

## FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

This contract will be funded in whole or in part by the FTA. The FTA sections listed below which may be applicable for this contract are indicated with an "X".

### 1. CHARTER BUS

[ ] This section **is not** applicable for this contract.

#### Applicability to Contracts

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

The Operator agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### 2. SCHOOL BUS

[ ] This section **is not** applicable for this contract.

#### Applicability to Contracts

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

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

### 3. ENERGY CONSERVATION

[XX] This section **is** applicable for this contract.

#### Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

The Operator 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.

### 4. CLEAN WATER

[XX] This section **is** applicable for this contract.

#### Applicability to Contracts

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

(1) The Operator 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 Operator 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 Operator also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 5. LOBBYING

[XX] This section **is** applicable for this contract.

#### Applicability to Contracts

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

**Byrd Anti-Lobbying Amendment, [31 U.S.C. 1352](#), as amended by the [Lobbying Disclosure Act of 1995, P.L. 104-65 \[to be codified at 2 U.S.C. § 1601, et seq.\]](#) - Operators 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.**

**6. ACCESS TO RECORDS AND REPORTS**

**[XX]** This section **is** applicable for this contract.

**Applicability to Contracts**

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

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 Operator 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 Operator which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Operator also agrees, pursuant to [49 C.F.R. 633.17](#) to provide the FTA Administrator or his authorized representatives including any PMO Operator access to Operator'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](#), Operator agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Operator, access to the Operator'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 [49 C.F.R. 19.48](#), Operator 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 Operator 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 Operator 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 Operator 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 Operator 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 Operator 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.

**7. FEDERAL CHANGES**

**[XX]** This section **is** applicable for this contract.

**Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

Operator 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. Operator's failure to so comply shall constitute a material breach of this contract.

1. CLEAN AIR

[XX] This section is applicable for this contract.

**Applicability to Contracts**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

(1) The Operator 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 Operator 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 Operator also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

[XX] This section is applicable for this contract.

**Applicability to Contracts:**

Applicable to all contracts.

**No Obligation by the Federal Government.**

(1) The Purchaser and Operator 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, Operator, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Operator 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.

1. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

[XX ] This section is applicable for this contract.

**Applicability to Contracts**

These requirements are applicable to all contracts.

(1) The Operator 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 Operator 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 Operator 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 Operator to the extent the Federal Government deems appropriate.

(2) The Operator 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 Operator, to the extent the Federal Government deems appropriate.

(3) The Operator 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.

## 11. TERMINATION

[XX] This section is applicable for this contract.

### Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Operator.

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

(2) Termination for Default [Breach or Cause] (General Provision) If the Operator does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Operator fails to perform in the manner called for in the contract, or if the Operator fails to comply with any other provisions of the contract, the CTC/County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Operator setting forth the manner in which the Operator is in default. The Operator 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 CTC/County that the Operator 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 Operator, the CTC/County, after setting up a new delivery of performance schedule, may allow the Operator to continue work, or treat the termination as a termination for convenience.

(3) Opportunity to Cure (General Provision) The CTC/County, in its sole discretion may, in the case of a termination for breach or default, allow the Operator [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 Operator fails to remedy to the satisfaction of the CTC/County the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Operator of written notice from the CTC/County, setting forth the nature of said breach or default, the CTC/County shall have the right to terminate the Contract without any further obligation to Operator. Any such termination for default shall not in any way operate to preclude the CTC/County from also pursuing all available remedies against Operator and its sureties for said breach or default.

(4) Waiver of Remedies for any Breach In the event that the CTC/County elects to waive its remedies for any breach by Operator of any covenant, term or condition of this Contract, such waiver by the CTC/County shall not limit the CTC/County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

(5) Termination for Convenience (Professional or Transit Service Contracts) the CTC/County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated the CTC/County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(6) Termination for Default (Transportation Services) If the Operator fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Operator fails to comply with any other provisions of this contract, the CTC/County may terminate this contract for default. The CTC/County shall terminate by delivering to the Operator a Notice of Termination specifying the nature of default. The Operator will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Operator has possession of the CTC/County's goods, the Operator shall, upon direction of the CTC/County protect and preserve the goods until surrendered to the CTC/County or its agent. The Operator and the CTC/County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Operator 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 CTC/County.

