



COLORADO
Department of Transportation

DIVISION OF
TRANSIT AND RAIL
STATE MANAGEMENT PLAN

APPENDIX A
FTA PROGRAMS

Section 5310 • Section 5311 • Section 5339
Section 5307 • Section 5304 • Section 5312



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS

A1. Section 5310

Draft August 2019

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FTA Circular: FTA C 9070.1G: Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions
Rules and Regulations by the Colorado Department of Transportation for Implementation of the Section 5310 Program of the Federal Transit Laws, 49 U.S.C. Section 5300 et seq, 2 CCR 603-2

A1. SECTION 5310

The Section 5310 Program (49 United States [U.S.] Code [U.S.C.] 5310) provides funds to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. This program supports transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities. Section 5310 funds are apportioned to the states by a formula based on the number of seniors and people with disabilities in the state according to the latest available U.S. Census data.

Documents that govern how the Colorado Department of Transportation (CDOT) administers Section 5310 funds include:

- Federal Transit Administration (FTA) Circular 9070.1G:
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf
- FTA Website Overview: <https://www.transit.dot.gov/funding/grants/enhanced-mobility-seniors-individuals-disabilities-section-5310>
- Rules and regulations by CDOT for implementation of the Section 5310 program:
<https://www.codot.gov/programs/transitandrail/transit/transit-grant-programs/grant-information/transit-unit-state-guidance-for-grants/Rules5310.pdf/view>

A1.1 Program Goals and Objectives

The following goals were established for CDOT in its Section 5310 policy and programs:

- Provide quality transportation in Colorado to meet the needs of seniors, persons with disabilities, and other transportation-disadvantaged persons, especially those without ready access to other means of transportation.
- Preserve and upgrade existing transportation services and facilities, and encourage new and innovative forms of transportation.
- Ensure that private sector transportation operators, minority organizations, disadvantaged business enterprises, and the public have the maximum feasible opportunity to participate in the design, provision and evaluation of public transportation services.
- Maximize the degree of coordination at both the state and local level in the provision of transportation services.
- Ensure a fair and equitable distribution of the Section 5310 funds across the state.

- Encourage services to be made widely available and not directly or indirectly limited to a particular client or population group.

A1.2 Roles and Responsibilities

The parts of CDOT’s organization that are involved in the administration of FTA and state transit funds are listed in the following table.

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
CRBRC = Civil Rights and Business Resource Center	MPO = Metropolitan Planning Organization
DAF = Division of Accounting & Finance	OFMB = Office of Financial Management & Budget
DTD = Division of Transportation Development	STIP = Statewide Transportation Improvement Program
DTR = Division of Transit and Rail	TIP = Transportation Improvement Program
FFATA = Federal Funding Accountability and Transparency Act	TPR = Transportation Planning Region
FFR = Federal Financial Report	TRAC = Transit and Rail Advisory Committee

CDOT Organization	Role
DTR	Primary entity responsible for the management of FTA funds and for the oversight of subrecipients that are the operating entities throughout the state who perform the work.
Transportation Commission	Approves high-level policy criteria and transit metrics by which transit funds are evaluated and allocated. Adopts statewide plans related to transit, including the STIP. Approves DTR’s annual budget and recommended project awards.
Executive Director	Reviews/approves FTA award amendments and award appeals, if required
Office of Policy and Governmental Relations	Submits CDOT lobbying certifications.
DAF	<p><u>OFMB</u>: Sets CDOT’s budget structure, prepares and approves STIP, approves FTA and state transit pool funds,</p> <p><u>Accounting</u>: Enters financial information into CDOT’s financial management system (SAP), manages the drawdown of federal funds, performs the FFR and FFATA reporting.</p> <p><u>Business Office</u>: Updates STIP, manages the accounts payable functions for all subaward agreements builds budgets in SAP, approves subrecipient reimbursement request, reconciles project budgets, approves final reimbursement request to FTA.</p> <p><u>Office of Procurement</u>: Sets CDOT procurement policies, maintains master subrecipient subaward agreements, reviews and executes subaward agreements, reviews subrecipient procurement processes for compliance with federal requirements and required federal clauses.</p>

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CDOT Organization	Role
CRBRC	Develops CDOT’s civil rights programs and policies, provides DTR guidance on civil rights requirements, oversees subrecipients’ compliance with civil rights requirements in providing services and third-party contracting, maintains CDOT and subrecipients’ required civil rights documentation
Division of Audit	Approves subrecipient cost allocation plans or indirect cost rates.
Office of Communications	Issues public notices of public comment periods for statewide planning process, issues statements of project awards
CDOT DTD (supported by TRAC)	Conducts statewide planning process, coordinates with MPOs and TPRs regarding TIPs and STIP
CDOT Regions	Participate in statewide planning process, manage Region transit construction projects

The Division of Transit and Rail’s (DTR) direct access to the CDOT Executive Director to perform duties and functions under CDOT and the Executive Director is established in state law CRS 24-1-127.7(3)(e), CRS 24-1-103 through 105, and CRS 43-1-117.5.

Federal law, 49 Code of Federal Regulations (CFR) 26.25 requires that CDOT’s Disadvantaged Business Enterprise (DBE) Liaison Officer has direct, independent access to the Chief Executive Officer concerning DBE program matters. CDOT meets this requirement under a notice of Assurance of Direct and Independent Access executed January 2016 by CDOT’s Executive Director.

A1.2.1 Division of Transit and Rail

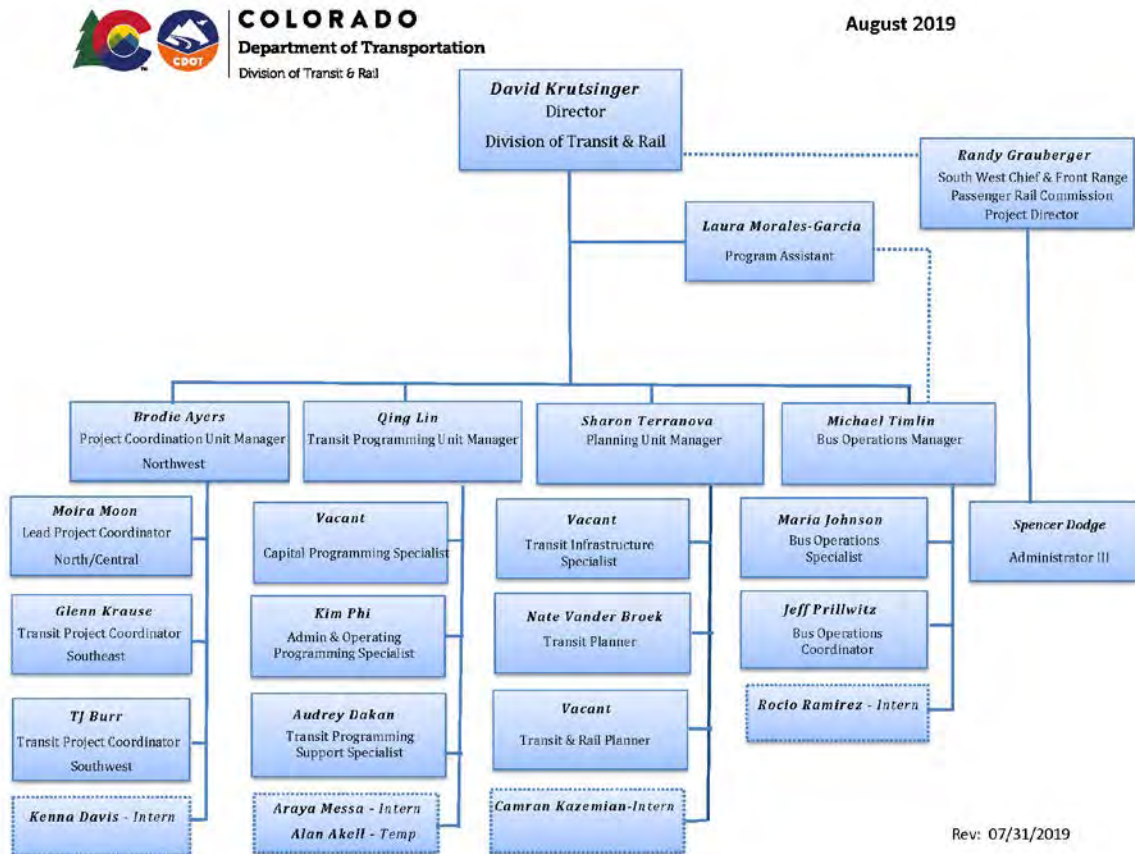
The DTR organization is shown in Figure A1.1.

Individual units within DTR have the following general responsibilities:

- **Planning Unit:** This group oversees the statewide planning process related to transit, and oversees distribution of federal and transit funds.

- **Programming Unit:** This group conducts and oversees the application process, award of projects, development and execution of the subaward agreement, and budgeting of federal and state funds.
- **Project Coordination Unit:** This group provides oversight and technical assistance to subrecipient agencies during the project and oversees the project close-out process.
- **Bus Operations Unit:** This group is responsible for regional, interregional, and intercity bus programs (Bustang and Outrider operations, Funding Advancement for Surface Transportation and Economic Recovery Act (FASTER) Operating assistance, and FTA 5311(f) programs).

Figure A1.1. DTR Organizational Chart



A1.2.2 Advisory Committees

There are several advisory committees that participate in CDOT's transit and rail planning processes, as described in the following sections. As required by the FTA, CDOT encourages minority participation in its advisory committees.

A1.2.2.1 Transportation Commission's Transit & Intermodal Committee

The state's transportation system is managed by CDOT under the direction of the Transportation Commission. The commission comprising 11 commissioners who represent specific districts. Each commissioner is appointed by the Governor, confirmed by the Colorado Senate, and serves a 4-year term. To provide continuity, the commissioners' term expiration dates are staggered every 2 years. Under state law, the powers and duties of the Transportation Commission include:

- Formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state.
- Advising and making recommendations to the Governor and the General Assembly relative to transportation policy; and promulgating and adopting CDOT's budgets and programs, including construction priorities and approval of extensions or abandonments of the state highway system. The General Assembly appropriates the administrative budget for CDOT.

The Transit and Intermodal Committee is one of three Standing Committees created by the Transportation Commission, as set forth in 2CCR 601-11, Rules Governing Practice and Procedures of the Transportation Commission of Colorado (<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6937&fileName=2%20CCR%20601-11>). The Chairman of the Transportation Commission with consent of the full Commission, appoints at least three but no more than five members of the Commission who meet periodically with executive management and the DTR Director to review transit and rail policies and practices.

A1.2.2.2 Statewide Transportation Advisory Committee

The Statewide Transportation Advisory Committee (STAC) advises CDOT and the Transportation Commission on the needs of the transportation system in Colorado and reviews and comments on all Regional Transportation Plans, and the Statewide Transportation Plan. STAC membership includes Colorado's 15 urban and rural Transportation Planning Regions (TPR) and 2 Indian Tribes. Voting representatives are selected by the 5 Metropolitan Planning Organizations (MPO), 10 rural Regional Planning Commissions, plus the Southern Ute and the Ute Mountain Ute Indian Tribes in southwest Colorado.

<https://www.codot.gov/programs/planning/planning-partners/stac.html>

A1.2.2.3 DTR's Transit and Rail Advisory Committee

The Transit and Rail Advisory Committee (TRAC) works with DTR to develop and promote the DTR's vision, policies, and priorities for transit and rail services in Colorado. The committee's 18 members are representatives from public and private transit providers, Class I and Shortline railroads, interest groups, CDOT TPRs, counties, cities and the general public. TRAC subcommittees are formed as needed to address specific issues, for example FTA Section 5310/5311 distribution, performance asset management, Bustang/Rural Regional Bus, and the Statewide Transit Plan (SWTP) implementation.

<https://www.codot.gov/about/committees/trac>

A1.2.2.4 Southwest Chief & Front Range Passenger Rail Commission

The Southwest Chief & Front Range Passenger Rail Commission was created by Senate Bill 17-153 in May 2017. It has 11 voting members (MPOs, Freight Railroads, Regional Transportation District, Passenger Rail Advocacy, Local Leaders, and others) and 3 non-voting members (Amtrak, Cheyenne Chamber of Commerce, and CDOT). It has two purposes: (1) to preserve and improve the existing Amtrak Southwest Chief service through track maintenance and other improvements, and (2) to facilitate the development of a passenger rail service along the greater I-25 corridor. Information about this Commission is located at

<https://www.codot.gov/about/southwest-chief-commission-front-range-passenger-rail>.

A1.3 State and Local Coordination

Every 5 years DTR completes an SWTP to establish a framework for creating an integrated statewide transit system that meets the mobility needs of Coloradans, while minimizing duplication of services and leveraging limited funds. The plan also meets state and federal planning requirements and guides CDOT's transit investments, project processes, and actions over the short-, mid-, and long-term. The SWTP includes needs, funding, and recommendations across the entire state. The Plan also integrates Regional Transit Plans for each of the state's ten rural TPRs, inclusive of coordinated public transit Human Services Transportation Plans. Local transit agencies in rural areas that are not part of an MPO are encouraged to work with the appropriate rural planning region regarding transit needs. The SWTP is located at: <https://www.codot.gov/programs/colorado-transportation-matters/other-cdot-plans/transit/transit>.

Part of DTR's application process requires the subrecipient to demonstrate that the project has been coordinated at the local level through Regional Coordinating Councils or Local Coordinating Councils.

CDOT's Chief Engineer participates in a statewide Strategic Action Planning Group on Aging (SAPGA), which makes recommendations to the governor and state legislature about issues related to an aging population—transportation included.

A1.4 Eligible Subrecipients

CDOT is the designated recipient for the Denver/Aurora large Urbanized Area (UZA; over 200,000), as chosen by the Governor in 2014. Two additional large UZAs in Colorado (Cities of Fort Collins and Colorado Springs) are direct recipients of Section 5310 funds and manage their Section 5310 programs in coordination with their MPOs, under the oversight of FTA Region 8.

CDOT is also the designated recipient for Small UZAs (50,000 to 200,000) and Rural areas (under 50,000).

Eligible subrecipients include private nonprofit organizations, states, or local government authorities, or operators of public transportation for transportation services targeted to meet the needs of seniors and persons with disabilities. Applicants must be one of the following to be eligible for “traditional” 5310 funds (mobility management projects):

- A private non-profit organization directly providing transportation services;
- A local public body approved by the State (CDOT) to coordinate services for seniors and individuals with disabilities; this approval must be requested in advance and should demonstrate how the public body is coordinating with others in its area; or
- A local public body certifying that it serves a region where no private non-profit organization is available. Public bodies must seek this certification prior to applying and must demonstrate due diligence in attempting to identify any local private nonprofit entity that is or might be interested in providing services for seniors and individuals with disabilities.

Applicants must be one of the following to be eligible for “Non Traditional” Other 5310 funds (operating projects):

- A private non-profit organization.
- A state or local governmental authority.
- An operator of public transportation that receives a Section 5310 award indirectly through a recipient.

A1.5 Local Share and Local Funding Requirements

All projects funded through these programs require some form of local match and sufficient operating funds to operate and maintain FTA-funded programs and projects. The federal share of eligible capital projects may not exceed 80%, and may not exceed 50% for operating assistance. For mobility management projects, the required local match percentage is 20% of expenses.

Local match may consist of any non-Department of Transportation (DOT) federal funds, such as Medicaid, Older Americans Act funding, or other funds that may be used for transportation; local tax revenues; local general operating funds; donations; or in-kind goods and services.

Local match may only be used once; that is, the same Older Americans Act funds may not be used for a 5311 application and a 5310 application. Local entities may choose to overmatch, meaning their portion of the total project budget may exceed 50% for operating and 20% for administration or mobility management projects.

In-kind goods and services may be used for the local share. If in-kind goods and services are used for local match, they must have direct relevance to the project being matched. For example, volunteer driver hours may be used as part of the local match under Section 5310 operating if the volunteer drivers are providing service to seniors and persons with disabilities.

Fuel in lieu of contributed funding is not considered in-kind when the fuel is used solely for the provision of transportation under one of the operating projects. The cost of the fuel is considered contributed income and may be used as cash local match.

A1.5.1.1 Sliding Scale Share

Colorado is one of 14 states under 23 U.S.C. 120(b) that are allowed to have higher federal share rates for capital projects under the 5310 program. Because of the limited amount of funding available and because the state faces an increased demand for capital and operating assistance, CDOT policy is to not use the sliding scale match and to limit the federal share to the standard match for all 5310 projects.

A1.5.2 Project Selection Criteria and Method of Distributing Funds.

A1.5.2.1 Eligible Projects

5310 projects must be targeted toward meeting the transportation needs of seniors and individuals with disabilities, although they may be used by the general public on an incidental basis. It is not sufficient that seniors and individuals with disabilities are included (or assumed to be included) among the people who will benefit from the project.

CDOT provides FTA operating assistance funds for three categories:

- **Rural** (less than 50,000 population)—Open to agencies in all non-urbanized, rural areas of Colorado.
- **Small Urbanized** (50,000 to 200,000 population)—Open to agencies in Boulder, Lafayette-Louisville-Erie, Longmont, Pueblo, Greeley, and Grand Junction.

- **Large Urbanized** (greater than 200,000 populations)—Denver (The other two large urbanized areas [Fort Collins and Colorado Springs] have chosen to administer their own Section 5310 funds.)

A1.5.2.2 Consolidated Capital Projects Call

Every year CDOT pools (consolidates) funds from federal and state programs and conducts a single competitive application process for local capital projects.

A1.5.2.2.1 Selection Criteria

Projects for these programs are evaluated based on the type of project—that is, revenue vehicles (rolling stock); facilities, design, and equipment; or studies—and whether the project is for replacement or expansion (new) vehicles. Evaluation metrics (or criteria) for each type of project are listed below.

For Replacement of Revenue Vehicles

Metric 1: *The vehicle's State of Good Repair (SGR):* Age, Mileage, Usage, Readiness, including how the vehicle's replacement is projected and prioritized within the agency's Asset Management Plan; higher mileage vehicles will be scored higher than lower mileage units. Older vehicles, beyond minimum useful life standards, are scored higher than newer vehicles, with special considerations allowed for "lemons" or irreparable damage due to accident, etc.

Metric 2: Higher scoring will be awarded to applicants that can demonstrate a good state of repair through effective, documented, formal preventive maintenance programs or Transit Asset Management programs, and to those that have and follow a capital replacement plan.

For Expansion of Revenue Vehicles

Metric 1: *Demonstrated Need and Readiness:* Higher scoring will be awarded to projects that clearly demonstrate the need for the expanded service in terms of documented ridership or need studies and community support, that demonstrate an effective business case and can demonstrate they are truly ready to implement and sustain the expansion.

Metric 2: *Special Considerations:* For vehicle requests, applicants with a lower fleet spare ratio, who have a capital replacement plan and follow sound asset management practices, who can show strong institutional commitment, and who can show a strong financial commitment (higher local match ratio), will be scored more strongly.

For Facilities, Design, and Equipment

Metric 1: *Readiness and Demonstrated Timetable:* Higher priority will be given to those that are shovel ready (i.e., National Environmental Policy Act [NEPA] clearance finalized, at least 30% design completed, and site location selected and purchased), and to the completion of existing projects.

Metric 2: Project Purpose, Cost Savings, and Efficiency: Higher priority will be given to those projects that: have a high degree of local and regional support; well-developed and defensible business case, and support or provide significant transit operational and utilization benefits.

Metric 3: Special Considerations. Higher scoring in this area will be given to those projects that demonstrate they were developed in partnership with the local community. In the case of requests for the expansion of existing facilities, higher scoring will be applied if the project demonstrates the need for the facility and for growth in the program it supports. Agencies that adequately demonstrate institutional commitment, funding, financial capacity, and capability to sustain the service and project over time will be also be scored more strongly.

Civil Rights Requirements. In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, "The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin." For purposes of this requirement, "facilities" does not include bus shelters, as these are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with the regulations:

The recipient must complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

A1.5.2.3 Local Transit Operating, Administrative, and Mobility Management; and Statewide Operating

Every year CDOT pools (consolidates) funds from several programs and conducts a competitive application process for local transit operating, administrative, mobility management, and statewide operating projects. Examples of these projects include operating assistance for general public transit, operating assistance for specialized transit, mobility managers, travel training, etc.

A1.5.2.3.1 5310 Operating

Under Moving Ahead for Progress in the 21st Century Act (MAP-21) legislation, Congress merged the 5317 New Freedom program into the Section 5310 program. As a result of this merger of programs, activities eligible under the New Freedom program, including operating funds for projects that serve seniors or people with disabilities beyond the minimum Americans with Disabilities Act (ADA) requirements—are now eligible under Section 5310 for Large Urban and Small Urban regions.

In rural and small urban areas, the legislation requires that at least 55% of Section 5310 funds be available for capital projects that are “traditional” Section 5310 projects (e.g., capital purchases, mobility management) while the remaining 45% can be used for other capital and operating projects that were previously associated with the New Freedom program.

Under the FTA Section 5310 program, the costs necessary to operate, maintain, and manage a transportation system are considered eligible operating expenses. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year

Operating funds under the Section 5310 program require a 50% local match and agencies must show that they have the required funding to match FTA funds.

Applicants must show that there is both a service need and a financial need for funding and outline how their program specifically meets the specified criteria.

A1.5.2.3.2 Section 5310 Mobility Management

This classification covers applications to fund the following types of projects:

- Purchased transit service
- Operating a transportation brokerage to coordinate service providers
- Providing information and referral services and/or resources
- Operating one call-one click systems and/or call centers
- Supporting local partnerships that coordinate transportation services, such as Regional Coordinating Councils and Local Coordinating Councils
- Staffing for the development and implementation of coordination plans
- Providing travel training and trip planning activities

Projects funded in this category require a 20% local match and are consistent with definitions developed under MAP-21.