(7) Termination for Convenience of Default (Cost-Type Contracts) The CTC/County may terminate this contract, or any portion of it, by serving a notice of termination on the Operator. The notice shall state whether the termination is for convenience of the CTC/County or for the default of the Operator. If the termination is for default, the notice shall state the manner in which the Operator has failed to perform the requirements of the contract. The Operator shall account for any property in its possession paid for from funds received from the CTC/County or property supplied to the Operator by the CTC/County. If the termination is for default, the CTC/County may fix the fee, if the contract provides for a fee, to be paid the Operator in proportion to the value, if any, of work performed up to the time of termination. The Operator shall promptly submit its termination claim to the CTC/County, and the parties shall negotiate the termination settlement to be paid to the Operator.

If the termination is for the convenience of the CTC/County, the Operator shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the CTC/County determines that the Operator has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Operator, the CTC/County, after setting up a new work schedule, may allow the Operator to continue work, or treat the termination as a termination for convenience.

#### 1. GOVERNMENT-WIDE DEBARMENT AND SUPENSION (NONPROCUREMENT)

[XX] This section **is** applicable for this contract.

##### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to [49 CFR Part 29](#) on November 26, 2003. This government-wide regulation implements [Executive Order 12549](#), *Debarment and Suspension*, [Executive Order 12689](#), *Debarment and Suspension*, and [31 U.S.C. 6101 note \(Section 2455, Public Law 103-355, 108 Stat. 3327\)](#).

The provisions of [Part 29](#) apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. [49 CFR 29.220\(b\)](#). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, Operators, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. [49 CFR 29.300](#).

Grantees, Operators, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with [49 CFR 29, subpart C](#) and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

##### **Suspension and Debarment**

This contract is a covered transaction for purposes of [49 CFR Part 29](#). As such, the Operator is required to verify that none of the Operator, 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 Operator 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 the CTC/County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CTC/County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of [49 CFR 29, Subpart C](#) while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 1. PRIVACY ACTS

[XX] This section **is** applicable for this contract.

##### **Applicability to Contracts**

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

The following requirements apply to the Operator and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Operator 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 Operator agrees to obtain the express consent of the Federal Government before the Operator or its employees operate a system of records on behalf of the Federal Government. The Operator 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 Operator 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.

## 2. CIVIL RIGHTS

[XX] This section **is** applicable for this contract.

### Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

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 Operator 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 Operator 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 Operator 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](#), "[Executive Order No. 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 Operator 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 Operator 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 Operator agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Operator 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 Operator 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 Operator agrees to comply with any implementing requirements FTA may issue.

(3) The Operator 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.

## 3. BREACHES AND DISPUTE RESOLUTION

[XX] This section **is** applicable for this contract.

### Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Operators violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

**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 Escambia County's Purchasing Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Operator mails or otherwise furnishes a written appeal to the Purchasing Manager. In connection with any such appeal, the Operator shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Purchasing Manager shall be binding upon the Operator and the Operator shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the CTC/County, the Operator shall continue performance under this Contract while matters in dispute are being resolved.

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

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CTC/County and the Operator arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida.

**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 CTC/County, the Architect, or the Operator 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.

#### 4. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

[XX] This section is applicable for this contract.

##### Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of an Operator recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

(1) The Operator agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Operator agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of [49 U.S.C. A 5333\(b\)](#), and U.S. DOL guidelines at [29 C.F.R. Part 215](#), and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Operator 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.

(b) Transit Employee Protective Requirements for Projects Authorized by 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 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. A 5333\(b\)](#) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Operator 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. A 5333\(b\)](#), U.S. DOL guidelines at [29 C.F.R. Part 215](#), and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Operator agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) 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, the Operator 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.

(2) The Operator also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## 5. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

[XX] This section is applicable for this contract.

### Background and Applicability

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

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

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

(a) This contract is subject to the requirements of [Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs](#). The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **7.8 %**. A separate contract goal **has not** been established for this procurement.

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

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

(d) The Operator 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 Operator's receipt of payment for that work from the CTC/County. In addition, **[the Operator may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the CTC/County, and Operator's receipt of the partial retainage payment related to the subcontractor's work.]**

(e) The Operator must promptly notify Escambia County, Florida, 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 Operator may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CTC/County.

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

[XX] This section is applicable for this contract.

### Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Operator 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.