Mobility Management Description

This category covers projects designed to enhance the mobility of individuals within a region. Funds may be used to hire staff to provide mobility services, purchase transportation for individuals needing to travel in a region, marketing of mobility services for a region,

coordination efforts within a region, or other services designed to enhance the mobility of Coloradoans.

The Colorado Mobility and Access Coalition describes Mobility Managers as individuals who “plan and manage activities and projects that improve coordination among transportation providers and those who need transportation. Mobility Management assists moving any individual using a range of transportation options, with a focus on effectiveness and cost-efficiency. Mobility Management seeks and leverages a variety of funds and partnerships to connect resources and needs in a sustainable manner.”

Mobility management is customer focused, serves a vital role in improving access for citizens, especially those who are elderly or have disabilities, and assists transportation providers in making the best use of scarce resources. Through the distribution of Section 5310 funds for Mobility Management, CDOT is committed to leveraging resources to maximize and enhance access to transit.

Mobility management activities are intended to build coordination between existing health and human service agencies, employment services, and public transportation providers, with the result of expanding the availability of service. Funding may be used for salaries, benefits, and related program expenses.

Subrecipients requesting funds for mobility management must demonstrate that they have and will use a range of transportation options and providers, working together cooperatively in a partnership.

Travel Training

Projects in this category consist of efforts designed to transition persons with disabilities from specialized ADA services onto regular fixed route services. These projects must operate within an area where a fixed route program and its complementary paratransit program exist. They typically operate in areas where other mobility management services are available. Funding may be used for salaries of trainers, purchase of travel training services, development of travel training materials, or the purchase of fixed route tickets or passes needed for one-on-one training.

Brokerage Operations

Funding for these services is limited to agencies that broker transportation trip requests. The applicant may be one of the providers as long as they identify the other participants in the brokerage and indicate the approximate percentage of trips they anticipate providing themselves. In addition, the applicant must show the processes by which they broker requests.

A1.5.2.4 Coordinated Planning

Title 49 U.S.C. 5310, as amended by MAP-21, requires a recipient of Section 5310 funds to certify that projects selected for funding under this program are included in a locally

developed, coordinated public transit-human services transportation plan and that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human service providers; and other members of the public. FTA strongly encourages coordination and consistency between the local coordinated public transit-human service transportation plan and metropolitan or statewide transportation planning processes, as described in 23 CFR part 450 and 49 CFR part 613.

During the application process, DTR staff verify that proposed projects are part of the applicable TPR plans or the coordinated human services plans prepared by the MPOs. CDOT's statewide planning process includes the required participation and coordination for the projects eligible for 5310 funds.

DTR allows the use of Section 5310 funded vehicles in a coordinated setting with Section 5311 funded programs, so long as the service being provided is primarily for seniors and persons with disabilities, and provided general public ridership is approximately no more than 20%. A subrecipient is responsible for ensuring compliance with this requirement and for tracking ridership data to support this assertion

A1.5.2.5 Geographical Distribution

DTR undertakes a geographic equity analysis as part of the SWTP update process every 4 years that ensures that each part of the state, as defined by the TPR, receives an equitable share of FTA funding. In addition, geographic equity is one of the criteria used to award projects under the Calls for Projects.

DTR enlists the assistance of the Denver Regional Council of Governments (DRCOG) in soliciting, evaluating, and selecting projects in the Denver/Aurora UZA. To avoid duplicative awards and facilitate a fair and equitable distribution of funds statewide, DTR coordinates with the MPOs of the Fort Collins and Colorado Springs large UZAs by sharing information about project requests. DTR coordinates with these entities so that state-managed funds like FASTER do not compete with or supplant regionally managed funds.

DTR seeks to award Section 5310 funds for capital equipment to no more than one organization within a geographic area. Exceptions can be made in more heavily populated communities where there are multiple providers that agree to work closely together under a coordination agreement; and when a lead agency applies on behalf of a second agency and there is a formal arrangement for administering the project.

A1.5.2.6 Application Evaluation and Scoring

DTR staff reviews the applications to ensure that minimum eligibility requirements are met. Any applicant not meeting the criteria is contacted by DTR and given the opportunity to respond to the finding of ineligibility.

For all projects, an evaluation committee made up of CDOT staff (DTR, Division of Transportation Development [DTD], the Policy and Government Relations Office, Civil Rights & Business Resource Center) evaluates and scores applications. In selecting projects for funding, consideration is given to geographic distribution.

The evaluation committee has two to three weeks to review applications and prioritize projects. The committee compiles scores and puts together a recommended prioritized award list.

After the committee evaluates the project according to the criteria included in the Notice of Funding Availability, each project is ranked according to its project type and score. Because of limited available funding, CDOT continues to put an emphasis on a fix-it-first approach—that is, giving higher priority to the replacement and refurbishment of buses, facilities, and equipment, rather than on new or expansion capital or planning projects. This does not mean, however, that expansion or planning projects are not funded—only that an applicant seeking funding for expansion projects must make a very strong case, with documented justification and evidence of sustainability, in order for the project to be considered.

A1.5.2.6.1 Operating and Mobility Management Projects

Applicant merit scoring and weighting are based on the following factors for Operating and Mobility Management projects:

Financial Need (30%)

- Lack of funding sources available to the applicant.
- Good faith efforts to obtain funds for the project from non-FTA sources (e.g., Title III of the Older Americans Act and Medicaid reimbursements).
- Economic condition of the applicant's service area.
- Level and amount of local commitment to transit.
- Reasonableness of costs to operate and administer the project.
- Amount of available revenue, including contract and earmarked funds.
- Portion of costs covered by local funds.

When evaluating financial justification, the Evaluation Committee compares estimated project costs and revenues in light of a three-year cost history. Inflation and service expansion are considered.

Service Justification (30%)

- Lack of appropriate public transportation alternatives.

- Transit dependency of the population in the applicant's service area, particularly the extent to which the proposed project serves elderly or disabled persons, persons without a car, or low-income persons.
- Extent to which the applicant provides service to other organizations; the numbers of riders and types of trips provided.
- Size of an applicant's service area.
- Other relevant factors, including congestion mitigation and air quality improvement.

Coordination/Effectiveness (40%)

This is the extent to which an applicant demonstrates that it has coordinated with other organizations to promote the service and reduce service duplication, overlapping service areas, and conflicts. The Evaluation Committee will also evaluate how the proposed/selected activities will advance efficiencies in, accessibility to, and/or the effectiveness of transportation services provided to seniors and individuals with disabilities. The coordination of services evaluation is separate from the threshold requirement for projects to be derived from a local human services transportation plan. Factors to be considered are:

- Extent which coordination reduces operating expenses, number of vehicles used and lead time for passenger scheduling.
- Extent which the applicant works with community organizations (e.g., Chambers of Commerce, human service agencies) to promote the service and make it more efficient.
- Lack of duplication or overlap with transit services provided by others.
- An applicant's good faith efforts to coordinate with private for profit operators.
- The performance measure(s) listed for each activity demonstrates your ability to improve your clients' quality of life and can also indicate the quality of change that was produced by your activity.
- Scoring priority is given to those agencies that provide transportation opportunities to a wider population.

Applications are given a score of 0 to 3.0 in 1/4-point increments for each element. The element score is then weighted based on the above criteria and added together to derive the total merit score. For example, an application receiving a 2.0 on financial need, a 2.5 on service need, and a 3.0 on coordination would score as follows:

- 2.0 x 0.3 = 0.60
- 2.5 x 0.3 = 0.75
- 3.0 x 0.4 = 1.20

A1.5.2.6.2 Capital Projects

Applicant merit scoring and weighting are based on the following factors for capital projects:

Project selection is based on FTA minimum useful life guidelines for buses and related facilities, and FTA program guidance, including asset management principles. Furthermore, Policy Directive 14 puts performance goals in place for the overall preservation of the statewide transportation system.

For Replacement of Revenue Vehicles

Metric 1: *The vehicle's SGR:* Age, Mileage, Usage, Readiness, including how the vehicle's replacement is projected and prioritized within the agency's Asset Management Plan; higher-mileage vehicles will be scored higher than lower mileage units. Older vehicles, beyond minimum useful life standards, are scored higher than newer vehicles, with special considerations allowed for "lemons" or irreparable damage due to accident, etc.

Metric 2: Higher scoring will be awarded to applicants that can demonstrate a good SGR through effective, documented, formal preventive maintenance programs or Transit Asset Management programs, and to those that have and follow a capital replacement plan.

For Expansion of Revenue Vehicles

Metric 1: *Demonstrated Need and Readiness:* Higher scoring will be awarded to projects that clearly demonstrate the need for the expanded service in terms of documented ridership or need studies and community support, that demonstrate an effective business case, and that can demonstrate they are truly ready to implement and sustain the expansion.

Metric 2: *Special Considerations:* For vehicle requests, applicants with a lower fleet spare ratio (i.e., less than 20%), who have a capital replacement plan and follow sound asset management practices, who can show strong institutional commitment, and who can show a strong financial commitment (higher local match ratio), will be scored more strongly.

For Facilities, Design, and Equipment

Metric 1: *Readiness and Demonstrated Timetable:* Higher priority will be given to those new projects that are shovel ready (i.e., NEPA clearance finalized, at least 30% design completed, and site location selected and purchased), and to the completion of existing projects.

Metric 2: *Project Purpose, Cost Savings, and Efficiency:* Higher priority will be given to those projects that have a high degree of local and regional support; are well-developed with a defensible business case; and support or provide significant transit operational and utilization benefits.

Metric 3: *Special Considerations.* Higher scoring in this area will be given to those projects that demonstrate they were developed in partnership with the local community. In the case of requests for the expansion of existing facilities, higher scoring will be applied if the project demonstrates the need for the facility and for growth in the program it supports. Agencies

that adequately demonstrate institutional commitment, funding, financial capacity, and capability to sustain the service and project over time will be also be scored more strongly.

Civil Rights Requirements. In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, "The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin." For purposes of this requirement, "facilities" does not include bus shelters, as these are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with the regulations.

The recipient must complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

For Planning Studies

Metric 1: *Project Purpose and Demonstrated Need:* The project does not qualify for FTA Section 5303 or 5307 (in urbanized areas) or 5304 funding (in rural areas), it is relevant to other transit agencies in the state, it has been vetted with the local transit provider, and the study is ready to proceed upon award. In rare cases, Section 5304 rural planning funds may be awarded to urbanized areas that consider rural-to-urban services.

A1.6 Annual Program of Projects Development and Approval Process

From the final list of subawards for a given Call for Projects, DTR develops a Program of Projects (POP) for each FTA program. The POP includes a brief description of the projects; identifies each subrecipient and indicates whether they are governmental authorities or private nonprofit agencies; and lists total project costs and federal share of each project. The POP summarizes the available and applied funds for the program and the sources of funding for each parent award and project within the parent award (FTA, local match, local in-kind match). Additional detail on each project includes specific information about the agency, award status, civil rights compliance status, and contract identifiers in the CDOT accounting system.

DTR then assembles an award application in FTA's Transit Award Management System (TrAMS) based on the POP. The award application includes the following minimum information:

- Fiscal Year (FY) of funding and whether Program Requirements are met
- Period of Performance
- Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)/Unified Planning Work Program
- Project Locations
- Activity line Item and Budget Line Information, Federal and Local match ratio
- Local Match Sources
- Vehicle Useful Life, fuel Type and Quantities
- Local Transportation Human Service Coordination Plan for 5310 projects
- Milestones
- NEPA Requirements

FTA reviews the POP and application for compliance, then approves and releases the funds to CDOT. This process is illustrated in Flowchart A1-1 FTA Award Application.

A1.7 State Administration, Planning, and Technical Assistance

DTR uses no more than 10% allowable allocation of Section 5310 funding, in combination with its \$1 million of FASTER administrative funds, to administer its programs, manage its planning process, and provide technical assistance.

A1.8 Transfer of Funds

The transfer of Section 5310 funds to and from other programs is allowed for the following:

- CDOT may transfer Section 5310 funds to Section 5311 or Section 5307 programs if the funds will remain unobligated at the beginning of the 90-day period before the end of the federal fiscal year.
- Surface Transportation Programs, Congestion Mitigation and Air Quality (CMAQ) funds, and other eligible flexible funds may be transferred from the Federal Highway Administration to the Section 5310 program for capital needs. Procedures related to flexible funding are outlined in FTA Circular 9040.1.G, Appendix D. DTR makes decisions about transferring funds in conjunction with local area transit providers, the area MPO, and the State Highway Engineer's office; transfers must be approved by the CDOT Executive Director.
- CDOT may use 5310 funds apportioned for Small and Rural UZAs for projects serving another area if all the objectives of the 5310 program are being met in the specified areas. This requires a certification from the governor (or the governor's designee) after CDOT consults with responsible local officials, publicly owned operators of public transportation,

and nonprofit providers in the area from which the funds to be transferred were originally apportioned.

- CDOT can transfer small UZA or rural allocations to large UZAs but not the other way around.

All contractual, procurement and payment procedures must follow state and federal guidelines. Notification to FTA of the intent to transfer funds is in accordance with FTA Circular 9070.1G.

A1.9 Private Sector Participation

CDOT issues its calls for projects using a broad advertising approach to ensure applications are competitive. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

In CDOT's continued commitment to the involvement of private enterprise in the provision of mass transit services, to the maximum extent feasible, the following applies:

- Applicants must provide reasonable notice to transportation providers regarding proposed services and opportunities for their participation in such services.
- Applicants must provide, in each application, certified receipts of letters that applicant sent to private for-profit transportation providers notifying them of all applicable public hearings and coordinated meetings.
- To ensure that all interested persons, businesses, and agencies have been notified of an applicant's intention to provide transportation services, and that they have adequate opportunity to comment, applicant must issue a public notice describing its proposed services. The notice should invite any interested private operator within the service area to comment, or request a public hearing, on the proposed services by written notice to the subrecipient. A minimum of a 15-day response time must be provided.
- Subrecipients may purchase service from private sector transportation providers as well as public providers. Under such arrangements, certain special conditions apply to the purchase of service agreement, depending on the funding used to provide such services.
- Subrecipients must ask permission, in writing, from CDOT/DTR to use Purchase Service Contracts. CDOT/DTR must approve the proposed purchase of service contracts prior to execution by the subrecipient.

A1.10 Civil Rights

CDOT's Civil Rights and Business Resource Center's (CRBRC) mission is to promote equal access to and participation in CDOT programs and activities. Additionally, the CRBRC collaborates with CDOT Regional Civil Rights Offices and various CDOT program staff to foster equality in CDOT's transportation contracting processes.

Within the CRBRC is the role of the Title VI Specialist/Civil Rights Liaison for DTR. This position works with DTR to implement and monitor compliance with the FTA's civil rights requirements, including Title VI, Equal Employment Opportunity, and DBE.

CRBRC and DTR monitor subrecipient compliance with FTA civil rights regulations through the following:

- Including civil rights requirements in each Call for Projects.
- Oversight of third-party contracting procedures.
- Review of subrecipient websites.
- Review of the subrecipient's programs prior to awarding funds.
- Requiring subrecipients to submit updated programs to DTR through Colorado Transit & Rail Awards Management System (COTRAMS) annually with certifications and assurances, or as required.
- Review of program documents during scheduled Subrecipient Information Request (SIR) and Site Review process every 3 years.
- Technical assistance and training to subrecipients in the development of and execution of their programs, including minority applicants and those serving minority or traditionally underserved populations.
- Assistance in resolving complaints.
- Filing required reports to FTA.

A1.11 Section 504 and Americans with Disabilities Act Reporting

DTR and CRBRC jointly oversee subrecipient compliance with ADA requirements. They must ensure that all vehicles acquired with FTA funds are equipped, maintained, and operated in accordance with 49 CFR Parts 27, 37 and 38, unless certification of equivalent service is filed annually, and that service provided does not discriminate against individuals with disabilities. Newly constructed facilities, including joint use stops and depots for intercity bus transportation, must comply with ADA accessibility standards.

Agencies receiving FTA funding under Section 5310 that provide demand responsive service are required to submit a Certification of Equivalent Service to DTR prior to procuring any inaccessible vehicle, which DTR must file with FTA. The certification is valid for 1 year. A sample Certification is available as an attachment to FTA Circular 4710.1. If DTR and CRBRC determine that a subrecipient presents a risk in this category, an ADA review may be performed.

In addition, CRBRC participates in the SIR and Site Review Process every 3 years. A subrecipient's ADA Program is part of this review.

A1.12 Program Measures

Program Measures Reports are required from subrecipients that have active 5310 projects. These reports ask for updates on program performance. These include:

- Traditional Section 5310 Projects
 - Gaps in service filled
 - Ridership
- Other Section 5310 Projects
 - Service improvements
 - Physical improvements
 - Ridership
- A client story or success story

Subrecipients must submit these quarterly reports in COTRAMS; DTR then submits the reports to FTA using TrAMS.

In addition, DTR monitors subrecipient use/expenditures of funds and progress in completing the awarded projects through the monthly reimbursement requests.

A1.13 State Program Management

Once an executed subaward agreement is in place, CDOT/DTR is responsible for oversight of the subrecipient agency and its implementation of the project. Oversight includes monitoring, training, and technical support for subrecipient agencies to support them in compliance with federal and state regulations and guidelines associated with receiving and disbursing funds.

When subrecipient agencies enter into contracts with contractors and subcontractors to perform work funded by FTA or state transit funds, the subrecipient agencies are responsible for oversight and compliance of the contractors and subcontractors with federal and state regulations and guidelines.

DTR utilizes the Comprehensive Review Guide, updated annually by the FTA, as a guide to conduct oversight. The most current Comprehensive Review Guide can be found through a link on FTA’s Program Oversight web page (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

A1.13.1 Baseline Activities

DTR Project Coordinators and subrecipients have responsibilities related to ongoing oversight and participating in oversight activities. Subrecipients are expected to participate in baseline activities, unless deemed not required by DTR. Baseline activities are outlined in Table 1.

Table A1.1. Baseline Activities

	Activity	Subrecipient	DTR
	COTRAMS = Colorado Transit & Rail Awards Management System LCC = Local Coordinating Council RCC = Regional Coordinating Council RTAP = Rural Transit Assistance Program CASTA = Colorado Association of Transit Agencies		NTD = National Transit Database DTR = Division of Transit and Rail FTA = Federal Transit Administration TrAMS = Transit Award Management System
Daily/Weekly	Customer Service and COTRAMS support		Assist subrecipients as requested
	Reimbursement Requests for Capital projects (COTRAMS)	Submit	Approve
Monthly	Transit Conference Calls	Participate and contribute	Prepare for and conduct
	Informal Site Reviews	Prepare for and participate	Schedule and conduct
	Reimbursement requests for Admin/Operating and Mobility Management projects (COTRAMS)	Submit	Review and approve
Quarterly	Local Coordinating Council (LCC) and Regional Coordinating Council (RCC) meetings	Attend	Attend as needed
	RTAP and other training opportunities	Attend	Schedule and conduct
	CASTA committees	Participate and attend	Participate and attend
	Risk assessments (COTRAMS)	Complete	Complete
	Quarterly Reports (Section 5311 and Section 5311[f] recipients)*	Prepare	Review
	Program Measures Reports (Section 5310 recipients)**	Prepare	Review
Annually (spring)	Transit Open Houses	Attend	Prepare for and conduct

Table A1.1. Baseline Activities

COTRAMS = Colorado Transit & Rail Awards Management System		NTD = National Transit Database	
LCC = Local Coordinating Council		DTR = Division of Transit and Rail	
RCC = Regional Coordinating Council		FTA = Federal Transit Administration	
RTAP = Rural Transit Assistance Program		TrAMS = Transit Award Management System	
CASTA = Colorado Association of Transit Agencies			
	Activity	Subrecipient	DTR

*Quarterly Reports are designed to assist 5311 and 5311(f) subrecipients capture the service information quarterly that they are required to report annually in the National Transit Database (NTD). Subrecipients that have active 5311 and 5311(f) projects must complete these reports in COTRAMS quarterly.

** Program Measures Reports are required from subrecipients that have active 5310 projects. These reports ask for updates on program performance: gaps in service filled and ridership. Subrecipients are encouraged to include a client story or success story, as these are important to share with the FTA. Subrecipients must complete these quarterly in COTRAMS; DTR then submits the reports to FTA using TrAMS.

A1.13.2 Subrecipient Information Request and Site Review Process

All subrecipients are required complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA’s Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

The SIR may be completed differently by agencies because some areas are only applicable to certain funding sources or for certain types of projects. The process is illustrated in Flowchart A1-2 Subrecipient Information Request (SIR) and Site Review and includes the following:

Pre-Review. Project Coordinators send notifications to the agencies scheduled to have a Site Review. The notification stating the purpose of the SIR according to the risk-based and SIR oversight policy. A site review date is agreed upon and scheduled. The subrecipient receives a

SIR custom created for the agency made up of questions for the subrecipient to answer and a request for copies of the subrecipient's program documents. The notification includes a deadline to return the completed SIR and upload the requested documents to COTRAMS.

Desk Review. Project coordinators complete an Internal SIR document that captures their comments on the subrecipient's SIR and documents submission. Based on the review of the provided documentation, the Project Coordinator develops questions, highlights areas of concern, and identifies additional areas for discussion, such as upcoming projects and needs. A detailed agenda for the Site Visit is sent to the subrecipient prior to the scheduled Site Visit.

Site Visit. The Site Visit view is typically a one-day meeting with facility and/or bus tours, as appropriate. The reviews are an opportunity for the Project Coordinator and the subrecipient to review projects, help subrecipient reach compliance requirements, identify opportunities for improvement, answer questions, and identify future needs. Attendees include the agency executive staff, the Project Coordinator, and representatives from other CDOT/DTR programs, as needed (Transit Asset Management, Civil Rights, Audit, Business Office, Drug & Alcohol program, Rural Transit Assistance Program [RTAP], CDOT Regional Planner, and others). Subrecipients are responsible for ensuring that pertinent staff members are available.

Site visits begin with an entrance conference stating the purpose of the review and a reminder that the informal "findings" are a reflection on CDOT's oversight. Site visits follow the pre-arranged agenda and leave ample time for the in-person checklist, especially checking maintenance records. A typical Site Visit checklist is included as Attachment A1-1 Subrecipient Information Request (SIR) and Site Review Checklist. The Site Visit ends with an exit conference to review the notes taken during the Site Visits and clarify any next steps.

Post-Review: The Project Coordinator sends a follow-up letter declaring whether or not the subrecipient is in compliance; and documenting observations, recommendations, and conclusions. Follow-up actions required by the subrecipient are also identified, including, if needed, additional training and technical assistance or a corrective action plan with a timeline.

A1.13.2.1 Frequency and Level of Oversight

After the initial SIR and Site Review, the frequency and level of oversight are based on the results of the scores of the Risk Assessment completed by the subrecipient and DTR in COTRAMS after an award. The Risk Assessment process is described in Chapter 3 (Section 3.5.1). DTR's objective is to provide the appropriate level of oversight based on the risk assessment scores and the needs of the specific agency.

The combined numerical score from the Risk Assessment corresponds to High, Medium/High, Medium/Low, and Low level of oversight. DTR uses the Low to High ratings to determine how often a Subrecipient is asked to complete the SIR and participate in a Site Review. The percentage of subrecipients at the different risk levels participating in the SIR and Site Review is illustrated in Figure A1.2.

Figure A1.2. Subrecipients Participating in SIR



A1.13.3 Federal Transit Administration Certifications and Assurances

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA Assistance Programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

FTA issues a list of required certifications and assurances for each fiscal year. The FY 2018 list available at <https://www.transit.dot.gov/funding/grants/grantee-resources/fta-fiscal-year-2018-certifications-and-assurances> and is included as Attachment A1-2 FTA FY 2019 Certifications and Assurances. Some certifications and assurances apply to all applicants. Others are required from applicants requesting more than \$100,000 in federal assistance or depend on the type of applicant or project.

A1.13.3.1 Program Documents

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the SIR and Site Review process; however, subrecipients are expected to have updated documents in COTRAMS on an ongoing basis. These documents cover all of the applicable areas of review in the FTA's Comprehensive

Review Guide (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

Individual FTA programs require additional submittals. Specific program requirements are detailed in SMP Appendix A (FTA Programs) and Appendix B (Non-Federal Transit Funds).

Finally, there are Civil Rights requirements related to Civil Rights programs for both CDOT and subrecipients. These are described in Chapter 5.

A1.13.3.2 Remedies for Noncompliance

Remedies for a subrecipient's noncompliance with the statutes, regulations, or the terms and conditions of the award or the executed subaward agreement are set forth in 2 CFR 200 (<https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>). If CDOT determines that a subrecipient is not complying with the general or specific terms of an award, CDOT may impose additional conditions to the award, as described in 2 CFR 200.207, or take additional actions, as detailed in 2 CFR 200.338. Rules pertaining to noncompliance are defined in CDOT's executed subaward agreement with the subrecipient in the Breach of Agreement and Remedies sections. CDOT's standard subaward agreement is included as Attachment A1-3 CDOT Standard Subaward Agreement.

A1.13.4 Project Amendments

Subrecipients are responsible for reporting to DTR whenever one or more of the following occurs:

- Budget or schedule changes
- Milestone or completion dates were not met
- Identification of problem areas and how the problems will be resolved
- Expected impacts and the efforts to recover from delays

DTR takes proactive steps to address issues on projects that are not meeting performance standards, including identifying resources for subrecipient project managers, identifying specific issues causing the delay, and providing a date certain by which time requirements must be met.

CDOT works with a subrecipient to obtain FTA's prior approval of proposed changes, then amend the subaward agreement to extend the end date or adjust awarded amount to reflect the approved changes. The process DTR uses to amend a capital project is shown in Flowchart A1-3 Amendment for Capital Project.

A1.13.5 Subaward (Project) Performance Schedule

The subrecipient is responsible for meeting the schedule requirements included in the executed subaward agreement and reporting through COTRAMS on meeting milestones. The

DTR Project Coordinator confirms on a regular basis that the project is performing on schedule. If it falls behind schedule, Project Coordinator notifies the DTR Unit Manager and DTR Director of the underperforming project, and a plan is developed to remediate or terminate the project.

The DTR Unit Managers and the DTR Director monitors schedule changes, with the goal of efficiently addressing underperforming projects and taking proactive steps to close out the projects in a timely manner.

A1.13.6 Invoicing and Reimbursement

A1.13.6.1 Governing Policies

The federal Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called Uniform Guidance) is the authoritative set of rules and requirements for federal awards and project management (<https://www.grants.gov/learn-grants/grant-policies/omb-uniform-guidance-2014.html>). In addition, specific requirements are outlined in FTA Circular 5010.1E Award Management Requirements, which is included as an Appendix to the State Management Plan (SMP) and can be found in: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/32136/5010-1e-circular-award-management-requirements-7-21-2017.pdf>. Requirements for invoicing and reimbursement are also covered in 2 CFR 200.

The State of Colorado “Fiscal Rules” govern the administrative procedures for reviewing and accepting all requests for reimbursement, and are stricter in some instances than required by federal law. The state fiscal rules are available from the Office of the State Controller at <https://www.colorado.gov/pacific/osc/alpha-index-6#F>

A1.13.6.2 DTR Reimbursement to Subrecipients

According to state fiscal rules, CDOT will not reimburse subrecipients for expenses incurred prior to the date of subaward agreement execution, unless the agreement contains a 60-day retroactivity clause (typically operating project). Under an executed subaward agreement, a subrecipient must first incur costs before submitting an invoice for reimbursement.

Reimbursement Requests may be held for payment due to any breach of the executed subaward agreement, i.e., lack of reporting or other documented noncompliance with the grant agreement terms.

A1.13.6.2.1 Eligible Expenses

According to federal and state policies, CDOT pays all reasonable and fully and accurately documented requests for reimbursement within 30-45 calendar days of submittal. If the documentation is incomplete or there are ineligible expenses in the invoice, the process may take longer.

Eligible expenses are defined in an exhibit to the executed subaward agreement titled Verification of Payment checklist and vary depending on the type of project. Information about how to submit documentation for reimbursement is outlined in the COTRAMS Manual.

Supporting documentation for the expenses and payment of expenses includes, but is not limited to, accounting records, such as cancelled checks, paid bills with receipts, or other proof-of-payment; payroll; time and attendance records; contracts; and subaward documents. Some programs have specific requirements related to documentation.

A1.13.6.2.2 Invoicing/Reimbursement Request Schedule

CDOT requires subrecipients to submit reimbursement requests in a timely fashion and regularly, according to the executed agreement.

Delay in submitting invoices may result in the subrecipient being considered a higher-risk agency and more stringent requirements may be placed on the agency. For example, the agency may be required to provide additional or more detailed documentation in its reimbursement requests. Or, the agency may be required to clear the backlog of invoices before CDOT will approve future applications from the agency.

The process for reimbursement for capital projects is illustrated in Flowchart A1-4 Capital Project Reimbursement Request.

A1.13.7 Procurement Policies and Procedures

A1.13.7.1 CDOT Direct Procurements

CDOT's Procurement and Contract Services office oversees CDOT's direct procurement of goods and services in accordance with State of Colorado Procurement Code and Fiscal Rules. This includes procurement of professional architectural and engineering services, as well as services that do not require an architectural or engineering license. Resources are available at <https://www.codot.gov/business/procurement-and-contract-services>.

The State of Colorado procurement policies and procedures are located here: <https://www.colorado.gov/pacific/osc/procurement-resources> and described further in the following documents:

- Procurement Code (Title 24, Article 101 to Article 112), modernized under Colorado House Bill 17-1051.
(<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crd=de9a576c-afd4-46c2-8253-d5e72996d564>)
https://www.colorado.gov/pacific/sites/default/files/2017A_1051_signed.pdf

- State of Colorado Procurement Code of Ethics and Guidelines
<https://www.colorado.gov/pacific/sites/default/files/State%20of%20Colorado%20Procurement%20Code%20of%20Ethics%20and%20Guidelines.pdf>
- State of Colorado Procurement & Fiscal Rules
(<https://www.sos.state.co.us/CCR/NumericalCCRDclList.do?deptID=14&deptName=100,800%20Department%20of%20Personnel%20and%20Administration&agencyID=40&agencyName=101%20Division%20of%20Finance%20and%20Procurement>)

A1.13.7.2 Professional Services Contracts

In Colorado, procurement of professional architectural and engineering services is governed under The Brooks Act. Professional services that are not performed by a licensed architect or engineer are considered “personal services.” CDOT’s Procurement Office conducts the procurement process in collaboration with DTR for these types of services according to the Procurement Code and State of Colorado Procurement & Fiscal Rules. The selection is generally made based on meeting minimum requirements and that are outlined in an Invitation for Bid (IFB) or Request for Proposal (RFP).

CDOT’s process for this type of procurement is documented in Flowchart A1-5 Personal Services Procurement. A sample RFP is included as Attachment A1-4 Sample Personal Services RFP.

A1.13.7.3 Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards set forth in 2 CFR 200.319 and Title 49 U.S.C. 5325(a) (<https://www.gpo.gov/fdsys/pkg/USCODE-2009-title49/pdf/USCODE-2009-title49-subtitleIII-chap53-sec5325.pdf>). CDOT encourages full and open competition.

For its direct procurements, CDOT advertises in the Rocky Mountain Bid System and has an open prequalification process for consultants and contractors wishing to do business with CDOT.

A1.13.7.4 Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

In accordance with 49 CFR Part 26, CDOT seeks to ensure non-discrimination in the award and administration of DOT-assisted contract and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

Detailed information about CDOT’s DBE Program and requirements for subrecipients regarding DBE contracting are provided in Chapter 5 of the SMP.

A1.13.7.5 Third-Party Procurements

As recipients of federal funds used in third-party procurements, CDOT and its subrecipients must comply with the State of Colorado Procurement Code for non-federal procurements, as well as the federal procurement standards outlined in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions. Subrecipients must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (2 CFR 200.321).

CDOT and its subrecipients are also responsible for ensuring that all of its contracts or subcontracts made in connection with FTA transit funds comply with provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Subrecipients must track all prime contractors and subcontractors, including DBEs, on all awarded, in process, and closed FTA-funded contracts.

DTR's policies and procedures related to third-party procurements are outlined in Attachment A1-5 DTR Quick Procurement Guide.

A1.13.7.5.1 DTR Oversight of Third-party Procurements

In its oversight role, DTR monitors and oversees subrecipient purchases of goods and/or services using FTA and state funds to confirm that the procurements are conducted in compliance with applicable state and federal regulations. Subrecipients must incorporate DBE nondiscrimination language into procurement documents and awarded contracts.

DTR coordinates, as needed, with the CDOT Procurement and Contract Services office throughout the procurement process. The Procurement Office reviews the statement of work/specifications; makes recommendation on type of procurement; and drafts and reviews the procurement subaward agreement, Purchase Orders, and associated documentation. The Procurement Office conducts annual training for subrecipients on CDOT procurement procedures. In addition, DBE civil rights requirements related to procurement are coordinated with the CRBRC in accordance with 49 CFR part 26.

A1.13.7.5.2 Subrecipient Written Procurement Procedures

Subrecipients are required to have written procurement procedures that conform to applicable state and local regulations, as well as the federal law and the standards set forth in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions.

Below is a list of what should be included in a subrecipient's written procedures for third-party procurements:

- DBE policy or goal
- Identified dollar thresholds, specifically for sealed bids/competitive process

- Description of management of payment to contractors
- A protest and appeal process
- Standards of conduct
- Graduated purchasing authority (what employee can authorize what type of purchase?)
- Policy for the documentation of responsibility determinations (prior to the award, the bidders are checked for integrity, compliance, past performance, etc.)

A1.13.7.5.3 Subrecipient Third-Party Procurement Process

Subrecipients are required to submit required documentation in COTRAMS for Project Coordinator's review and approval at each step of the third-party procurement process. The procurement process is explained in detail in Attachment A1-5 DTR Quick Procurement Guide.

An overview of the Procurement process is illustrated in Flowchart A1-6 Third-Party Procurement. Requirements for the submittals are detailed in the following sections.

Prepare Independent Cost Estimate

Subrecipients must prepare an Independent Cost Estimate prior to conducting a procurement process. This helps to determine the appropriate procurement method and the special requirements for it, as outlined in 2 CFR 200.320.

Determine Procurement Method

A Project Coordinator is available to assist a subrecipient in determining which procurement method to use. Procurements may be conducted by an individual agency or through a joint procurement with multiple agencies with common specifications.

Requirements for the different procurement methods can be referenced in Attachment A1-5 DTR Quick Procurement Guide.

Procurement Forms

DTR follows a 4-step Procurement Approval process in COTRAMS, where the following forms are collected. These forms are more fully explained in Attachment A1-5 DTR Quick Procurement Guide.

- PCR: Procurement Concurrence Request
- PA: Purchase Authorization
- NA: Notice of Acceptance and Vehicle Checklist
- SA: Security Agreement

Post-Procurement Administrative Requirements

The subrecipient must include the following items in its procurement records and make them available for the Project Coordinator upon request.

- Record of any debriefing with proposers

- Record of any protest and subrecipient response

Retention Requirement for Procurement Documentation

A subrecipient must keep written documentation of each procurement process for 3 years following completion of the project/procurement or project closeout.

The FTA's Procurement Best Practices Manual recommends that agencies maintain records for 3 years following project completion. Some examples of documentation to maintain in a written record of procurement history could include:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Rationale for the method of procurement (i.e. RFP, IFB, Sole Source)
- Independent cost estimate
- Copy of the solicitation, all addenda and all amendments
- List of sources solicited
- Copies of published notices of proposed contract action
- An abstract of each offer or quote
- Reasons for contractor selection or rejection
- Determination that contractor is responsive and responsible
- Determination that price is fair and reasonable including an
- Analysis of the cost and price data
- Required internal approvals for award
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Record of any protest
- Required insurance documents, if any, and
- Notice to proceed

A1.13.8 Project Close-Out

Upon completion of the project—after the purchase of the goods for capital projects or at the end of the service period for operating or mobility management agreements as provided in 2 CFR § 200.343 and within 30 days of the final invoice paid—the subrecipient must submit a project closeout form through COTRAMS and notify the Project Coordinator to close the project. The executed subaward agreement includes the required project close-out elements or other project deliverables.

DTR's process for this is shown in Flowchart A1-7 Project Closeout.

CDOT's policy is to close out projects and FTA awards as soon as practicable and deobligate and reobligate unspent funds such that "older money" from these closed awards is used first for new projects.

The Project Coordinator verifies that the subrecipient has completed all of its responsibilities related to the project. Examples include:

- Final report and Quarterly reports submitted to DTR.
- Vehicle title on file with DTR.
- Copy of completed plan, if applicable for planning projects.

When a project is closed out, terminated or partially terminated, the recipient is responsible for compliance with the requirements in 2 CFR § 200.344 Post-Close Out Adjustments and Continuing Responsibilities.

A1.13.9 Construction Projects

Construction projects each have a specific schedule and milestones as part of the subaward agreement. The subrecipient/contractor must follow the requirements set forth in the CDOT SMP and the Local Agency Manual, as it applies. The Local Agency manual can be found at: https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual

Project Coordinators, working with their subrecipients, confirm on a regular basis that the project is performing on schedule. If the project falls behind schedule, the Project Coordinator notifies the Project Coordination Unit Manager and the DTR Director of the underperforming project. At that point, a plan will be developed to remediate or terminate the project.

A1.14 Reporting Requirements

In addition to the Program Measures Report listed in Section A1.12, DTR reports the following information on behalf of its subrecipients:

- Annual POP Status Report. An updated POP, as well as any significant civil rights issues, notable accomplishments, or difficulties with projects are reported by October 30 of each year.
- Milestone Progress Reports. Revisions and status updates on projects including revised completion dates by Monthly Progress Report line item. Reports are due by October 30 annually and may be required quarterly.
- Federal Financial Report. Accrual reports for each project within the federal programs are provided by October 30 of each year and may be required quarterly.
- National Transit Database (NTD). For those agencies receiving Section 5310 funds, CDOT reports transit asset management SGR performance measures and targets on behalf of agencies participating in the Group Transit Asset Management (TAM) Plan.
- DBE Reports. These are the semi-annual DBE reports required of all FTA funding recipients.

A1.15 Other Provisions

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA assistance programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

All subrecipients are required complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA's Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the SIR and Site Review Process, but subrecipients are expected to have updated documents in COTRAMS on an ongoing basis. These documents cover all of the applicable areas of review in the FTA's Comprehensive Review Guide (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

Environmental protection requirements are reviewed during the pre-award phase of the application process, where DTR confirms that the required environmental clearances for the project have been obtained.

Buy America provisions, and pre-award and post-delivery reviews are confirmed through DTR's oversight of the subrecipient's procurement processes. Review and approval occurs with a

PCR, PA, and NA—which the subrecipient is required to submit through COTRAMS for DTR’s approval.

Restrictions on lobbying are included as part of the subaward agreement and are reaffirmed through annual Certifications and Assurances submittals through COTRAMS.

DTR has contracted with a drug and alcohol program consultant that works directly with subrecipients to comply with the regulations. The consultant is responsible for subrecipient training, compliance monitoring, and technical assistance. The consultant monitors the subrecipient testing programs throughout the year. Subrecipients are required to report program testing results in the FTA’s Drug & Alcohol Testing Management Information System (DAMIS) by March 15 for the prior year. DTR and the consultant work with subrecipients to make sure the reports are accurately submitted by the annual deadline.

ATTACHMENTS

Attachment A1-1. Subrecipient Information Request (SIR) and Site Review Checklist

COLORADO DEPARTMENT OF TRANSPORTATION: DIVISION OF TRANSIT AND RAIL

CHECKLIST IS MEANT FOR USE DURING SITE REVIEWS, DOES NOT REFLECT OFFICIAL FINDINGS

SITE REVIEW	NOTES
Use as an opportunity to show how well projects are progressing and to identify problem areas that might require technical assistance	
PROGRAM	
✓ Interview staff and review files to determine effectiveness of programs	
✓ Sample program brochures and hear updates	
FINANCIAL	
✓ Sample a few financial transactions for accuracy, completeness and review of source documentation (receipts), especially the appropriate use of funds.	
✓ Determine that accounting transactions are recorded in a timely manner.	
✓ Ask business office if they have any concerns.	
✓ Review where records are kept and how they are secured.	
PERSONNEL	
✓ Any new staff? Turnover contributed to?	
CONTRACTS	
✓ Review that contracts or subcontracts for services are conducted competitively (obtained multiple bids, use of selection procedures and monitoring techniques); maintains detailed records documenting the basis of all solicitations/procurements	
✓ Review contract and procurement records; view where they are stored and how they are secured. (PCR, PA, NA, SA)	
PROPERTY	
✓ Review whether recipient keeps adequate property records and maintains an up-to-date inventory of all property used on the grant	
✓ Are there proper controls in place to safeguard property against loss, damage, theft (ie, locked fences or garage, lighting, security system); Where are keys secured?	
✓ Check vehicle maintenance plan for preventative maintenance schedules.	

✓ Check that vehicle maintenance plan coincides with vehicle manufacturing recommendations?	
✓ Has your alternate maintenance schedule been approved by the manufacturer?	
✓ Check 2-3 vehicle records for +/- 500 mi or are within 10% variance to actuals in 80% of the audit sample.	
✓ How are warranty claims handled and tracked back to the manufacturer?	
✓ Record retention - policy & practice (3 years)	
CIVIL RIGHTS	
✓ Where is the (ADA & Title VI) discrimination complaint log kept? If any within the last 3 years, were they sent to CDOT Civil Rights Specialist?	
✓ Is the location of a discrimination complaint process posted on vehicles? At the transit center? Website?	
✓ Ensure correct Civil Rights contacts and ADA & Title VI complaint procedures are posted on the agency's website.	
✓ Ensure requests for reasonable modification are posted on the agency's website.	
SIGNAGE	
✓ Job Safety & Health Protection sign	
✓ If a Job Injury Occurs sign	
✓ Rights as a Worker sign	
✓ Equal Opportunity is the Law sign	
✓ Nondiscrimination public notice (i.e. reception desk - public location - and on the website)	
✓ ADA Policy (if applicable)	
TRANSIT FACILITIES	
<ul style="list-style-type: none"> ✓ Check that transit facilities are open to the public are ADA accessible: <ul style="list-style-type: none"> ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? ○ Is there clear access to the boarding area? ○ Is there a flat concrete pad at the boarding area? ○ Is there adequate seating present at the stop/station? ○ Are route numbers on the bus stop sign at least three inches tall? 	