7. DRUG AND ALCOHOL TESTING  
[XX ] This section is applicable for this contract.

**Applicability to Contracts**

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

**Drug and Alcohol Testing**  
**Option 2**

*Under Option 2, the recipient relies on the Operator to implement a drug and alcohol testing program that complies with Federal Transit Administration (FTA) [49 CFR 655](#), but retains the ability to monitor the Operator's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the Operator complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the Operator's program, the recipient may find itself out of compliance with the rules.*

The Operator agrees to establish and implement a drug and alcohol testing program that complies with [49 CFR 655](#), produce any documentation necessary to establish its compliance with [49 CFR 655](#), and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the CTC to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under [49 CFR 655](#) and review the testing process. The Operator agrees further to certify annually its compliance with [49 CFR 655](#) before March 15 and to submit the Management Information System (MIS) reports before March 15 to (Donald A. Christian, III, Escambia County ADA Coordinator, 3363 W. Park Place, Pensacola, FL 32505). To certify compliance the Operator 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-FREE WORKPLACE FORM

The undersigned vendor in accordance with [Florida Statute 287.087](#) hereby certifies that

\_\_\_\_\_ does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for the drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Date

# **DEBARRED AND SUSPENDED BIDDERS:**

## Breach of Contract

1. **Scope.**

This policy prescribes policies and procedures relating to:

  - (a) the debarment of bidders for cause;
  - (b) the suspension of bidders for cause under prescribed conditions;  
and,
  - (c) the rejection of bids, revocation of acceptance and termination of contracts for cause.

It is directly applicable to the advertised and negotiated purchases and contracts, for equipment and services of the the CTC/County.
2. **General.**

Debarment and suspension are measures which may be invoked by the CTC/County either to exclude or to disqualify bidders and Operators from participation in Escambia County contracting or subcontracting. These measure should be used for the purpose of protecting the interests of the CTC/County and not for punishment. To assure the CTC/County the benefits to be derived from the full and free competition of interested bidders, these measures should not be instituted for any time longer than deemed necessary to protect the interests of the CTC/County and should preclude awards only for the probably duration of the period of non-responsibility.
- 2.1 **Definitions.**
  - (a) "Debarment" means, in general, an exclusion from County contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, improper conduct or the inadequacy of performance.
  - (b) "Suspension" means a disqualification from County contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence (See Section 6) of engaging in criminal, fraudulent, improper conduct or inadequate performance.
  - (c) A "debarment list" or "debarred bidders list" means a list of names of concerns or individuals against whom any or all of the measures referred to in this policy have been invoked.
  - (d) "Bidders" means, wherever the term is used in this policy, an offerors bidding pursuant to an invitation for bids or a request for proposals.
  - (e) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.
  - (f) "Business operations" means commercial or industrial activity engaged in regularly and continuously over a period of time for the purpose of receiving pecuniary benefit or otherwise accomplishing an objective. "Business operations" constitute and are equivalent to "carrying on business", "engaged in business", "doing business".
3. **Establishment and Maintenance of a List of Concerns or Individuals Debarred or Suspended.**
  - (a) The Purchasing Department shall establish and maintain, on the basis contained in Sections 6 and 6.1, a consolidated list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited.
  - (b) The list shall show as a minimum the following information:
    - (1) the names of those concerns or individuals debarred or suspended (in alphabetical order) with appropriate cross-reference where more than one name is involved in a single action;
    - (2) the basis of authority for each action;
    - (3) the extent of restrictions imposed; and,
    - (4) the termination date for each debarred or suspended listing.
  - (c) The list shall be kept current by issuance of notices of additions and deletions.
4. **Treatment to be Accorded Firms or Individuals Debarred or Suspended**

Firms or individuals listed by the Purchasing Department as debarred or suspended shall be treated as follows.

  - (a) **Total restrictions.** A contract shall not be awarded to a concern or individual that is listed on the basis of a Section 5(a)(1), (2) or (3) felony "conviction", or to any concern, corporation, partnership, or association in which the listed concern or individual has actual control or a material interest; nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the County Commission, an exception may be made with respect to a particular procurement action where the individual or concern is effectively the sole source of supply or it is an emergency purchase.
  - (b) **Restrictions on subcontracting.** If a concern or individual listed on the debarred and suspended bidders list is proposed as a subcontractor, the Purchasing Department shall decline to approve subcontracting with that firm or individual in any instance in which consent is required of the CTC/County before the subcontract is made, unless it is determined by the CTC/County to grant approval if the service is essential to public interest and the individual or concern is effectively the sole source of supply or it is an emergency purchase.
5. **Causes and Conditions Applicable to Determination of Debarment.**

Subject to the following conditions, the Purchasing is authorized to debar a firm or individual in the public interest for any of the following causes occurring with ten (10) years of debarment.