<ul style="list-style-type: none"> ○ Are other signs at the stop/station easy to read? ○ Are there braille signs indicating which buses/trains use that stop/station? ○ Is visual information in terminals, bus stops, or stations variable: by size, contrast, color, layout, spacing, etc. ○ Is auditory information available and are alternatives provided, such as text or voice recognition-to-text technology, visual symbols for emphasis, sound alerts, etc. ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? 	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features in public facilities are operational i.e. automatic doorways 	
<p>If RIDE ALONG</p>	
<ul style="list-style-type: none"> ✓ Stop announcements made? 	
<ul style="list-style-type: none"> ✓ Ask operator to operate the lift or ramp. 	
<ul style="list-style-type: none"> ✓ Review if a pre-trip vehicle inspection checklist is used. What items are tracked on it? Lifts? 	
<p>ADA-VEHICLE</p>	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features on vehicles are operational (ie, lifts, ramps, kneeling) 	
<ul style="list-style-type: none"> ✓ Review complementary paratransit bus schedules to ensure that they mirror the fixed route service provided. 	

Attachment A1-2. FTA FY 2019 Certifications and Assurances

CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

This certification appears on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 C.F.R. Part 21;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 C.F.R. Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated

- against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
- (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 C.F.R. Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 C.F.R. Part 24.
- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 C.F.R. Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.

- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a sub-recipient from:
- (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget's standard form 424D "Assurances—Construction Programs" and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 C.F.R. 200.324, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards,” 2 C.F.R. Part 200, particularly 2 C.F.R. §§ 200.317–200.326 “Procurement Standards;

- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 C.F.R. Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 C.F.R. § 180.300. Additionally, each applicant must disclose any information required by 2 C.F.R. § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

CATEGORY 2. TAX LIABILITY AND FELONY CONVICTIONS.

Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. As prescribed by U.S. DOT Order 4200.6, FTA requires each applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 3. LOBBYING.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 C.F.R. § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 C.F.R. Part 20.

3.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

3.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CATEGORY 4. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 C.F.R. § 604.4.

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 C.F.R. Part 604, the terms and conditions of which are incorporated herein by reference.

4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 C.F.R. § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 C.F.R. § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
 - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 C.F.R. § 605.11, the applicant agrees as follows:
 - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
 - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
 - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 5. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it has, or will develop, a transit asset management plan in compliance with 49 C.F.R. Part 625.

CATEGORY 6. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.**6.1. Rolling Stock Buy America Reviews.**

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 C.F.R. § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 C.F.R. Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 C.F.R. Part 663.

6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 C.F.R. § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 C.F.R. Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 7. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
 - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 8. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

CATEGORY 9. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

CATEGORY 10. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant, regardless of whether it is in an urbanized or rural area, will apply for an award under subsection (c) (low or no emission vehicle grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(c)(3).

Making this certification will incorporate by reference the applicable certifications in Category 7 or Category 8.

CATEGORY 11. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 7, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 7 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 7, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 12. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, this certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4).

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 C.F.R. Part 625.

CATEGORY 13. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks ("SIB") Program (23 U.S.C. § 610), it must make the certifications in Category 7 for the Urbanized Area Formula Grants Program, Category 9 for the Fixed Guideway Capital Investment Grants program, and Category 12 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 7, 9, and 12 by reference.

CATEGORY 14. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA's Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 C.F.R. § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 C.F.R. Part 655.

CATEGORY 15. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 C.F.R. §§ 659.43, 672.31, and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 C.F.R. part 659, "Rail Fixed Guideway Systems; State Safety Oversight";
- (b) Compliant with the requirements of 49 C.F.R. part 672, "Public Transportation Safety Certification Training Program"; and
- (c) Compliant with the requirements of 49 C.F.R. part 674, "State Safety Oversight".

CATEGORY 16. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 C.F.R. Part 37, it must make the following certification. This certification is required by 49 C.F.R. § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;

- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 17. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 18. CONSTRUCTION HIRING PREFERENCES.

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. G, title I, § 191.

The applicant certifies the following:

- (a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;
- (b) That the applicant will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and

- (c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

FTA FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES

FEDERAL FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: _____

The Applicant certifies to the applicable provisions of categories 01–18. _____

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Tax Liability and Felony Convictions	_____
03 Lobbying	_____
04 Private Sector Protections	_____
05 Transit Asset Management Plan	_____
06 Rolling Stock Buy America Reviews and Bus Testing	_____
07 Urbanized Area Formula Grants Program	_____
08 Formula Grants for Rural Areas	_____
09 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
10 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____
11 Enhanced Mobility of Seniors and Individuals with Disabilities Programs	_____
12 State of Good Repair Grants	_____
13 Infrastructure Finance Programs	_____
14 Alcohol and Controlled Substances Testing	_____
15 Rail Safety Training and Oversight	_____
16 Demand Responsive Service	_____
17 Interest and Financing Costs	_____
18 Construction Hiring Preferences	_____

FEDERAL FISCAL YEAR 2019 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE

PAGE

(Required of all Applicants for federal assistance to be awarded by FTA in FY 2019)

AFFIRMATION OF APPLICANT

Name of the Applicant: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in federal fiscal year 2019, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Award for which it now seeks, or may later seek federal assistance to be awarded during federal fiscal year 2019.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____ Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature _____ Date: _____

Name _____ Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.

Attachment A1-3. CDOT Standard Subaward Agreement

STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number/PO Number XX-HTR-ZL-XXXXXX/491XXXXXX
Subrecipient XXXXXXXXXXXX	Agreement Performance Beginning Date The Effective Date
Subaward Agreement Amount	Initial Agreement Expiration Date December 31, 2021
Federal Funds Maximum Amount (80%) \$XX,XXX.XX	Fund Expenditure End Date December 31, 2021
Local Funds Local Match Amount (20%) \$XX,XXX.XX	Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.
Agreement Total \$XX,XXX.XX	
Agreement Purpose XXXXXXXXXXXX	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Required Federal Contract/Agreement Clauses. 5. Exhibit E – Verification of Payment. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit C – Federal Provisions. 2. Exhibit D – Required Federal Contract/Agreement Clauses. 3. Colorado Special Provisions in §18 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A – Statement of Work and Budget. 6. Exhibit B – Sample Option Letter 	
Principal Representatives	
For the State: To Be Determined Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 TBD	For Subrecipient: XXXXXXXX XXXXXXXX XXXXXXXX XXXXXX, XX XXXXXX-XXXX XXXXXXXX@XXXXXXXX.org

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p style="text-align: center;">SUBRECIPIENT XXXXXXX</p> <hr/> <p>By: Print Name of Authorized Individual _____</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: _____</p> <p>Date: _____</p>
<p>2nd State or Subrecipient Signature if needed</p> <hr/> <p>By: Print Name of Authorized Individual _____</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p>By: Assistant Attorney General _____</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <hr/> <p style="text-align: center;">By: Colorado Department of Transportation</p> <p style="text-align: center;">Effective Date: _____</p>	

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1. PARTIES

This Agreement is entered into by and between Subrecipient named on the Cover Page for this Agreement (the “Subrecipient”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Subrecipient and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Subrecipient, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Subrecipient of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Subrecipient shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- H. **"End of Term Extension"** means the time period defined in §2.D.

- I. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- L. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. Federal Transit Administration (FTA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- M. **“FTA”** means Federal Transit Administration.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- O. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et. seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. **“Initial Term”** means the time period defined in §2.B.
- R. **“Master Agreement”** means the FTA Master Agreement document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.
- S. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- T. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- U. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- V. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- W. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- BB. **“Subcontractor”** means third-parties, if any, engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of grant funds.
- CC. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Contractor is a Subrecipient.
- DD. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- EE. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- FF. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK AND BUDGET

Subrecipient shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Subrecipient for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO SUBRECIPIENT

A. Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Agreement Maximum shown on Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Subrecipient shall provide Matching Funds as provided in §5.A. and Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's treasury or bank account. Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies

D. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of §5, this Agreement, and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.
- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the maximum total amount described in Exhibit A and §5 for all allowable costs described in this Subaward and shown in Exhibit A, except that Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change,

the change does not modify the total maximum amount of this Agreement or the maximum amount for any state or federal fiscal year, and the change does not modify any requirements of the Work.

- iii. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within 1 year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Agreement having a term longer than 3 months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §14.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Subrecipient shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final

expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Subrecipient or any of its Subcontractors will or may receive the following types of data, Subrecipient or its Subcontractors shall provide for the security of such data. Subrecipient shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Subrecipient shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure

environment that ensures confidentiality of all State Confidential Information wherever located. Subrecipient shall provide the State with access, subject to Subrecipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subrecipient shall return State Records provided to Subrecipient or destroy such State Records and certify to the State that it has done so, as directed by the State. If Subrecipient is prevented by law or regulation from returning or destroying State Confidential Information, Subrecipient warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that none of Subrecipient or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent subrecipients, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or self-insurance program carried by Subrecipient or the State.

F. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and Subrecipient shall forward such notice to the State in accordance with §14 within 7 days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All commercial insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each commercial insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall

deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Subrecipient is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Government and State purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Subrecipient under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Subrecipient agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Subrecipient's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in §17.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Subrecipient shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Subrecipient, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Subrecipient in violation of §8 may be cause for legal action by third parties against Subrecipient, the State, or their respective agents. Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation

to any act or omission by Subrecipient, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

U. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibit D at all times during the term of this Agreement.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Subrecipient’s liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Contract and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Subrecipient has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subrecipient’s services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State’s discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Subrecipient **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political

subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount Federal Funds Maximum Amount (%) \$0.00 Local Funds Local Match Amount (%) \$0.00 Agreement Total \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option <hr/> Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year <hr/> Current Agreement Expiration Date Month, Day, Year

1. **OPTIONS:**
 - A. Option to extend for an Extension Term.
2. **REQUIRED PROVISIONS:**
 - A. **For use with Option 1(A):** In accordance with Section(s) 2.B of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
 - B. **For use with Options 1(A):** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval
By: <u>Name & Title of Person Signing for Agency or IHE</u> Date: _____	Option Effective Date: _____

EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award *does not* include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Contract or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION.

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §0 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §0 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §0 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D - Required FEDERAL Contract/Agreement Clauses

All FTA-Assisted Third-Party Contracts and Subawards from the Current FTA Master Agreement [FTA MA(25)]

Section 3.I. – No Federal government obligations to third-parties by use of a disclaimer

No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4.e. – Program fraud and false or fraudulent statements and related acts

False or Fraudulent Statements or Claims.

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying

Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.

- (e) *Closeout*. Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

3.G – Federal Changes

Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.

12 – Civil Rights

- (c) *Nondiscrimination – Title VI of the Civil Rights Act*. The Recipient agrees to, and assures that each Third Party Participant will:

- (1) Prohibit discrimination based on race, color, or national origin,
- (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
 - (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.

- (d) *Equal Employment Opportunity*.

- (1) *Federal Requirements and Guidance*. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - (ii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
 - (iv) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.
- (2) *Specifics*. The Recipient agrees to, and assures that each Third Party Participant will:
 - (i) *Affirmative Action*. If required to do so by U.S. DOT regulations (49 C.F.R. part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) *Indian Tribe*. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities*. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and

- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (h) *Nondiscrimination on the Basis of Disability*. The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
- (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
 - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
 - (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
 - (xi) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- (a) *Federal Laws, Regulations, Requirements, and Guidance*. The Recipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

- (i) *Energy Conservation*. The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

Applicable to Awards exceeding \$10,000

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 16. Procurement

- (a) *Debarment and Suspension.* The Recipient agrees to the following:
- (1) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
 - (2) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:
 - (i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
 - (ii) U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto;
 - (iii) Executive Order No. 12549, “Debarment and Suspension of Participants in Federal Programs,” February 18, 1986, 31 U.S.C. § 6101 note, as amended by Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989 31 U.S.C. § 6101 note; and
 - (iv) Other applicable federal laws, regulations, requirements, or guidance regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - (4) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
 - (iii) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);

- (b) *Cargo Preference–Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. part 381; and
- (c) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

Section 39. Disputes, Breaches, Defaults, or Other Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics, Political Activity, and Certain Criminal Activity.

- (a) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and

- (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

Clean Air and Clean Water - From 16(e.):

- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- (a) Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) Cargo Preference—Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 C.F.R. part 381; and
- (c) Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),
 - (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
 - (c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (2) Wage and Hour Requirements of:
 - (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (3) "Anti-Kickback" Prohibitions of:
 - (a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,
 - (b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and
 - (c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 C.F.R. part 3.
 - (4) Construction Site Safety of:
 - (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

From Section 16

- (e) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708).* Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (o) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
- (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

From Section 23

- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117.

Section 12 Civil Rights d.3

- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour

protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Applicable to Transit Operations

From Section 24. Employee Protections

- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - a. *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
 - b. *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
 - c. *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)- type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.
- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 C.F.R. part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 32. Public Transportation Safety.

- (a) *Public Transportation Agency Safety Program.* The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.
- (b) *State Safety Oversight of Rail Fixed Guideway Public Transportation Systems.* For a Recipient that is a state with a rail fixed guideway public transportation system, the Recipient agrees as follows:
 - (1) *Laws.* It will comply with State Safety Oversight requirements under 49 U.S.C. § 5329(e) and implementing regulations at 49 C.F.R. part 674, or 49 U.S.C. § 5330 and implementing regulations at 49 C.F.R. part 659.
 - (2) *State Safety Oversight Program.* A Recipient must have a State Safety Oversight Program certified under 49 C.F.R. part 674 no later than April 15, 2019.
 - (3) *Regulations.* The Recipient will comply with FTA regulations, “State Safety Oversight,” 49 C.F.R. part 659, until the Recipient has a certified State Safety Oversight Program under 49 C.F.R. part 674. A Recipient that has a certified State Safety Oversight Program will comply with the regulations at 49 C.F.R. part 674.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 C.F.R. part 605, and any other applicable federal “School Bus Operations” laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
 - (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 et seq.;
 - (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 C.F.R. part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
 - (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
 - (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or

- (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights*. The Recipient agrees that:
 - (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and 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.
- (c) *License Fees and Royalties*. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions*. The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - (1) Prohibitions. The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) Exceptions. The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights*. The Recipient agrees that:
 - (1) General. It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - (2) U.S. DOT Public Access Plan – Copyright License. The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs*. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
 - (1) *Publicly Available Report*. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports*. It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data*. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.

- (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
- (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
- (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- a. Disadvantaged Business Enterprise (and Prompt Payment and Return of Retainage).
 - (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
 - a. *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - i. Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note;
 - ii. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26; and
 - iii. Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.

- b. *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 C.F.R. part 26.
- c. *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - i. *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26; and
 - ii. *Reporting TVM Awards.* Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- d. *Assurance.* As required by 49 C.F.R. § 26.13(a):
 - i. *Recipient Assurance.* The Recipient agrees and assures that:
 - 1. It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - 3. Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - 4. Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - ii. *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - 1. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - 3. Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- e. *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- (h) *Nondiscrimination on the Basis of Disability.* The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - a. Federal laws, including:
 - i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - ii. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - A. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but

- B. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - iii. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - iv. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - v. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- b. Federal regulations and guidance, including:
- i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
 - ii. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
 - iii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - iv. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
 - v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
 - vi. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
 - vii. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
 - viii. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
 - ix. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
 - x. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
 - xi. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - xii. Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement. For Assignability

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:
- a. To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - b. To comply with the applicable U.S. DOT Common Rules; and
 - c. To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

EXHIBIT E, VERIFICATION OF PAYMENT

This checklist is to assist the Subrecipient in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change by CDOT. CDOT shall provide notice of any such changes to Subrecipient. All items may not apply to your particular entity. CDOT's goal is to reimburse Subrecipients as quickly as possible and a well organized and complete billing packet helps to expedite payment.

Verification of Payment –

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger
 - In-Kind (must be pre-approved by CDOT) and/or cash match
 - Date of the report
 - Accounting period
 - Current period transactions
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable
 - copies of checks
 - check registers
 - paycheck stub showing payment number and:
 - showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
- ✓ CDOT needs to ensure that expenditures incurred by the local agencies have been paid by Party ***before*** CDOT is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by CDOT prior to any work taking place.

- ✓ If in-kind or cash match is being used for the local match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the agreement or purchase order. FTA does not require pre-approval of in-kind or cash match, but CDOT does.
- ✓ General ledger must also show the in-kind and/or cash match.

Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by CDOT prior to applying it to the reimbursements.

- ✓ If indirect costs are being requested, an approved indirect letter from CDOT or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit or
- ✓ Submit the following fringe benefit rate proposal package to CDOT Audit Division:
 - Copy of Financial Statement
 - Personnel Cost Worksheet
 - State of Employee Benefits
 - Cost Policy Statement.

Attachment A1-4. Sample Personal Services RFP



COLORADO

Department of Transportation

Center for Procurement and Contract Services

SOLICITATION AND RESPONSE COVER SHEET

HAA (BID NUMBER), TITLE

Per the attached specifications, terms and conditions.

INSTRUCTIONS: Offeror (bidder) must complete this cover sheet, and attach it with their proposal. **Offerors are urged to read the solicitation document thoroughly before submitting a proposal.**

Submit Proposal to:	CDOT Supplier Self Service (SuSS) Portal SuSS Portal Help Desk 303-757-9848	Purchasing Agent:	Name, Phone, Email
Due Date:	mm/dd/yyyy, Xxxday	Time Due:	2:00 PM Mountain Time

OFFEROR INFORMATION

Offeror F.E.I.N.:	_____	Payment Terms:	_____
DUNS Number	_____	(Minimum of Net 30)	_____
Delivery Date:	_____		
Authorized Signature:	_____		
<small>Signature acknowledges acceptance of all terms and conditions of the solicitation.</small>			
Typed/Printed Name and Title:	_____		
Legal Company Name:	_____		
Doing Business As:	_____		
Address:	_____		
City:	_____	State: _____	Zip: _____
Phone Number:	_____	Fax Number:	_____
Contact for Clarifications:	_____		
Title:	_____		
Phone Number:	_____	Fax Number:	_____
E-mail Address:	_____		

CDOT Supplier Self Service (SuSS) Portal and Registration: This solicitation is published using the SuSS Portal. Suppliers must be registered on the SuSS Portal in order to download solicitation documents and information (including any amendments or modifications) and to be considered responsive at the time of submission of the response. **Interested suppliers who have not registered in SuSS Portal must initiate registration immediately to ensure a responsive bid response.** Information may be accessed through the CDOT public web link: www.codot.gov/business/procurement-and-contract-services Registration assistance is provided by our Help Desk at 303-757-9848 or by email: dot_hq_srm_help@state.co.us

Offeror to answer and acknowledges by its signature above:

- Confirm that you are aware that the award notice will be published on [CDOT website](#): ____ Yes
- My company is registered on CDOT's SuSS Portal: ____Yes / ____No
- Proprietary Information: is in my response and as segregated pages: ____Yes / ____No
- Registered with the Colorado Secretary of State ____No / ____Yes, and # _____
- Offeror proposes using Subcontractors for this project: ____Yes / ____No
- Offeror has reviewed Modifications made to this RFP – list the Modification # last reviewed: _____
- If claiming SDVOSB (Service Disabled Veteran Owned Small Business) attach proof of certification: ____Yes / ____NA
- Offeror has reviewed Section 1.19, Protested Solicitations and Awards: ____Yes

Colorado Revised Statutes Title 24, Article 109, Entitlement to Cost, in part states: "When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but, due to defect in the solicitation, was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs. No other costs shall be permitted and reasonable costs shall not include attorney fees."

Please read this Request for Proposal (RFP) thoroughly before responding. Illegible responses may be rejected as non-responsive.

The Colorado Department of Transportation (CDOT) reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, proposer agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid and/or quote, proposer agrees as follows:

- Except as replaced, modified, or supplemented by CDOT for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of, and are incorporated by reference into this document.
- Proposer testifies that bid prices were arrived at independently and there was no collusion involved.
- The Bidder/Proposer/Vendor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Proposers shall seek clarification from CDOT of any specifications, terms and/or conditions that they determine to be unclear. The failure of a proposer to seek clarification may be deemed a waiver of any such clarification.
- If applicable, low tie bids/proposals shall be decided in accordance with the provision of C.R.S. Section 24-103-202.5, as it currently exists or is hereafter amended, which gives a preference to resident bidders. Any bidder who wishes to be considered a "resident bidder" for purposes of the tie bid procedure provided in C.R.S. Section 24-103-202.5 shall include with their bid, proof that they meet the definition of resident bidder as set forth in either C.R.S. Section 24-103-101(6)(a) or C.R.S. Section 24-103-101(6)(b).
- Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the Colorado Division of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

NOTE: Results will be posted on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> or sent via postal system but will not be discussed by phone except as noted in the RFP document.

REQUEST FOR PROPOSAL THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE AND INQUIRIES:

This request for proposal is issued for the State of Colorado, the Colorado Department of Transportation, Center for Procurement and Contract Services.

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time specified in the Schedule of Activities, Prospective proposer's inquiry deadline. All contacts regarding this RFP is to be directed to:

(name),
 Purchasing Agent & Contract Administrator
 Colorado Department of Transportation
 Center for Procurement and Contract Services
 4201 East Arkansas Avenue, Room 200
 Denver, CO 80222
 (email)

Phone: Fax:

Subject line of the e-mail shall clearly state "Questions for RFP [number]" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9669). An addendum responding to questions submitted regarding the RFP will be published on the Supplier Self Service (SuSS) portal.

1.2 PURPOSE:

The purpose of this Request for Proposal (RFP) is to obtain competitive bid proposals from qualified firms interested in providing _____.

This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by CDOT to satisfy the needs as outlined in this RFP's Statement of Work.

1.3 SCHEDULE OF ACTIVITIES:	DATE:	TIME (MST)
1. RFP published on SuSS	_____	N/A
2. Prospective proposer's inquiry deadline (No questions accepted after this date)	Date _____	5:00 P.M.
3. Response to proposer questions	Date _____	5:00 P.M.
4. Proposal submission deadline	Date _____	2:00 P.M.
5. Top consultants selected and notified of interview (<u>estimate</u>), if appropriate	Date _____	TBD
6. Oral interviews with a short list of consultants (<u>estimate</u>), if required – week of	Date _____	TBD
7. Firms selected (<u>estimate</u>)	Date _____	N/A
8. <i>Desired</i> date of executed contract	Date _____	N/A

1.4 ELECTRONIC PROPOSAL SUBMISSION THROUGH SuSS:

Suppliers must upload their proposal to SuSS. CDOT procurement will distribute your uploaded proposal and any attachments to the evaluation panel.

1.5 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the SuSS. It is the proposer's responsibility to monitor the SuSS at the Internet site www.codot.gov/business/procurement-and-contract-services , and comply with all addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted regarding this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP will become public record and open to inspection after the Notice of Intent to Award notice is issued. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from the rest of the proposal, *i.e.*, uploaded to SuSS in a separate file. Such a request must include the proposer's justification for the material to be treated as proprietary or confidential. The request will be reviewed and either approved or denied by the CDOT Purchasing Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. **NEITHER COST NOR PRICING INFORMATION NOR A TOTAL PROPOSAL WILL BE CONSIDERED PROPRIETARY.** If any of the materials submitted by the Vendor to CDOT are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, CDOT will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will CDOT be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of CDOT. CDOT will inform Vendor if a request for the information is made by a third party and will give Vendor a chance to defend against any action seeking the materials.

1.9 REJECTION OF PROPOSALS:

CDOT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format requested in this RFP may disqualify the proposal. Any exceptions to the Statement of Work must be clearly identified in the proposal. Inclusion of exceptions does not guarantee acceptance by the State of such variation, and may instead lead to rejection of the proposal as non-responsive. (See further Section 1.12 of this RFP.)

1.10 INCURRING COSTS:

Notwithstanding the statute, CDOT is not liable for any costs incurred by proposers prior to issuance of a legally executed contract. All costs to prepare and submit a response to this solicitation shall be borne solely by the proposer.

1.11 EVALUATION CRITERIA:

An evaluation will be made by a committee selected to evaluate the merits of all proposals received according to the evaluation criteria defined herein (Section 3). The recommendations of this group will be forwarded to the Purchasing Director for approval.

1.11.1 Failure of the proposer to provide in his/her proposal any information requested in this RFP may result in disqualification of the proposal. It is the sole responsibility of the proposing individual or firm to ensure all information requested in the RFP is included.

1.11.2 During the evaluation process, discussions/interviews may be scheduled with proposers who submit proposals determined to be reasonably competitive for selection for award. It will be upon the recommendation of the evaluation committee if discussions/interviews for clarification are needed.

1.11.3 The sole objective of the evaluation committee will be to recommend the proposer(s) whose proposal(s) is/are most responsive to CDOT's needs within the available resources. The specifications within this RFP represent the minimum performance necessary for response.

1.11.4 Specific evaluation criteria are outlined in Section 3 of this RFP, entitled Evaluation Criteria.

1.12 ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the autographic signature of the proposer, or an officer of the proposer, legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Any exceptions and/or variations to the terms and conditions presented in the RFP may be submitted as part of the proposal, with each such exception and/or variation identified clearly and thoroughly. Failure to identify any exceptions and/or variations in the submitted proposal shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP, and may result in cancellation of the award and such vendor may be removed from future solicitations. Submission of a proposal containing exceptions and/or variations does not guarantee of acceptance of such variations by CDOT, and may instead lead to the rejection of the proposal as non-responsive if the requested variations are determined to be extensive or unreasonable, by the evaluation committee assigned to this RFP solicitation.

1.13 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the sample contract, **Attachment B**.

1.14 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form, CDOT Form #637, with their proposal, **Attachment A** to this RFP.

1.15 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. Any firm affiliated or related to an employee of CDOT shall be ineligible to submit a proposal for the required services.

1.16 REQUEST FOR PROPOSAL:

The Request for Proposal Form - the cover page for this RFP - must be signed, by a person authorized to bind the proposer, and returned with the proposal.

1.17 AUDIT OF THE SELECTED PROPOSER:

Prior to final contract award, an audit may be conducted by the CDOT's External Audit Branch of the selected proposer. This audit will be for the purpose of ensuring that the selected firm is financially capable of performing the contract, that the cost information and prices quoted are reasonable, and that the selected proposer has adequate accounting practices to assure accurate tracking of contract costs.

Prior to final acceptance of the contract work, a closing audit of the proposer may be performed by the CDOT External Audit Branch. This final closeout audit will be performed upon completion of the contract to verify the accuracy of the billings and compliance with the contract provisions.

1.18 BUDGETED FUNDS:

The funds available for this solicitation are \$_____. OR CDOT is not disclosing the funds available for this solicitation at this time.

1.19 INTENT TO AWARD:

After a proposer is selected, an "Intent to Award" on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> . After intent to award has been issued, interested parties may review any/all the proposals by making an appointment with:

(name),

HAA (BID NUMBER), TITLE

Purchasing Agent & Contract Administrator
Colorado Department of Transportation
Center for Procurement and Contract Services
4201 East Arkansas Avenue, Room 200
Denver, CO 80222
(email)
Phone: Fax:

1.20 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to a Procurement Official at dot_procurement@state.co.us. The protest shall be submitted in writing within ten (10) business days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Protests received after the ten-business-day period shall not be considered.

The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement by bid, RFP, or award number;
- C. A statement of the reasons for the protest; and
- D. Any available exhibits, evidence or documents substantiating the protest.

1.21 CONTRACT:

CDOT has provided as **Attachment B a Sample Contract** that it expects to enter into with the successful proposer. **Although submittal of a proposal is agreement to the entire contract without exception, under certain circumstances CDOT may be agreeable to negotiating minor modifications to the Sample Contract. Any modifications requested must be submitted concurrently and clearly labeled as Suggested Contract Exceptions in the bid response. CDOT makes no guarantees that the proposed exceptions will be accepted or negotiated.** If the Bidder is awarded a contract and refuses to sign the contract as provided in this solicitation, CDOT may reject the Bidder proposal for this work. Under no circumstances shall the Bidder submit its own boilerplate of terms and conditions.

The initial term of the Contract shall be 1 year. Initial term of the Contract shall be from date of execution through the initial term of the award. If a contract, at its sole discretion, the State, upon written notice to the Contractor, may unilaterally renew the term of the Contract for **four (4)** additional terms of 1 year, including, but not limited to prices, rates and service delivery requirements. Bidder agrees to deliver under this solicitation for the full initial term and any renewals.

CDOT may elect to renew services annually contingent upon: (1) the results and recommendations generated through this contract; (2) the State's satisfaction and acceptance of the selected vendor's services and deliverables upon completion of each anticipated contract year; and (3) availability of funding to continue services.

1.22 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP evaluation. Upon review and approval of the evaluation committee's recommendation for award(s), the CDOT Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer(s). Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. A contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer(s) that receive a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer(s) shall not take any actions(s) to prepare for or start the performance of the RFP work/services until a contract is so negotiated and executed. In addition, a contract must be completed and signed by all parties concerned on or before the date indicated in the Schedule of Activities.

1.23 AWARD OF CONTRACT:

The award will be made to that proposer(s) whose proposal conforms to the RFP, and is/are judged to be the most advantageous to the State of Colorado and CDOT, price and other factors considered, subject to negotiation and execution of an acceptable contract as described above.

CDOT will award this solicitation and enter into a contract with the winning Proposer(s) through an executed State of Colorado, Department of Transportation Contract. CDOT intends to award to Offerors capable of fulfilling CDOT's current anticipated volume needs. However, should CDOT determine, at any time during the term of the resulting contract(s), that the number of awarded contractors is not adequate to properly fill CDOT's needs, CDOT reserves the right to make awards to Offerors who submitted responses to the original solicitation but were not awarded, or to re-issue the solicitation and make additional awards as necessary. If the solicitation is re-issued, current contractors in good standing will not be required to respond.

1.24 It is the intent of CDOT to select a vendor within 30 days of the deadline for receipt of proposals. However, bid proposals must be firm and valid for award for at least 120 days after the deadline for receipt of proposals.

1.25 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then will be made only with the approval of CDOT.

1.26 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.26.1. By submission of this proposal each proposer thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor; and
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.26.2 Each person signing the Invitation for Bid form of this RFP certifies that:
He/she is the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

or
He/she is not the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

1.26.3 A proposal will not be considered for award where 1.26.1 (a) and (c), and 1.26.2 above, have been deleted or modified. Where 1.26.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the CDOT's Purchasing Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.27 TAXES

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K), and from all State and Local Government Use Taxes (Ref.

Colorado Revised Statutes Chapter 39-26.114[a]). Proposer is hereby notified that when materials are purchased in certain political subdivisions the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.28 FUNDS AND COMPENSATION:

The funds payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado or CDOT.

1.29 BACKGROUND, OVERVIEW, GOALS:

Project Purpose

1.30 STATEMENT OF WORK:

See attached Statement of Work – Attachment C. **CDOT is not guaranteeing the award of any work.**

1.31 RESPONSIBILITIES

Responsibilities

1.32 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CDOT Purchasing Official, provided that the submission must be in STRICT accordance with the following procedures. The submission of information in strict accordance with such procedures shall be the SOLE RESPONSIBILITY of the proposer.

PROCEDURE FOR SUBMISSION:

- A. A written request for confidentiality shall be submitted, by the proposer with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY, AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED/PACKAGED from the rest of the proposal. Co-mingling of confidential/proprietary information and other information is NOT acceptable.
- E. The CDOT Purchasing Official will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Purchasing Official will be sent to the proposer.
- E. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Purchasing Official, and not given further consideration.

1.33 ORAL PRESENTATION/SITE VISITS:

Proposers may be asked to make oral presentations or to make their facilities available for a site inspection by the evaluation committee. Such presentations and/or site visits will be at the proposer's expense and for the total evaluation committee and the Purchasing Agent.

1.34 PROPOSAL PRICES:

Estimated proposal prices/amounts are not acceptable. Best and final offers may be considered in determining the apparent successful proposer, if requested, by the evaluation committee after oral presentations.

1.35 RFP CANCELLATION:

The State reserves the right to cancel this Request for Proposal at any time, without penalty.

1.36 PARENT COMPANY:

If a proposer is owned or controlled by a parent company, the name, main office address and parent company's tax identification number shall be provided in the proposal.

1.37 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

1.38 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract. Further, Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement the statutes govern this procurement.

1.39 COOPERATIVE PURCHASING AGREEMENT:

In accordance with 24-110-201 CRS, this solicitation may be issued to establish a cooperative purchasing agreement. The prices and rates from the awarded vendor's bid/proposal resulting from the solicitation may be used by the issuing entity, other state agencies, institutions of higher education, political subdivisions (i.e., cities, counties, schools) and eligible non-profit agencies. Each entity will be responsible for costs incurred by their entity and may use a commercial card or issue a purchase order/contract as appropriate by the ordering agency or entity.

1.40 COLORADO PROCUREMENT MODERNIZATION ACT:

As of August 9, 2017 the Colorado Procurement Modernization Act is in effect. As a result the following terms for all existing and future contracts will be void as a matter of law under Colorado Revised Statute 24-106-109:

- A. Any term that requires the State to indemnify or hold harmless the vendor or a 3rd party.
- B. Any term that requires the State to agree to binding arbitration or any other binding extra-judicial dispute resolution process.
- C. Any limitation of liability that includes bodily injury, death or damage to tangible property.
- D. Any term that requires legal disputes to be handled by any laws other than those of the state of Colorado. All contracts shall be governed by Colorado law.

All contracts containing terms 1.40 A-D above shall otherwise be enforceable as if they did not contain such terms.

1.41 EQUAL OPPORTUNITY AND NON-DISCRIMINATION:

CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.42 SUBCONTRACTING :

CDOT may award a single contract or multiple contracts. Subcontracting will be allowed under the Resulting award(s). Awarded vendors will be the Prime Contractor and will be fully accountable to CDOT for assuring that its subcontractors comply with all terms of the contract between CDOT and the Prime Contractor. All Subcontractors will be subject to the same State and Federal Laws,

Assurances and Certifications as the Prime Consultant.

1.43 COMPLIANCE WITH FEDERAL REQUIREMENTS

When a procurement involves the expenditure of federal assistance or federal contract funds, the Procurement Official shall comply with the appropriate federal law and the rules and regulations promulgated pursuant to such laws which are mandatorily applicable.

FEDERAL CLAUSES AND CERTIFICATIONS

1.44 Awarded Vendor(s) will be required to complete Federal Clauses and Certifications attached as Exhibit D prior to final award and execution of the contract.

1.45 RESPONSIBILITY OF VENDORS AND CONTRACTORS :

A determination of responsibility or non-responsibility shall be governed by these rules (R-24-103-401).

Standards of Responsibility

- (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor:
 - (i) has or can obtain the appropriate financial, material, equipment, facility, personnel resources and expertise to indicate the capability to meet all contractual requirements;
 - (ii) has a satisfactory record of performance;
 - (iii) has a satisfactory record of integrity;
 - (iv) does not appear on any debarred lists;
 - (v) is qualified legally to contract with the state; and
 - (vi) has supplied all necessary information in connection with the inquiry concerning responsibility.
- (b) The prospective contractor or vendor shall supply information requested by the procurement official concerning the responsibility of such contractor. If such contractor or vendor fails to supply the requested information, the chief procurement officer or procurement official shall base the determination of responsibility upon any available information.

Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) Evidence that such contractor possesses such necessary items;
- (b) Acceptable plans to subcontract for such necessary items; or
- (c) A documented commitment from, or explicit arrangement with a satisfactory source to provide the necessary items.

Written Determination of Non-Responsibility Required

If a prospective contractor or vendor who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the procurement official. A copy of the determination shall be sent promptly to the non-responsible prospective contractor or vendor. The determination shall be made part of the procurement record.

SECTION 2.0
INFORMATION REQUIRED FROM PROPOSERS
General Proposer Response Format

2.1 BACKGROUND:

This section of the proposal, should demonstrate the proposer's understanding of, and approach to, the described services, specifically addressing how *each element* of the Statement of Work will be accomplished using the _____ as an example. The proposal should include details of the following:

2.2 CONFLICT IDENTIFICATION:

Proposals must identify all current and former contract activity with any existing State agency or transportation authority, reasonably related to the work described in this RFP. Indicate when involvement occurred and length such involvement, the specific type of activity with identified agency and/or transportation authority, and indicate the extent of involvement with such entities.

2.3 WORK EXPERIENCE:

Using the _____ as an example of how expertise will be applied, the proposal should list and describe all relevant work experience and qualifications, including but not limited to:

- a. Describe why your firm is well qualified to provide the services that have been described in this RFP.
- b. Describe your firms experience and capabilities in _____
- c. Other

2.4 FORMAT FOR PROPOSALS – Submissions must be electronic and submitted through the CDOT SUSS vendor portal in one file. If file size does not permit one file, then clearly mark the sections of your submittal. Firms responding to this RFP should address the following items in no more than 16 pages, double sided (excluding appendices: resumes, sample reports, charts, graphs, or other supporting documentation), 11 pt. font, 8.5 x 11 letter size paper, 1.5 inch margins per submission. Do not leave pages blank. All pages must be clearly numbered and sections labeled. 11x17 formatting can be used if it's necessary to properly display charts, maps, or similar information and will be counted as a single page. Text should not be presented in 11x17 format. The Cover Letter will be included towards the page count.

COVER LETTER

A cover letter (separate from the RFP signature form) must be included that generally introduces the Project Team and the approach to completing various work items outlined in the statement of work under sections 1.30 & 1.31. It must be signed by a person with full authority to enter into a contract between the Contractor and CDOT.

2.5 FEES AND EXPENSES

Cost Proposal

Contractor shall complete the work identified in this **Exhibit C – Scope of Work** based on the following Cost Proposal:

A. Labor Costs

Employee Classification	Labor Rate	Total Hours	Total Cost
1.			
2.			
3.			

Total Labor Costs: \$ _____

B. Materials, Equipment, and Other Costs

Item Description	Quantity	Total Cost
1.		
2.		
3.		

Total Materials/Equip/Other Costs: \$ _____

C. Total Project Cost

The total project cost and Task Order Maximum Amount Payable is \$ _____.

The above project budget includes all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses.

OR

PRICES AND RATES

The total price of a Project shall be determined based on the following prices and rates:

A. Labor Rates

Employee Classification	Rate/Hour
1.	
2.	
3.	

B. Materials, Equipment, and Other Costs

Item Description	Unit Cost
1.	
2.	
3.	

The above rates shall include all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses. The State is not required to execute any minimum number of Task Orders under the Contract. Only one price/rate increase will be considered during any Renewal Term following the Initial Term.

2.6 VETERANS PREFERENCE:

A. Pursuant to C.R.S. 24-50-511, the State shall give consideration to proposers utilizing a preference for hiring veterans of military service *only* in the following manner:

- To break a tie between proposals following review, scoring and ranking by the evaluation committee. Such tie shall be broken by awarding the resulting contract to the proposer utilizing the greatest quantitative (numerical) preference for veterans in the hiring of its employees.

Veterans' preference will not be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

B. Proposers should be aware of the provisions of the recently enacted House Bill 14-1224 which sets Service Disabled Veteran Owned Small Business(SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the **Center for Veteran Enterprise within the U.S. Department of Veteran Affairs**.(www.vip.vetbiz.gov)

Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-211; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

SDVOSB preference will be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

2.7 MBE/WBE PARTICIPATION:

The State encourages its agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposer's are reminded of the illegality of discrimination, and the provisions of Procurement Code Section 24-111-102.

In accordance with 49 CFR Parts 23 and 26 and 14 CFR Part 152, the Colorado Department of Transportation and the contractors, subcontractors, cities, counties and other local entities with whom it does business will take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and participate in contracts and subcontracts financed with state and federal funds. This policy specifically upholds the Transportation Commission's commitment to fair and equitable business practices and is supported by CDOT's DBE program.

SECTION 3 EVALUATION CRITERIA

3.1 AWARD OF BID:

This section will outline the evaluation criteria to be used by the evaluation committee in the review, rating, and selection of submitted proposals. After evaluation of the written proposals, CDOT *may* request oral presentations from top-ranked proposers. The highest ranked proposals will be given fair and equal treatment during the second (optional) phase of the evaluation. Oral presentations will not be scored separately as part of this solicitation. Oral presentations will only be used to adjust the proposal scores accordingly (per the same evaluation criteria), based upon the information discussed at the presentation. The top-ranked proposal(s) (following conclusion of all phases of the evaluation) shall be recommended, by the evaluation committee, to enter into contract negotiations. The contract(s) will be awarded to those proposer(s) whose proposal (conforming to the RFP) is/are deemed to be the most advantageous to the State of Colorado, price and other factors considered.

3.2 EVALUATION PROCESS:

- 3.2.1 Each member of the evaluation committee will first independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP, followed by panel discussion and final scores ranking. The recommendations of this committee will then be forwarded by the purchasing agent, to the CDOT Procurement Director for review and final approval.
- 3.2.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as nonresponsive. It is the responsibility of the proposer to provide all information required by this RFP.
- 3.2.3 The sole objective of the evaluation committee will be to recommend the proposal most responsive to the State of Colorado's needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.
- 3.2.4 The top ranked proposal(s) (highest score(s)), following independent review and panel discussion, will be recommended either for award or, if the evaluators deem in appropriate, to make an oral presentation.
- 3.2.5 Proposal Scoring: The sole objective of the evaluation committee will be to score the responses and recommend the proposer(s) whose proposal is/are most advantageous to the State of Colorado, taking into consideration all evaluation factors set forth herein. Following independent review and panel discussion, the successful proposer(s) will be the one(s) accumulating the highest number of points (of a maximum 100) at the conclusion of the final stage of the selection process and whose proposal(s) is/are deemed most advantageous to the State, and who successfully negotiates the ensuing contract.

3.3 EVALUATION CRITERIA:

The complete proposal package will include, *but not be limited to*, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items presented in Section 1.30 and Section 2 of this RFP.

As stated in Section 2.1, proposals should not simply repeat what is written in Section 1.30 of this RFP – the Statement of Work, but rather evidence the proposer's understanding of the State's requirements and its ability to provide the services needed within a clearly defined and cost-effective budget. (Refer to Section 2 of this RFP).

1. **Understanding and Project Approach - describes clear understanding of CDOT goals and proposal and contains all required information including certifications and specific information about task in Scope of Work: (40%)**

- a.
- b.

c. .

2. **Overall Experience & Capabilities - describes relevant experience of the firm, proposed staff and team experience and clearly demonstrate expertise for this contract: (30%)**
 - a. .
 - b. .
 - c. .
3. **Qualifications and Ability to Provide Services - Sufficient staff/availability to perform in a timely manner, clear description of ability to respond and complete projects in a timely manner: (15%)**
 - a. Qualification and commitment of personnel.
4. **Budget and Narrative - describes cost effective and efficient staffing/procedures that demonstrate quality value of final product: (10%) (can be more, but not less)**
 - a. Information is provided as requested in Section 2.5 and no unacceptable modifications to the terms and conditions outlined in this RFP are proposed.
5. **Feasibility and Completeness: (5%)**
 - a. The proposal is both adequate and complete, as defined through the RFP.
 - b. The proposal inspires confidence in production of a quality-required product, solicited under the RFP.
6. **Service Disabled Veteran Owned Small Business (SDVOSB) Certification: (5% preference if applicable)**
 - a. Proposers should be aware that there is a Service Disabled Veteran Owned Small Business (SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the *Center for Veteran Enterprise within the U.S. Department of Veteran Affairs*. (www.vip.vetbiz.gov)
 - b. Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-905; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

Attachment A1-5. DTR Quick Procurement Guide



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL QUICK PROCUREMENT GUIDE 2019





This guide includes tools and guidelines for a subrecipient conducting a third-party procurement.