- (a) Causes
  - (1) "Conviction" for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.
  - (2) "Convictions" of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification or destruction of records, perjury, or receiving stolen property where the conviction is based upon conduct which arose out of, or was related to, business operations of the bidder.
  - (3) "Conviction" for bid-rigging activities arising out of the submission of bids or proposals.
  - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the CTC/County to be so serious as to justify debarment action:
    - (i) willful failure to perform in accordance with the specifications or within the time limit provided in the contract;
    - (ii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts. Failure to perform or unsatisfactory performance caused by acts beyond the control of the firm or individual as an Operator shall not be considered to be a basis for debarment.
  - (5) Debarment by any other governmental agency.
- (b) Conditions.
  - (1) Debarment for any of the causes set forth in this section shall be made only upon approval of the Purchasing.
  - (2) The existence of any of the causes set forth in (a) of this section does not necessarily require that a firm or individual be debarred except as provided in 4(a). In each instance, whether the offense or failure, or inadequacy of performance, be of criminal, fraudulent, or serious nature, the decision to debar shall only be made if supported by a preponderance of the credible evidence available. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, in deciding whether debarment is warranted. The actual or apparent authority of an involved individual, the present relationship of involved individuals with the bidder, the past performance of the individual or concern, and the relationship of the violation to the services or materials involved shall be considered.
  - (3) The existence of a cause set forth in (a)(1), (2), and (3) of this section shall be established by criminal "conviction" by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in reversal of the "conviction", the debarment shall be removed upon the request of the bidder (unless other causes for debarment exists). For the purposes of this policy, the following shall have the same effect as a "conviction": pleading guilty or nolo contendere, or being found guilty by a jury or court of, the offense in question, regardless of whether probation is imposed and adjudication withheld.
  - (4) The existence of a cause set forth in (a)(4) and (5) of this section shall be established by a preponderance of credible evidence by the Purchasing.
  - (5) Debarment for the cause set forth in (a)(5) of this section (debarment by another agency) shall be proper if one of the causes for debarment set forth in (a)(1) through (4) of this section was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

#### 5.1 Period of Debarment.

- (a) Debarment of a firm or individual shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense or the failure or inadequacy or performance. As a general rule, a period of debarment shall not exceed five (5) years. However, when partial or total debarment for an additional period is deemed necessary, notice of the proposed additional debarment shall be furnished to that concern or individual in accordance with Section 8.
- (b) A debarment may be removed or the period thereof may be reduced by the County Administrator upon the submission of an application supported by documentary evidence, setting forth appropriate grounds for the granting of relief; such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed. The County Administrator may request additional information, shall consider all relevant facts, and shall render a decision within twenty (20) days of receipt of the application unless a longer period is warranted under the circumstances.

#### 6. Suspension of Bidders.

- (a) Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether evidence exists for invoking a suspension, consideration should be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. In making a determination to suspend, the Purchasing shall consider the factors set forth in Section 5(b)(2). A suspension may be modified by the County Administrator as described in Section 5.1(b).