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BASIC REQUIREMENT

Organizations use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR Part 200 (specifically Sections 200.317-200.326), and FTA Circular 4220.1F, "Third Party Contracting Guidance."

LIST OF ABBREVIATIONS

A&E	Architectural and Engineering
ADA	Americans with Disabilities Act
CASTA	Colorado Association of Transit Agencies
CDOT	Colorado Department of Transportation
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FMVSS	Federal Motor Vehicle Safety Standards
FTA	Federal Transit Administration
ICE	Independent Cost Estimate
IFB	Invitation for Bid
ITS	Information Technology Solutions
NA	Notice of Acceptance
PA	Purchase Authorization
PCR	Procurement Concurrence Request
RFP	Request for Proposals
RFQ	Request for Quotation
SA	Security Agreement
TVM	Transit Vehicle Manufacturer



PROCUREMENT THRESHOLDS



STATE

\$0 to \$4,999	Micro- Purchase
\$5,000 to \$24,999	Documented Quote
\$25,000 to \$150,000	Quick Bid
≥ \$150,000	IFB/RFP/QBS



FEDERAL

\$0 to \$10,000	Micro-Purchase
\$10,001 to \$250,000	Small Purchase (Documented Quotes)
> \$250,000	Above Small Purchase (RFP)

METHOD OF PROCUREMENT DECISION MATRIX

To determine which method of procurement is best suited, classify the situation by checking off the applicable boxes in each of the procurement methods below. All elements must apply to justify use of the method.

I. Micro-purchase

- Amount is under the Micro-purchase threshold
- Three or more vendor quotes available

II. Small Purchase (Documented Quote)

- Amount is within the Documented Quote Threshold
- Two or more vendor quotes available (Competitive Procurement)

III. Competitive Procurement

- Amount is above the Documented Quote Threshold
- Multiple sources available
- Not an Emergency Procurement



IV. Sole Source (not all elements need to apply for this category)

- Emergency Procurement (Subset of Sole Source)
- Original Equipment Manufacturer, Custom Item
- Only one source available
- Approved by CDOT - Sole Source
- Public exigency issue/emergency
- Competition is inadequate after public solicitation
(If all elements apply, continue to Emergency Procurement below)
- This is a health and safety issue that prohibits delay

V. Sealed Bid—Invitation For Bid (IFB)

- Complete & adequate specifications or purchase description
- Two or more responsible bidders willing to compete
- Selection can be made on basis of price
- Procurement suitable for firm, fixed price

VI. Informal Competitive Bidding—Request for Quotation (RFQ)

- Complete & adequate specifications or purchase description
- Does not require complicated solicitation evaluation

VII. Competitive Proposals—Request for Proposal (RFP)

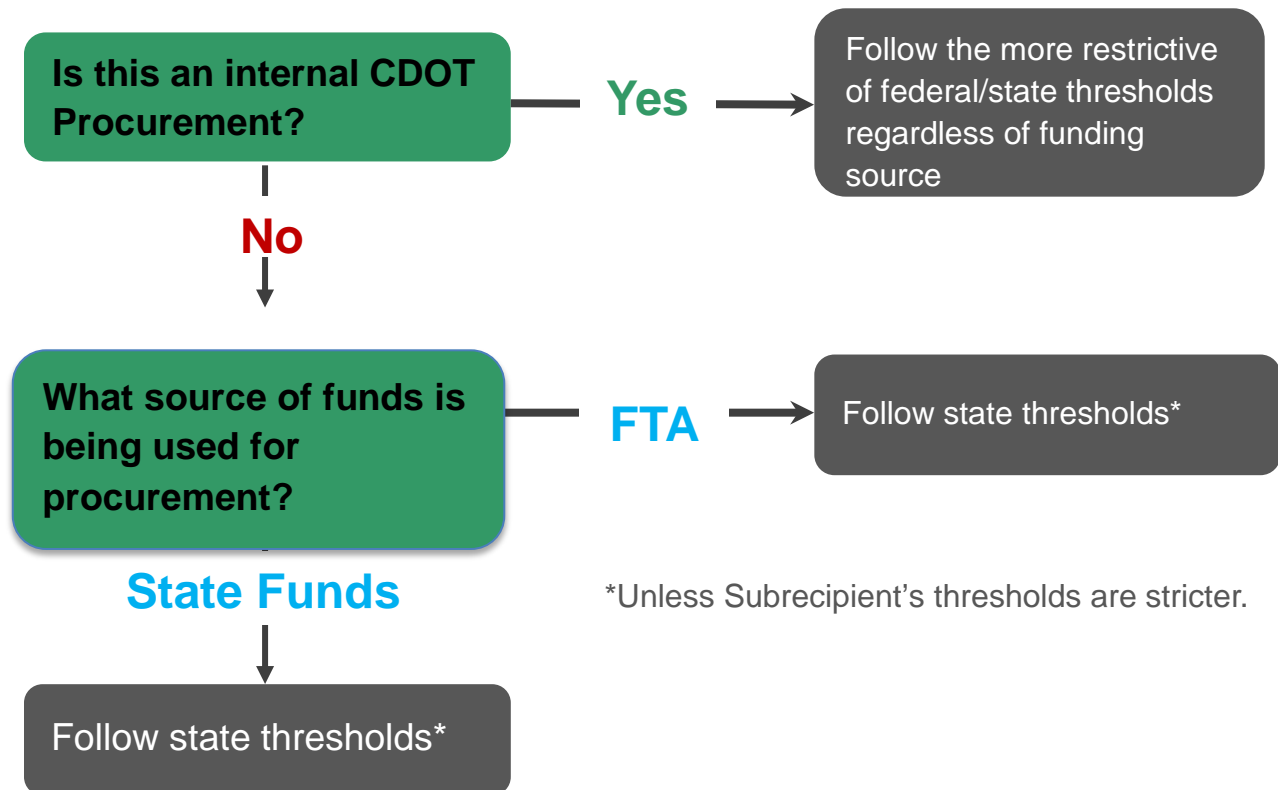
- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

VIII. Procurement for Architectural/Engineering Professional Services - Qualification Based Solicitation (QBS)

- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

Note: You cannot divide or reduce the size of the procurement to avoid the additional procurement requirements. Avoid unreasonable qualifications, specifying brand names, or exhibiting geographic preference. The successful bidder can be selected on the basis of price only.

DETERMINATION OF STATE OR FEDERAL FUNDING





DEFINITIONS USED IN DTR'S PROCUREMENT PROCESSES

1

PCR Procurement Concurrence Request

The PCR is made for the purpose of reviewing the request to ensure that it avoids duplicative or unnecessary purchases and considers opportunities for intergovernmental or inter-entity sharing of goods/services. The Project Coordinator reviews the rationale for the request and procurement method, and then approves or rejects the PCR in COTRAMS.

2

PA Purchase Authorization

Subrecipients must prepare this form and submit it for approval prior to finalizing its agreement with the vendor for goods or services purchased with federal/state funding. The Project Coordinator reviews the required documentation (as seen in Procurement Documentation Requirement chart) and approves or rejects the PA in COTRAMS.

3

NA Notice of Acceptance

Subrecipients submit the NA after they have accepted any equipment or rolling stock. The NA also includes a Vehicle Inspection Checklist and allows for the Post Delivery Audit to be reported to the Project Coordinator. Post Delivery Audit includes: Buy America Certification (as applicable), Purchaser's Requirements Certification, Federal Motor Vehicle Safety Standards Certification, and Altoona Testing as applicable.

4

SA Security Agreement

The SA is made for the purpose of securing the State or Federal interest in transit vehicles purchased with State or Federal funds awarded by CDOT to the subrecipient. This form is taken to the agency's county DMV to register and title the vehicle. In order to ensure proper use of vehicles throughout the useful life, CDOT holds a first lien on all vehicles in the amount of the Federal or State share of the vehicle cost.

FTA AND FASTER CERTIFICATIONS AND ASSURANCES

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air				Construction contracts over \$2,000	
Buy America			All	All	All			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, manufactured products)					
Charter Bus Service Operations		All					All							Construction contracts over \$2,000	
School Bus Operations		All					All							Construction contracts over \$2,000	
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel				Involving property that may be transported by ocean vessel	
Seismic Safety	A&E for new buildings and additions			New buildings and additions		A&E for new buildings and additions			New buildings and additions					Construction contracts over \$2,000	
Energy Conservation	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Clean Water	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Bus Testing (not minivans)			All					All							
Pre-Award and Post Delivery Audit Requirements			All					All							
Lobbying	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Access to Records and Reports	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Federal Changes	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Bonding (not required of states)				All (including ferry vessels)											
Clean Air	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Recycled Products		All		All	All		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year					
Davis-Bacon and Copeland Anti-Kickback Act				All (including ferry vessels)					All (including ferry vessels)					Section 1: All Section 2: >\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		All	All	All (including ferry vessels)			>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Termination Provisions	All	All	All	All	All	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000					
Gov't-wide Debarment and Suspension	All	All	All	All	All	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000					
Privacy Act	All	All	All	All	All	All	All	All	All	All					
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution	All	All	All	All	All	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000					
Patent Rights and Rights in Data (& Copyrights Requirements)	Research & development					Research & development					Research & development			Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311, 5316 funds					Transit operations funded with Section 5307, 5309, 5311, 5316 funds							Construction contracts over \$2,000	
Disadvantaged Business Enterprises (DBE)	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met				All if threshold for DBE program met	
Incorporation of FTA Terms	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds		Construction contracts over \$2,000	

FASTER CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	IFB/RFP/QBS (>\$100,000)		Quick Bid (\$25,000 - \$99,999)		Documented Quote (\$5,000 - \$24,999)		Micro-Purchase (\$0 - \$4,999)	
	FASTER		FASTER		FASTER		FASTER	
	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity								
Fly America								
Buy America								
Charter Bus Service Operations								
School Bus Operations								
Cargo Preference								
Seismic Safety								
Energy Conservation								
Clean Water								
Bus Testing (not minivans)	All		All		All		All	
Pre-Award and Post Delivery Audit Requirements								
Lobbying	>\$150,000	>\$150,000						
Access to Records and Reports	All	All	All	All	All	All	All	All
Federal Changes								
Bonding (not required of states)								
Clean Air								
Recycled Products								
Davis-Bacon and Copeland Anti-Kickback Act								
Contract Work Hours and Safety Standards Act		>\$150,000 (Construction)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts								
Termination Provisions	All	All	All	All	>\$10,000	>\$10,000		
Gov't-wide Debarment and Suspension (#22)	All	All	All	All				
Privacy Act (#23)								
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution								
Patent and Rights in Data								
Transit Employee Protective Arrangements								
Prompt Payment								
Incorporation of FTA Terms								
Drug and Alcohol Testing								



PROCUREMENT DOCUMENTATION REQUIREMENTS

Subrecipients must maintain sufficient records that detail the significant history of a procurement. At a minimum, such records must include:



Rationale for the method of procurement (i.e., Request for Proposals, Invitation for Bids, sole source)



Selection of contract type (i.e., fixed price, cost reimbursement)



Reason for contractor selection or rejection



Basis for the contract price (i.e., cost/price analysis)



The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
CDOT Price Agreements	Procurement using CDOT/DTR's negotiated price agreements for commonly purchased buses and transit vehicles.	X	X	X	X	<ul style="list-style-type: none"> Independent Cost Estimate (ICE) 	<ul style="list-style-type: none"> Cost and Price Analysis* Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed Transit Vehicle Manufacturer (TVM) Certification* Bus Testing Certification* Federal Motor Vehicle Safety Standards (FMVSS) Certification* Purchasers Requirement Certification* More than \$100k Lobby Certification* More than \$150k Buy America Certification* Price Agreement Vendor Quotes* *Obtained from CDOT Price Agreement Contractor for vehicle procurement Additional: TVM Survey Monkey - CDOT Staff	<ul style="list-style-type: none"> Independent Cost Estimate Procurement Concurrence Request Purchase Authorization Notice of Acceptance Security Agreement Application for Title or Title Invoice Proof of Payment Post Delivery Certifications
State Price Agreements (State funds only)	Procurements using State of Colorado State Commodity & Service Agreements. Agreements generally run for a year, with the option for renewal. The State's current contracts can be found at https://www.colorado.gov/pacific/osc/price-agreements .	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Price Agreement Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Piggybacking (Non-federal funds)	A post award practice that allows a party that was not included in the original procurement to purchase supplies or equipment through the contract. Piggybacking is only allowed under certain circumstances.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> All official correspondence related to the procurement Written approval from original agency Supporting documentation for Piggybacking Worksheet Self-certifications for Buy America and Purchaser's Requirements Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
Micro-Purchases	Purchases under \$10,000. Do not require competitive quotes.	--	--	--	--	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Documentation that the price is reasonable 	
Documented Quotes	Purchases between \$10,000 and \$250,000. Require a minimum two quotes.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Invitation for Bid (IFB)/ Request for Proposal (RFP)	Purchases over \$250,000. Competitive procurement with defined rules and procedures.	X	X	X	X	<ul style="list-style-type: none"> ICE RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Qualification-based (Brooks Act)	Used for procuring architectural/engineering professional services.	X	X	--	X	<ul style="list-style-type: none"> ICE RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* More than \$100k Lobby Certification More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
Sole Source	Procurements soliciting proposal from one source. Also used for a contract change not within scope of the original contract.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Sole Source Justification Proposed contract with applicable clauses Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	



LINKS & TIPS

FTA Procurement Website

<https://www.transit.dot.gov/funding/procurement/procurement>

FTA Circular C 4220.1F: Third Party Contracting Guidance provides contracting guidance for recipients of federal assistance awarded by the FTA when using that federal assistance to finance its procurements (third-party contracts)

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

FTA Best Practices Procurement Manual includes procedures, methods, and examples of procurement practices covering the entire procurement cycle

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

Federal Title 49 – Part 18 Subpart C, Section 18.36 Procurement

<https://www.gpo.gov/fdsys/pkg/CFR-1999-title49-vol1/pdf/CFR-1999-title49-vol1-sec18-36.pdf>

National RTAP ProcurementPRO website—especially helpful for managing RFP's









<http://www.nationalrtap.org/Web-Apps/ProcurementPRO-20>

RTAP Procurement Assistance is available to rural agencies by contacting Colorado Association of Transit Agencies (CASTA)

<https://coloradotransit.com/>

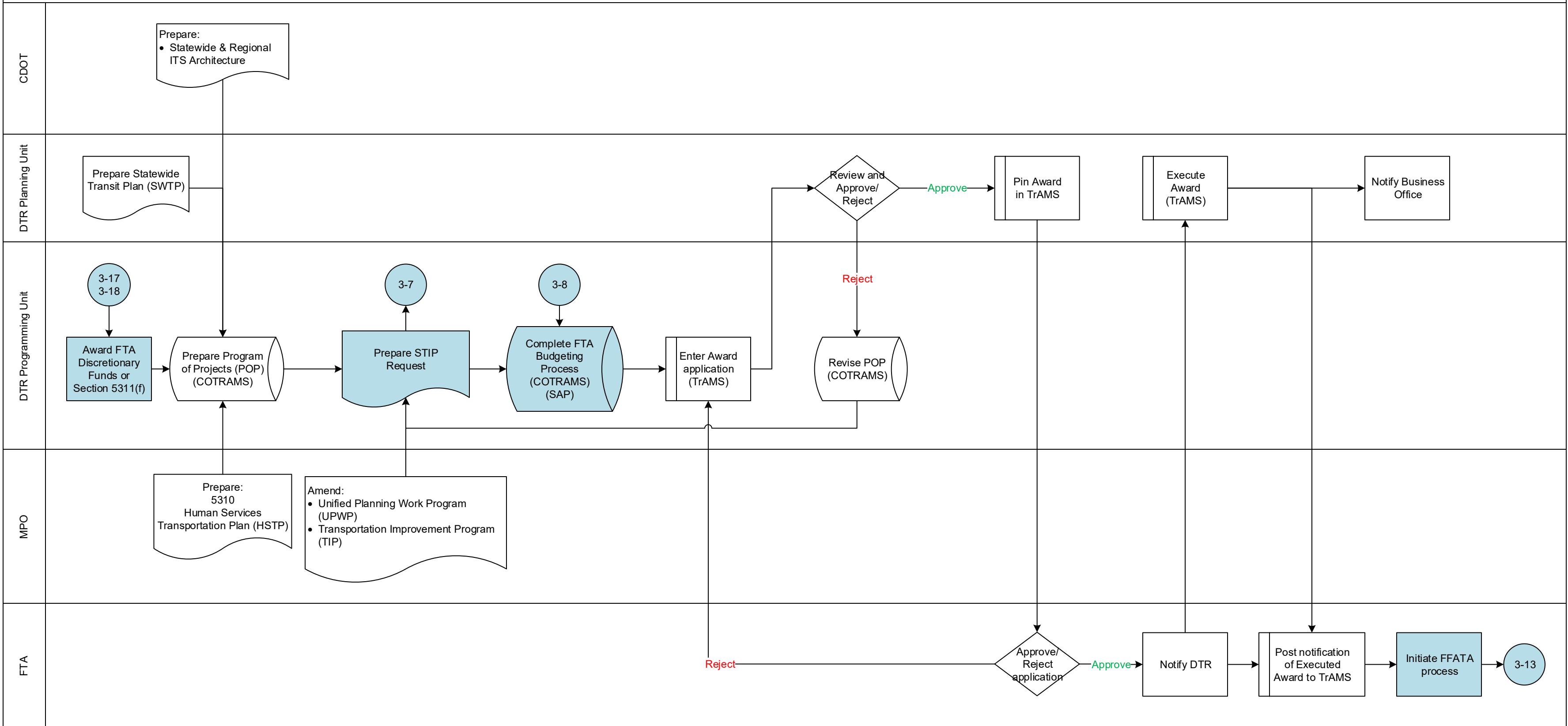
FLOWCHARTS

Flowchart Shapes/Key

 Process	 Decision
 Subprocess	 Document
 Connecting Flowchart	 COTRAMS
 TraMS	 SAP Database

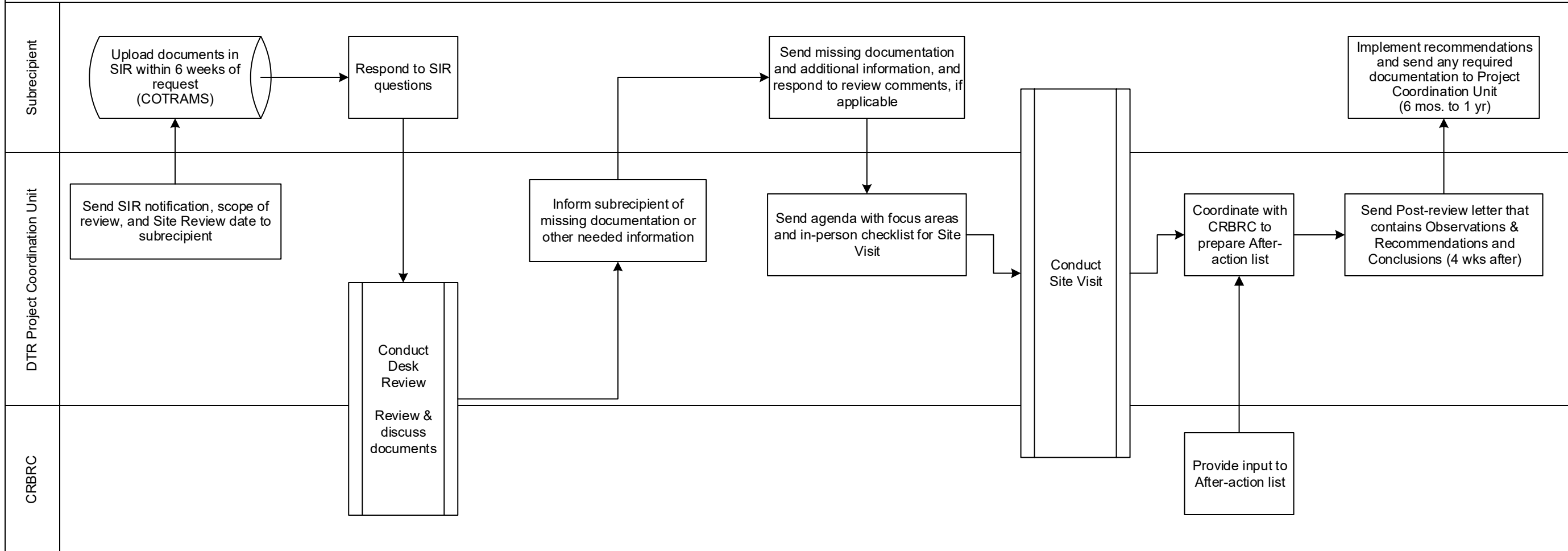
Flowchart A1-1. FTA Award Application

A1-1 FTA Award Application



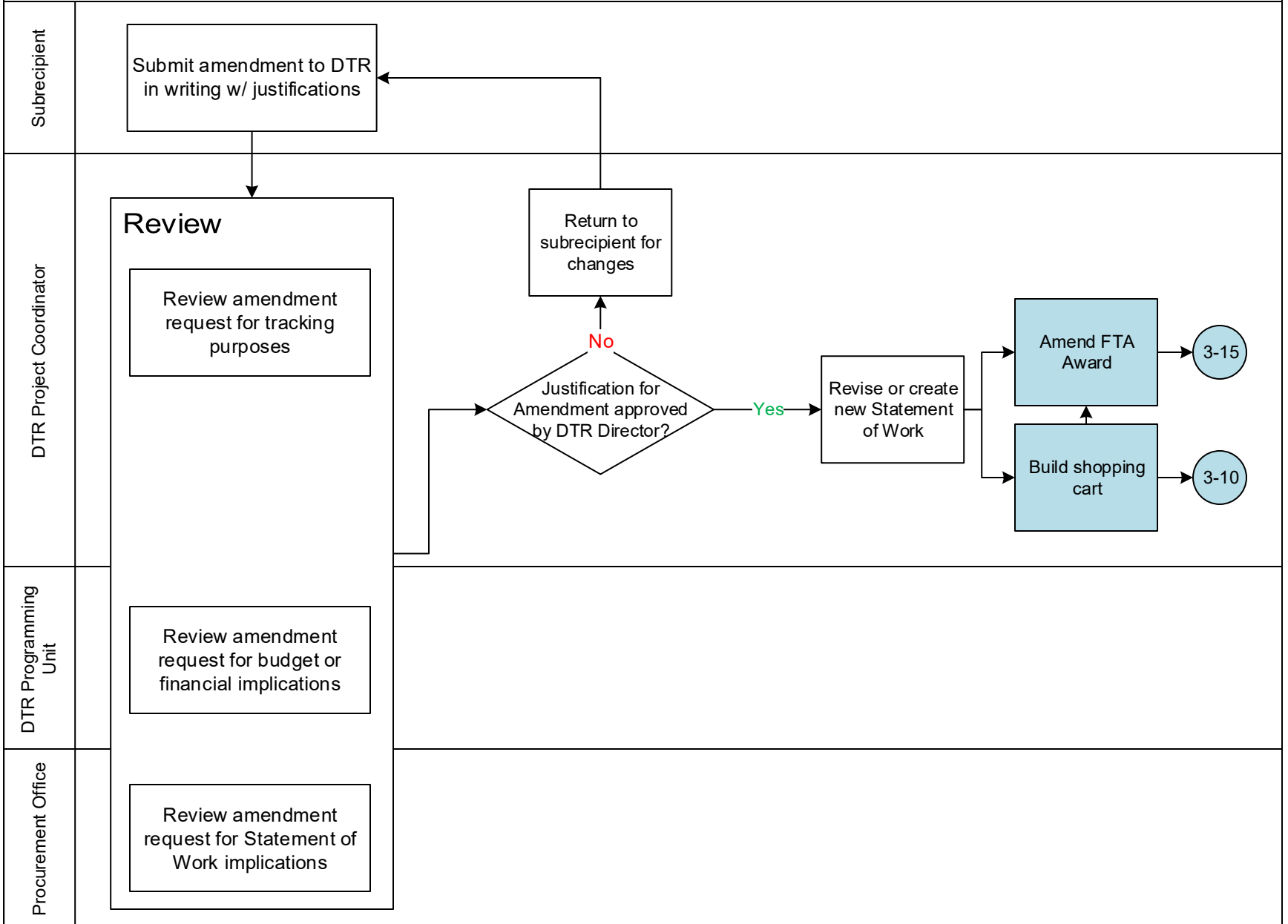
Flowchart A1-2. Subrecipient Information Request (SIR) and Site Review Process

A1-2 Subrecipient Information Request (SIR) and Site Review Process



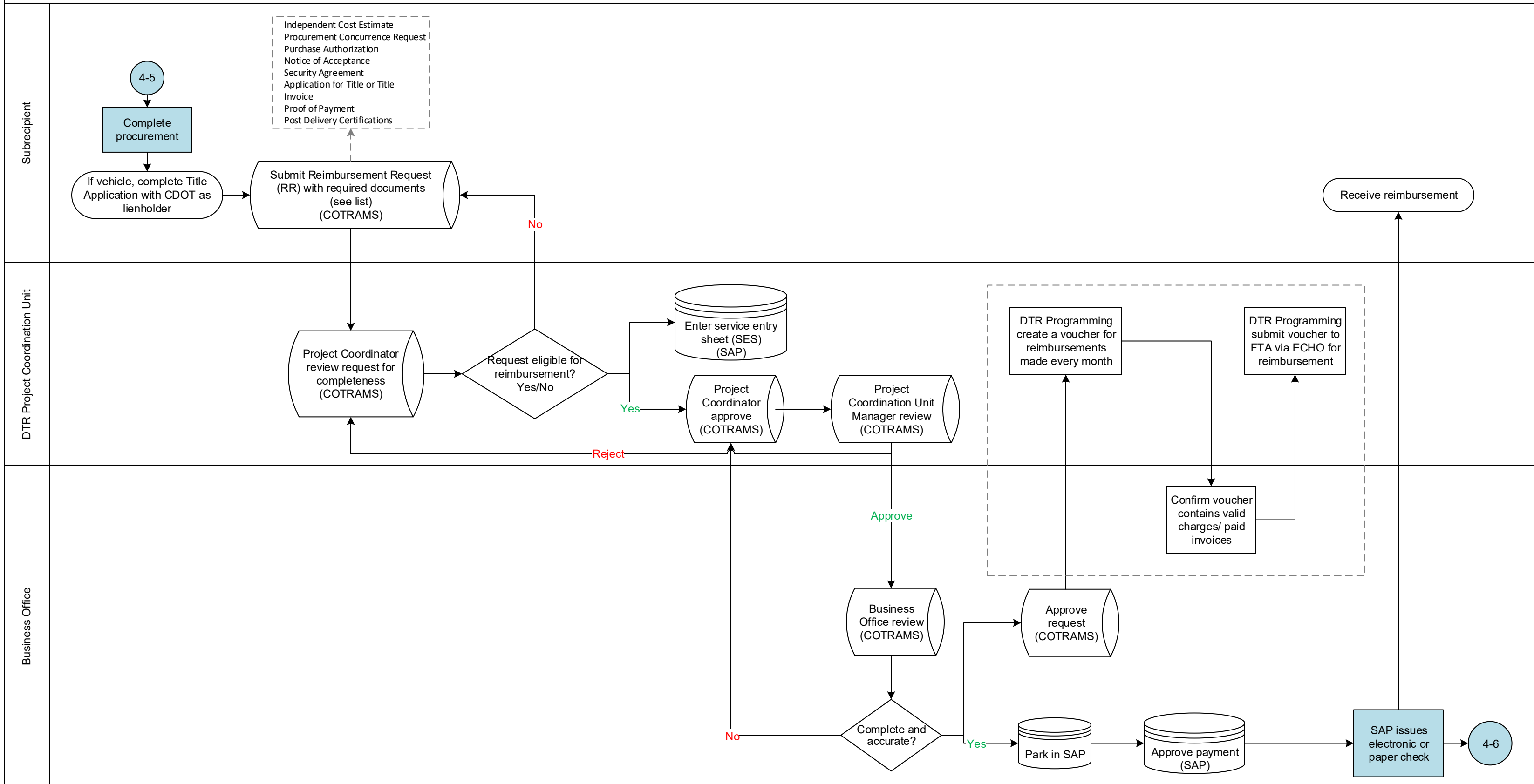
Flowchart A1-3. Amendment for Capital Project

A1-3 Amendment for Capital Project



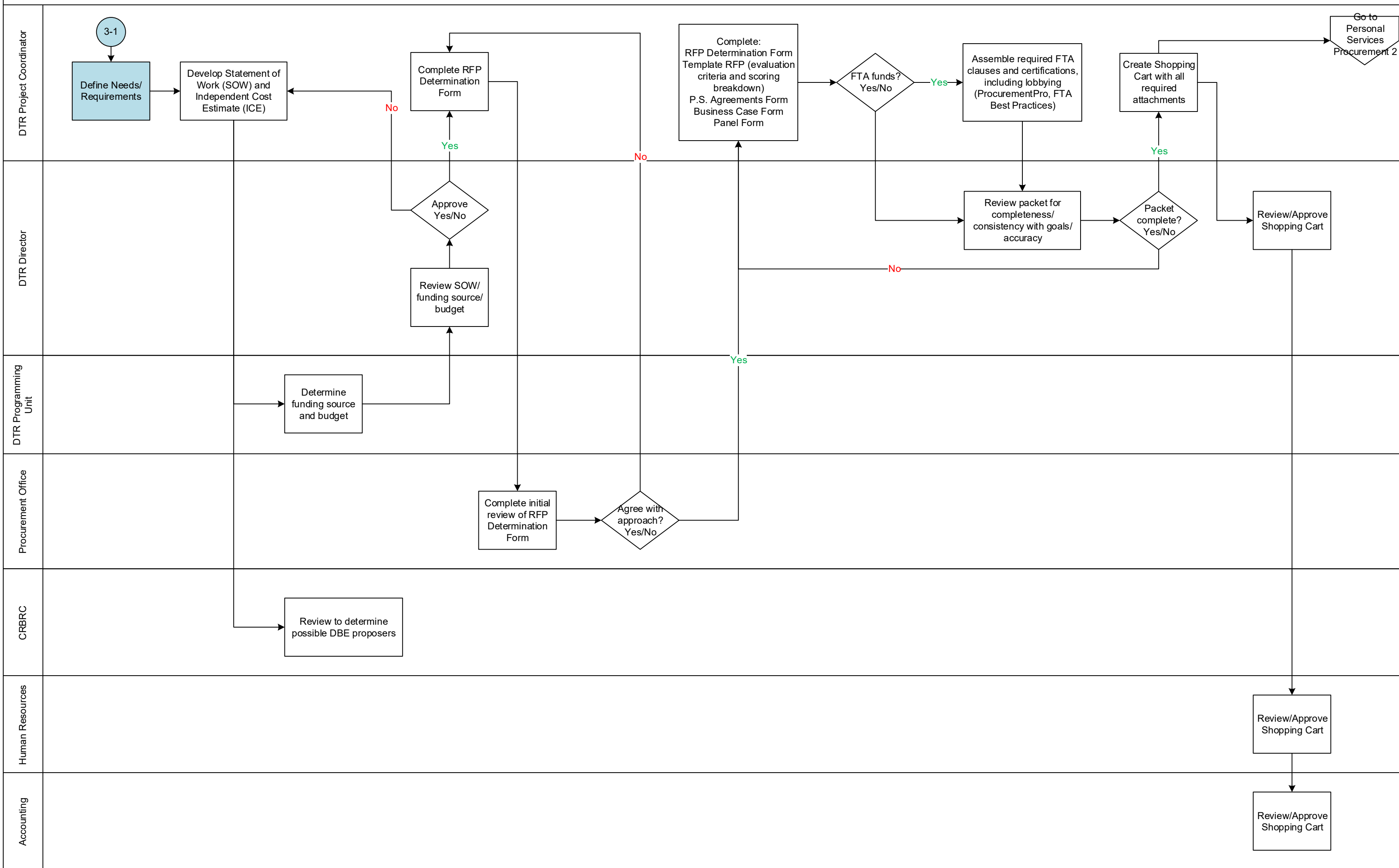
Flowchart A1-4. Capital Project Reimbursement Request

A1-4 Capital Project Reimbursement Request

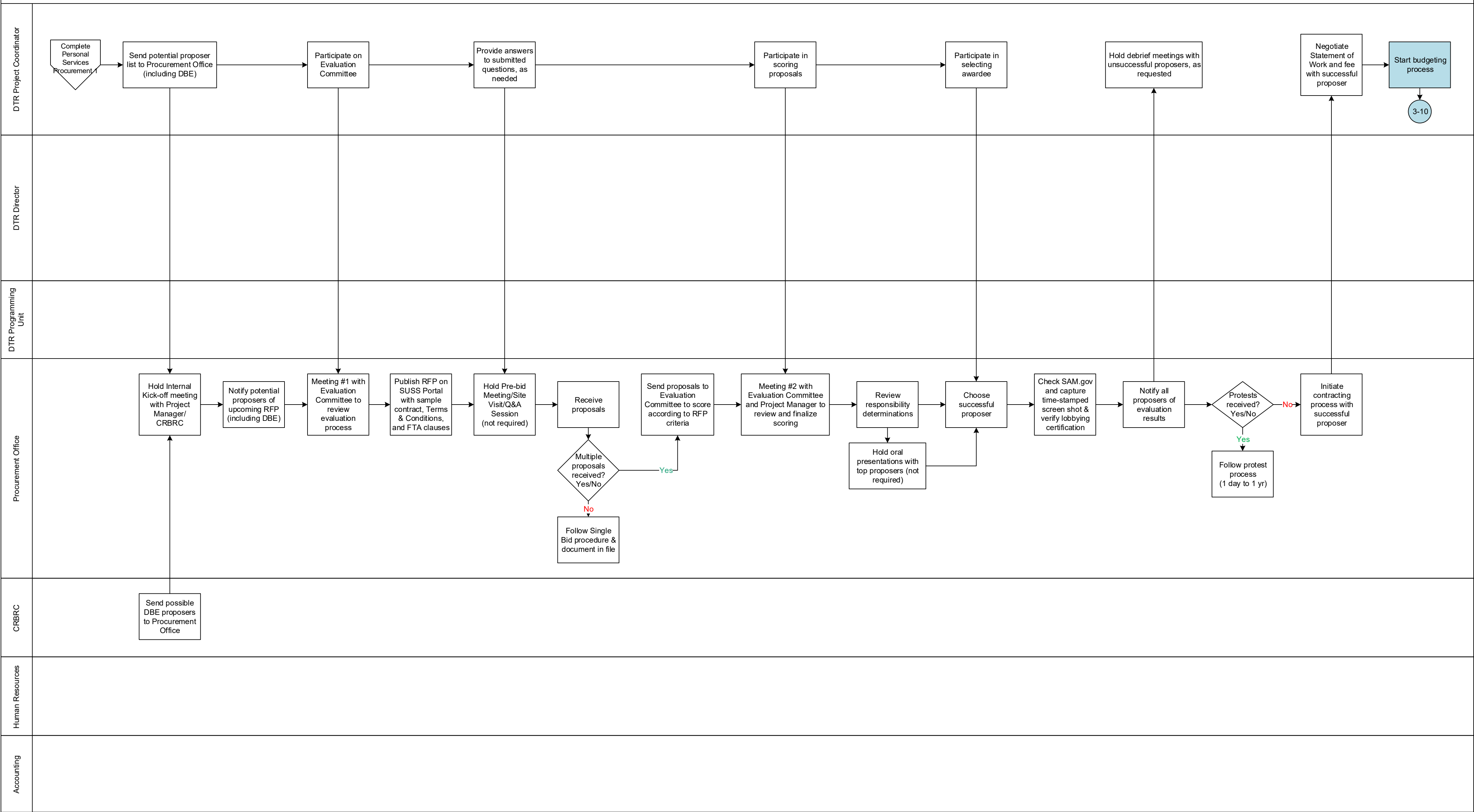


Flowchart A1-5. Personal Services Procurement

A1-5 DTR Personal Services Procurement - 1

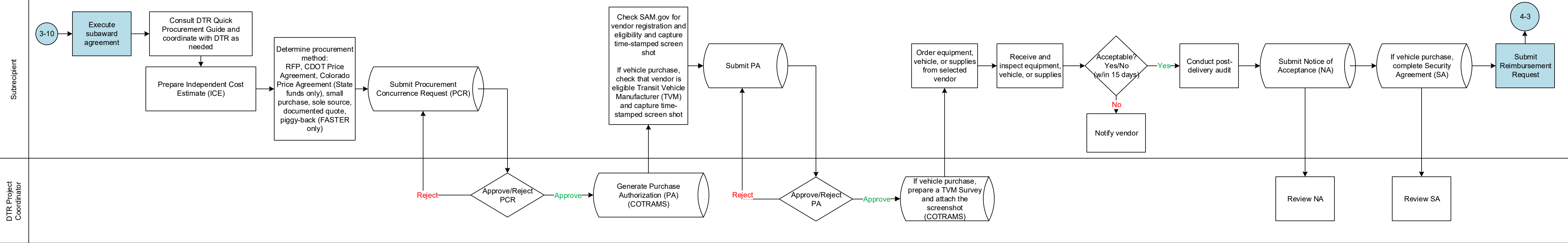


A1-5 DTR Personal Services Procurement - 2



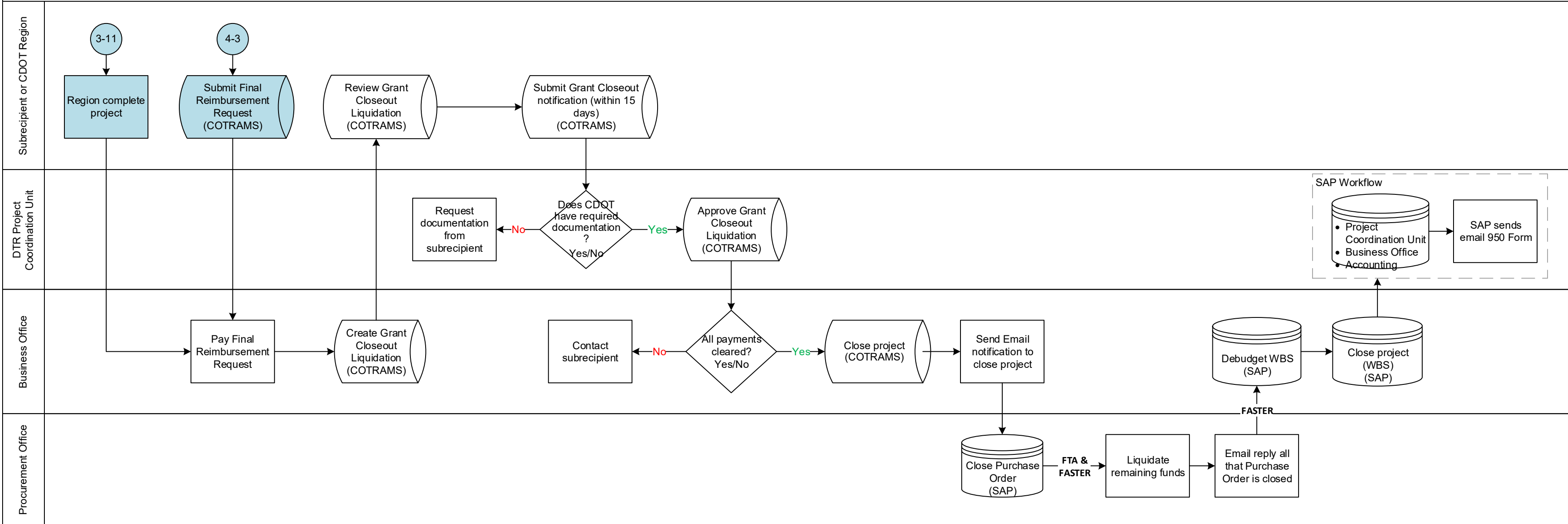
Flowchart A1-6. Third-Party Procurement

A1-6 Third-Party Procurement



Flowchart A1-7. Project Closeout

A1-7 Project Closeout



ADDITIONAL ATTACHMENTS

FTA Circular: FTA C 9070.1G: Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 9070.1G

July 7, 2014

**Subject: ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH
DISABILITIES PROGRAM GUIDANCE AND APPLICATION
INSTRUCTIONS**

1. PURPOSE. This circular is a reissuance of guidance on the administration of the transit assistance program for seniors and individuals with disabilities under 49 U.S.C. 5310, and guidance for the preparation of grant applications. This revision incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21).
2. CANCELLATION. This circular cancels Federal Transit Administration (FTA) Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions," dated May 1, 2007; and FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions," dated May 1, 2007.
3. AUTHORITY.
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.91.
4. WAIVER. FTA reserves the right to waive any requirements of this circular to the extent permitted by law.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, FTA published a notice in the *Federal Register* on June 6, 2014, addressing comments received during development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to amend this circular to update references to requirements contained in other revised or new guidance and regulations that undergo notice and comment procedures, without further notice and comment on this circular.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. Paper copies of this circular as well as information regarding these accessible formats may be obtained by calling FTA's Administrative Services Help Desk, at 202-366-4865.

/S/ Original signed by

Therese W. McMillan
Deputy Administrator

SECTION 5310 PROGRAM CIRCULAR

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten operating administrations within the U.S. Department of Transportation (DOT). Headed by an administrator appointed by the president of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation means regular, continuing, shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes, but is not limited to, transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferry boats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intraterminal or intrafacility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These grant recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141), signed into law on July 6, 2012, with an effective date of October 1, 2012, authorizes funding for federal surface transportation programs for fiscal years (FY) 2013 and 2014. Most of the federal transit provisions of MAP-21 are codified in chapter 53 of title 49, United States Code.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix F for additional information.

For further information, visit the FTA website (<http://www.fta.dot.gov>) or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communication and Congressional Affairs
1200 New Jersey Ave., SE
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. DEFINITIONS. All definitions in 49 U.S.C. 5302(a) apply to this circular, as well as the following definitions:
- a. Applicant: In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.” For purposes of this circular, the grant applicant is limited to states and designated recipients.
 - b. Capital Asset: Facilities or equipment with a useful life of at least one year.
 - c. Capital Lease: Any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.
 - d. Capital Project: A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter III of this circular.
 - e. Coordinated Public Transit-Human Service Transportation Plan (Coordinated Plan): Means a locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, seniors and people with low incomes, provides strategies for meeting those needs, and prioritizes transportation services for funding and implementation.
 - f. Cost of Project Property: This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty, or in-transit insurance, should be treated in accordance with the recipient’s regular accounting practices, in the same or as separate line items.
 - g. Designated Recipient: An entity designated, in accordance with the planning process under sections 5303 and 5304 of title 49, United States Code, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.