#### 6.1 Causes and Conditions Under Which the County May Suspend Operators

- (a) The Purchasing Department may, in the interest of the County, suspend a firm or individual when the firm or individual is suspected, upon credible evidence, of having committed one or more the following act(s) within three (3) years of the date of suspension:
    - (1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;
    - (2) Violation of statutes concerning bid-rigging activities out of the submission of bids and proposals; and,
    - (3) Commission of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification, or destruction of records, perjury, receiving stolen property. Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as the CTC/County Operator.
- 6.2 Period of Suspension.
- (a) All suspension shall be for temporary period pending the completion of an investigation and such legal proceedings as may ensue. In the event that prosecution has not been initiated within twelve (12) months form the date of the suspension, the suspension shall be terminated. Upon removal of suspension, consideration may be given to debarment in accordance with Section 5 of this policy.
7. Scope of Debarment or Suspension.
- (a) A debarment or suspension may include all known affiliates of a concern or individual.
  - (b) Each decision to include a known affiliate within the scope of a proposed debarment or suspension is to be made on a case-by-case basis, after giving due regard to actual or apparent authority of the controlling concern or individual and similarity of the services provided by the affiliate to those provided by the debarred individual or concern.
  - (c) The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business concern with which he is connected, where such impropriety was accomplished within the course of his official duty or apparent authority, or was effected by him with the knowledge and approval of that concern. When the individual was an officer of the concern, knowledge and approval may be presumed. Likewise, where a concern is involved in criminal, fraudulent, or seriously improper conduct, any individual who was involved in the commission of the impropriety may be debarred or suspended.
8. Notice of Debarment of Suspension.
- When the Purchasing seeks to debar or suspend a concern or individual (or any affiliate thereof) for cause, it shall furnish that party with a written notice:
- (1) stating that debarment or suspension is being considered;
  - (2) setting forth the reasons for the proposed action;
  - (3) indicating that such party will be afforded an opportunity for a hearing if he so requests one within ten (10) days; and,
  - (4) indicating that such party may make a written response in accordance with Section 9(a).
9. Response to Notice of Debarment or Suspension.
- (a) In lieu of requesting a hearing within the prescribed ten (10) day period, the party may, within said ten (10) day period, notify the CTC/County of its intent to provide a written reply and submit written evidence to contest the debarment or suspension. Such written evidence must be submitted within twenty (20) days after receipt of the notice of proposed debarment or suspension in order for it to be considered.
  - (b) Whatever response is received to the notice of intent to debar or suspend, such will be considered in determining whether debarment or suspension action will be made. Where a reply is received to the notice of intent to debar or to suspend, and evidence to refute such action is furnished but no hearing is requested, the information furnished will be considered in determining the action to be taken.
  - (c) If a hearing is requested, it shall be conducted by the County Administrator. The hearing will be held at a location convenient to the CTC/County as determined by the County Administrator and on a date and at a time stated. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred or suspended. The proceeding shall be of an informal nature as determined by the County Administrator. After consideration of the facts, the County Administrator shall notify the firm or individual of the final decision.
  - (d) If no response is made to the notice of debarment or suspension within the first ten (10) day period, the decision of the Purchasing shall be deemed final and the party so notified.
10. Rejection of Bids, Breach of Contract.
- (a) Previously solicited and/or accepted bids may be rejected or acceptance revoked prior to beginning of performance upon discovery by the County that the bidder or its affiliates have committed any act which would have been cause for debarment.
  - (b) If after a contract is awarded and performance has been begun the CTC/County discovers that the bidder or its affiliates have committed any act prior to award or acceptance which would have been cause for debarment had it been discovered prior to solicitation or acceptance, the CTC/County may consider such to be a material breach of the contract and such shall constitute cause for termination of the contract.

- (c) If after bids have been solicited and/or accepted or after a contract is awarded and performance begun, the County discovers that the bidder or its affiliates committed any act prior to award or acceptance which would have been cause for disbarment or suspension had it been discovered prior to solicitation or acceptance, the County may require additional satisfactory assurances that such act(s) have not occurred and that the contract can and will be faithfully performed. If additional assurances are requested and are not satisfactory or if the bidder or its affiliates fail to immediately cooperate with all reasonable requests, including requests for information reasonably calculated to lead to the discovery of relevant evidence, then such may be considered a material breach of the contract and such shall constitute cause for termination of the contract.

## BUSINESS INFORMATION

Full Legal Name of Entity:

(Exactly as it is to appear on the

Contract/Agreement)

Entity Address:

Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ Fax Number: ( \_\_\_\_\_ )

Form of Entity (check one and complete the appropriate entity statement attached hereto)

- Corporation (Complete forms page(s) \_\_\_ )
- Partnership, General (Complete forms page(s) \_\_\_ )
- Partnership, Limited (Complete forms page(s) \_\_\_ )
- Joint Venture (Complete forms page(s) \_\_\_ )
- Sole Proprietorship

Federal I.D. Number:

(1) If Proponent is a subsidiary, state name of parent company.

Caution: All information provided herein must be as to Proponent (subsidiary) and not as to parent company.

(2) If a corporation is a partner of a proposing partnership or a member of a proposing joint venture, the corporation statement, attached hereto, must be completed in addition to the appropriate Proponent's business entity statement.

Is Entity registered to do business in the State of Florida? Yes  No

If yes to the above, as of what date?

If not presently registered to do business in the State of Florida, Proposer acknowledges, by signing below, that if it is the Awardees' it will register with the State of Florida prior to the effective date of the contract with the CTC/County.

NAME (PRINT): \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_



## CORPORATION STATEMENT

If a Corporation, answer the following:

1. When incorporated?
2. Where incorporated?
3. The Corporation is held:  Publicly                       Privately
4. Has the Corporation previously offered Paratransit Services of similar size (as stated in the RFP) in the state of Florida?  
  
 yes                       no

If yes, indicate    Date: \_\_\_\_\_ Location:

5. Furnish the name, title, and address of each director, officer, principal manager and how long each has been employed.
6. Attach a copy of the Corporate Certificate from the Secretary of State.
7. Attach Credit references.