- h. Direct Recipient: An entity that receives funding directly from FTA. For purposes of this circular, a direct recipient is a state or a designated recipient.
- i. Disability: The term disability has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102). The term “disability” means, with respect to an individual—
 - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment.
- j. Electronic Clearing House Operation (ECHO) System: ECHO is an FTA Web-based application system that processes drawdown payment requests from FTA recipients.
- k. Electronic Grant Management System: A system that recipients and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by recipients to submit financial status reports and milestone progress reports and to submit grant modification requests; this term includes FTA’s TEAM-Web and successor systems.
- l. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.
- m. Governor: The term governor means the governor of a state, the mayor of the District of Columbia, and the governor of a territory of the United States; and includes the designee of the governor.
- n. Grant: An award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by the federal government to an eligible recipient or recipient. Used interchangeably with grant agreement.
- o. Grant Application: A complete application for an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the federal government to an eligible recipient.
- p. Human Service Transportation: Transportation services provided by or on behalf of a human service agency to provide access to agency services and/or to meet the basic, day-to-day mobility needs of transportation-disadvantaged populations, especially individuals with disabilities, seniors, and people with low incomes.

- q. Large Urbanized Area: An urbanized area (UZA) with a population of 200,000 or more individuals, as determined by the Bureau of the Census.
- r. Master Agreement: The FTA official document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its project(s). The master agreement is generally revised annually in October. The master agreement is incorporated by reference and made part of each FTA grant, cooperative agreement, and amendment thereto.
- s. Metropolitan Planning Organization (MPO): The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and Transportation Improvement Programs (TIP) for metropolitan regions of a State or States.
- t. Mobility Management: Consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. chapter 53 (other than section 5309). Mobility management does not include operating public transportation services.
- u. Net Project Cost: The part of a project that reasonably cannot be financed from operating revenues (i.e., farebox recovery).
- v. New Bus Model: A bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been used in public transportation in the United States, but is being produced with a major change in configuration or components.
- w. Nonprofit Organization: A corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. 501(c) which is exempt from taxation under 26 U.S.C. 501(a) or one which has been determined under state law to be nonprofit and for which the designated state agency has received documentation certifying the status of the nonprofit organization.
- x. Operating Expenses: Those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.
- y. Preventive Maintenance: All maintenance costs related to vehicles and nonvehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.

- z. Pre-award Authority: Authority given under specific and limited circumstances to incur costs for eligible projects before a grant is made without prejudice to possible federal participation in the cost of the project(s). Applicants must comply with all federal requirements. Failure to do so will render a project ineligible for FTA financial assistance.

- aa. Program of Projects: A list of projects to be funded in a grant application submitted to FTA by a state or designated recipient. The program of projects (POP) lists the subrecipients and indicates whether they are private nonprofit agencies or local governmental authorities, designates the areas served (including rural areas), and identifies any tribal entities. In addition, the POP includes a brief description of the projects, total project cost, and federal share for each project, and the amount of funds used for program administration from the 10 percent allowed.

- bb. Public Transportation: Regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income, and does not include: intercity passenger rail transportation provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intraterminal or intrafacility shuttle services.

- cc. Recipient: For purposes of this circular, a designated recipient or a state that receives a grant under Section 5310 directly.

- dd. Rural Area: An area encompassing a population of fewer than 50,000 people that has not been designated in the most recent decennial census as an urbanized area by the Secretary of Commerce.

- ee. Seniors: An individual who is 65 years of age or older.

- ff. Small Urbanized Areas: A UZA with a population of at least 50,000 but less than 200,000, as determined by the Bureau of the Census.

- gg. Subrecipient: A state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a grant under Section 5310 indirectly through a recipient.

- hh. Traditional Section 5310 Projects: Those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.

- ii. Urbanized Area (UZA): An area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an urbanized area by the Secretary of Commerce.

5. PROGRAM HISTORY. The Section 5310 program was established in 1975 as a discretionary capital assistance program. In cases where public transit was unavailable, insufficient, or inappropriate, the program awarded grants to private nonprofit organizations to serve the transportation needs of seniors and persons with disabilities. FTA (then the Urban Mass Transportation Administration [UMTA]) apportioned the funds among the states by formula for distribution to local agencies, a practice made a statutory requirement by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In the early years of the program, many of the subrecipient nonprofit agencies used the vehicles primarily for transportation of their own clients. Funding for the Section 16 program, as it was then known, ranged between \$20 million and \$35 million annually until the passage of ISTEA, when it increased to the \$50 million to \$60 million range. ISTEA also introduced the eligibility of public agencies under limited circumstances to facilitate and encourage the coordination of human service transportation. Increasingly, FTA guidance encouraged and required coordination of the program with other federal human service transportation programs. In lieu of purchasing vehicles, acquisition of service in order to promote use of private sector providers and coordination with other human service agencies and public transit providers was made an eligible expense under ISTEA. Other provisions of ISTEA introduced the ability to transfer flexible funds to the program from certain highway programs and the flexibility to transfer funds from the Section 5310 program to the rural and urban formula programs.

With the codification of federal transit laws in 1994, the “Section 16” program became the “Section 5310” program. The Transportation Equity Act for the 21st Century (TEA-21) enacted in 1998, reauthorized the Section 5310 program. TEA-21 increased the authorized funding levels for the Section 5310 program but made no significant program changes. In 2005, Congress enacted SAFETEA-LU. SAFETEA-LU introduced the requirement that Section 5310 projects be derived from a locally developed, coordinated public transit-human service transportation plan; removed the flexibility that funds can be transferred to Section 5311 for Section 5311 program purposes during the fiscal year apportioned, if funds were not needed for Section 5310 program purposes; introduced a seven state pilot program that allowed selected states to use up to one-third of the funds apportioned to them for operating assistance; and allowed transfers to Section 5307 or 5311, but only to fund projects selected for Section 5310 program purposes.

Congress enacted The Moving Ahead for Progress in the 21st Century Act (MAP-21) on July 6, 2012, and the law became effective on October 1, 2012. MAP-21 repealed the New Freedom program (49 U.S.C. 5317) and merged the New Freedom program into the Section 5310 program. As a result of this merger of programs, activities eligible under the New Freedom program are now eligible under Section 5310, and, consistent with Section 5317, funds are apportioned among large urbanized areas, small urbanized areas, and rural areas, instead of only to states, as the law previously provided. The apportionment is based on the population of seniors and individuals with disabilities in large UZAs, small UZAs, and rural areas. MAP-21 authorized \$254,800,000 for FY 2013 and \$258,300,000 for FY 2014, which

is an increase over the SAFETEA-LU authorized amount of \$226,000,000 for FY 2012 for the Section 5310 and Section 5317 programs combined.

In addition to the types of projects eligible under the traditional Section 5310 program and the former New Freedom program, a new eligible activity is public transportation projects that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit. MAP-21 requires that not less than 55 percent of a recipient's Section 5310 funds be available for capital projects that are "traditional" Section 5310 projects. A recipient may use more of its Section 5310 funds for these capital projects, but may not use less.

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CHAPTER II

PROGRAM OVERVIEW

1. STATUTORY AUTHORITY. Title 49 U.S.C. 5310 authorizes the formula assistance program for the Enhanced Mobility of Seniors and Individuals with Disabilities Program and provides formula funding to states and designated recipients (recipients) to improve mobility for seniors and individuals with disabilities.

This program provides grant funds for capital and operating expenses to recipients for:

- Public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;
- Public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.);
- Public transportation projects that improve access to fixed-route service and decrease reliance on complementary paratransit; and
- Alternatives to public transportation projects that assist seniors and individuals with disabilities with transportation.

Under MAP-21 this program no longer provides a single apportionment to each state; it now provides apportionments specifically for large urbanized, small urbanized, and rural areas, and will require new designations of designated recipients in large UZAs. Consistent with the type of projects eligible under the former New Freedom program, MAP-21 expanded the eligible activities to include operating expenses. FTA refers to this formula program as “the Section 5310 program.” Funds authorized by 49 U.S.C. 5310 are subject to annual appropriations.

Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Further, the law provides that a recipient may allocate the funds apportioned to it to:

- a. A private nonprofit organization; or
- b. A state or local governmental authority that:

- (1) is approved by a state to coordinate services for seniors and individuals with disabilities; or
- (2) certifies that there are no nonprofit organizations readily available in the area to provide the service.

These provisions, found at 49 U.S.C. 5310(b)(1) and (b)(2), essentially maintain the status quo for traditional Section 5310 projects and the eligible subrecipients for traditional Section 5310 projects.

Eligible subrecipients for other eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

The code assigned to the Section 5310 program in the Catalogue of Federal Domestic Assistance is 20.513.

2. PROGRAM GOAL. The goal of the Section 5310 program is to improve mobility for seniors and individuals with disabilities throughout the country by removing barriers to transportation services and expanding the transportation mobility options available. Toward this goal, FTA provides financial assistance for transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas—large urbanized, small urbanized, and rural. The program requires coordination with other federally assisted programs and services in order to make the most efficient use of federal resources.
3. SECTION 5310 PROGRAM MEASURES. Under the Government Performance Results Act (GPRA), FTA is required by law to “establish performance goals to define the level of performance” and to also “establish performance indicators to be used in measuring relevant outputs, service levels, and outcomes” for each of its programs. The performance measures described here are designed to fulfill FTA’s obligations under this Act. These measures will be used at a program level, and will not be used to assess individual grants.

FTA will be capturing overall program measures to be used with the GPRA and the Performance Assessment Rating Tool process for the U.S. Office of Management and Budget. FTA will conduct independent evaluations of the program focused on specific data elements in order to better understand the implementation strategies and related outcomes associated with the program.

The following indicators are targeted to capture overarching program information as part of the annual report that each state and designated recipient submits to FTA. The state and designated recipient should submit both quantitative and qualitative information as available on each of the following measures.

Traditional Section 5310 Projects

- (1) Gaps in Service Filled. Provision of transportation options that would not otherwise be available for seniors and individuals with disabilities measured in numbers of seniors and people with disabilities afforded mobility they would not have without program support as a result of traditional Section 5310 projects implemented in the current reporting year.
- (2) Ridership. Actual or estimated number of rides (as measured by one-way trips) provided annually for individuals with disabilities and seniors on Section 5310–supported vehicles and services as a result of traditional Section 5310 projects implemented in the current reporting year.

Other Section 5310 Projects

- (1) Increases or enhancements related to geographic coverage, service quality, and/or service times that impact availability of transportation services for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year.
- (2) Additions or changes to physical infrastructure (e.g., transportation facilities, sidewalks, etc.), technology, and vehicles that impact availability of transportation services for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year.
- (3) Actual or estimated number of rides (as measured by one-way trips) provided for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year.

The state and designated recipient should ensure that the above information is reported for all recipients and subrecipients of Section 5310 funding in projects selected by the state or designated recipient. The state or designated recipient may consolidate information for all projects in the annual report for any open Section 5310 grant awarded to the designated recipient. If Section 5310 funds have been awarded to other designated recipients pursuant to a supplemental agreement with the state or designated recipient, that direct recipient may report on behalf of itself and any subrecipients.

4. **RECIPIENT ROLE IN PROGRAM ADMINISTRATION**. The state agency designated by the governor of the state has the authority and responsibility for administering the Section 5310 program in urbanized areas under 200,000 in population and rural areas. The designated recipient of Section 5310 funds in urbanized areas over 200,000 in population has the authority and responsibility for administering the Section 5310 program in those areas.

The recipient's responsibilities include the following:

- a. Document the state or designated recipient's procedures in a state management plan (SMP) or program management plan (PMP);
- b. Plan for future transportation needs, and ensure integration and coordination among diverse transportation modes and providers;
- c. Develop project selection criteria consistent with the coordinated planning process;
- d. Notify eligible local entities of funding availability;
- e. Solicit applications from potential subrecipients;
- f. Determine applicant and project eligibility;
- g. Certify that allocations of funds to subrecipients are made on a fair and equitable basis;
- h. Submit an annual program of projects (POP) and grant application to FTA;
- i. Ensure subrecipients comply with federal requirements;
- j. Certify that all projects are included in a locally developed, coordinated public transit-human service transportation plan developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public;
- k. Certify that to the maximum extent feasible, services funded under Section 5310 are coordinated with transportation services assisted by other federal departments and agencies;
- l. Ensure that at least 55 percent of the area's apportionment is used for traditional Section 5310 projects carried out by the eligible subrecipients as described in section 5 of Chapter III of this circular; and
- m. Oversee project audit and closeout.

5. FTA ROLE IN PROGRAM ADMINISTRATION.

- a. FTA headquarters in Washington, DC, serves a broad, program level role in the administration of the program. FTA headquarters:
 - (1) Provides overall policy and program guidance for the Section 5310 program;
 - (2) Apportions funds annually to the states and designated recipients;
 - (3) Develops and implements financial management procedures;

- (4) Initiates and manages program support activities; and
 - (5) Conducts national program reviews and evaluations.
- b. FTA regional offices have the day-to-day responsibility for administration of the Section 5310 program. Regional offices:
- (1) Review and approve grant applications;
 - (2) Obligate funds, monitor and close grants, and oversee the recipient's implementation of the annual program, including revisions to the POP;
 - (3) Receive state or designated recipient certifications;
 - (4) Review and approve SMPs and PMPs;
 - (5) Provide technical assistance, advice, and guidance to states and designated recipients as needed; and
 - (6) Perform triennial reviews and state management reviews every three years or as circumstances warrant, and other reviews as necessary.
6. RELATIONSHIP TO OTHER PROGRAMS. Other public transportation-related federal programs may provide support for Section 5310 projects, and Section 5310 projects may in turn enhance the effectiveness of these programs. The following is a brief discussion of existing programs, including programs that were repealed but for which funding remains available, and those newly authorized under MAP-21.
- a. Repealed Programs. MAP-21 repealed the Job Access and Reverse Commute (JARC) and New Freedom programs. The JARC program was merged into the Section 5307 Urbanized Area Formula Grant and the Section 5311 Rural Area Formula Grant programs. As described in Chapter I of this circular, activities eligible under the New Freedom program are now eligible under the Section 5310 program. Funds authorized under the JARC and New Freedom programs and not yet obligated or expended remain available for obligation in a grant under the terms and conditions of 49 U.S.C. 5316 and 49 U.S.C. 5317, respectively, as those sections existed prior to the enactment of MAP-21, until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated.
 - (1) Job Access and Reverse Commute (JARC) Program (Section 5316). The Job Access and Reverse Commute (JARC) program was a formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and rural areas to suburban employment opportunities.

- (2) New Freedom Program (Section 5317). The New Freedom program was a formula grant program that provided funding for capital and operating expenses that support new public transportation services beyond those required by the Americans with Disabilities Act of 1990 (ADA) and new public transportation alternatives beyond those required by the ADA, designed to assist individuals with disabilities with accessing transportation services. The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing individuals with disabilities seeking integration into the workforce and full participation in society.
- (3) Coordination Provisions, Sections 5310, JARC and New Freedom. Federal transit law, as amended by SAFETEA-LU, required that projects funded from the Section 5310, JARC, and New Freedom programs be derived from a locally developed, coordinated public transit-human service transportation plan (“coordinated plan”). A coordinated plan should maximize the programs’ collective coverage by minimizing duplication of services. A coordinated plan may incorporate activities offered under other programs sponsored by federal, state, and local agencies to greatly strengthen its impact. FTA also encourages participation in coordinated service delivery as long as the coordinated services will continue to meet the purposes of all programs.

Under MAP-21, Section 5310 is the only program that still has this coordinated plan requirement. However, recipients with unobligated JARC and New Freedom funds must continue to certify that projects are included in a coordinated plan. Therefore, FTA encourages recipients with unobligated JARC and New Freedom funds to include/continue to include the Section 5310 program funds when developing the coordinated plan.

b. New and Revised Programs Under MAP-21.

- (1) Section 5307 and Section 5311, the Urbanized Area and Rural Area Formula Programs. The Section 5307 program makes funds available to designated recipients to assist in the development, improvement, and use of public transportation systems in urbanized areas. The Section 5311 program makes federal funds available to states to assist in the development, improvement, and use of public transportation systems in rural areas. Under MAP-21, job access and reverse commute projects are eligible under both Section 5307 and 5311. While the overall objectives of the Section 5307, Section 5311, and Section 5310 programs differ (that is, the objectives of Sections 5307 and 5311 are to provide transportation to the general public in urbanized and rural areas and the objective of Section 5310 is to serve seniors and individuals with disabilities in both rural and urbanized areas), there are parallels that make it desirable for designated recipients and states to consider all resources and plan for their use in a complementary way. FTA expects local transit providers to participate in the development of a coordinated public transit-human service transportation plan.

- The Section 5311 program makes funds available to states to assist with the development, improvement, and use of public transportation systems in rural areas. Under Section 5311, the Rural Transportation Assistance Program (RTAP) provides for technical assistance, training, and related support services in rural areas. Section 5310 providers may participate in RTAP sponsored activities, at the state's discretion, as long as the activities are primarily designed and delivered to benefit rural transit providers.
- (2) Bus and Bus Facilities Formula Program (Section 5339). MAP-21 amended 49 U.S.C. 5339 to create a new formula bus and bus facilities program. The purpose of this program is to finance capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities. The requirements of Section 5307 apply to this program. Eligible recipients are designated recipients that operate fixed-route bus service or that allocate funding to fixed-route bus operators.
 - (3) Federal Highway Administration (FHWA) Flexible Funds. Surface Transportation Program (STP) funds, among others, are a source of flexible funds for both highway and transit projects. At the state's discretion, these flexible funds may be used for transit capital projects. This provision includes transit capital projects funded through Section 5310 that meet the transportation needs of seniors and individuals with disabilities.

7. COORDINATION WITH OTHER FEDERAL PROGRAMS.

- a. The Federal Interagency Coordinating Council on Access and Mobility (CCAM). The Federal Interagency Coordinating Council on Access and Mobility (CCAM), comprised of eleven federal departments and agencies, was established by Executive Order 13330, "Human Service Transportation Coordination," signed by President George W. Bush on February 24, 2004. The members consist of the secretaries of the U.S. Departments of Transportation, Health and Human Services, Labor, Education, Agriculture, Housing and Urban Development, Interior, Veterans Affairs, the Commissioner of Social Security, the Attorney General, and the Chair of the National Council on Disabilities.

CCAM coordinates more than sixty federal programs providing transportation funding for seniors, people with disabilities, and individuals with low incomes.

To implement the Executive Order, CCAM launched the United We Ride (UWR) initiative to break down the barriers between programs and set the stage for local partnerships that generate common sense solutions and deliver A-plus performance for everyone who needs transportation. UWR has been working with states and communities to address gaps and needs related to human service transportation in their geographic regions. This includes assistance with the development and implementation of action plans for coordinated human service transportation.

Consistent with the presidential directive, members of CCAM adopted the following policy statement in October 2006: “Member agencies of the Federal Coordinating Council on Access and Mobility resolve that federally-assisted recipients that have significant involvement in providing resources and engage in transportation delivery should participate in a local coordinated human services transportation planning process and develop plans to achieve the objectives to reduce duplication, increase service efficiency and expand access for the transportation-disadvantaged populations as stated in Executive Order 13330.”

At the same time, CCAM adopted a policy clarifying federal policy regarding vehicle sharing: “Member agencies of CCAM resolve that federally-assisted recipients that have significant involvement in providing resources and engage in transportation should coordinate their resources in order to maximize accessibility and availability of transportation services.”

Both of these policy statements are intended for implementation by each CCAM member department through administrative, regulatory, and/or legislative mechanisms.

CCAM has also established the UWR Logic Model and Performance Measure tool to assist states and communities with identifying potential measures in a coordinated transportation system. The policy statements, logic model, and other tools can be found on the UWR website at www.unitedweride.gov.

- b. Meal Delivery for Homebound Individuals. Public transportation service providers that receive assistance under Section 5310 or Section 5311(c) funds may coordinate and assist in regularly providing meal delivery service for homebound individuals, as long as the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.
- c. Other Interagency Coordination. FTA encourages state departments of transportation and designated recipients’ participation in interagency efforts such as the State Rural Development Councils, Economic Development Councils, and Human Service Transportation Coordinating Councils. Coordination councils at the state and local levels often include participation from public and private transportation providers, human service providers, and passengers, including seniors and individuals with disabilities. These councils are actively working on identifying needs, resources, and gaps for seniors, individuals with disabilities, and others who require assistance with transportation services.

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CHAPTER III

GENERAL PROGRAM INFORMATION

1. RECIPIENT DESIGNATION. The governor of each state or an official designee must designate a public entity to be the recipient for Section 5310 funds. The designated agency must have the requisite legal, financial, and staffing capabilities to receive and administer federal funds under this program. In urbanized areas with populations less than 200,000 and in rural areas, the state is the designated recipient. For these areas, the governor of a state designates a state agency responsible for administering the Section 5310 program, and officially notifies the appropriate FTA regional office in writing of that designation. The governor of a state may designate the state agency that receives Rural Area Formula Funds (Section 5311) to be the Section 5310 recipient, or the governor of a state may designate a different agency.

In urbanized areas over 200,000 in population, the recipient charged with administering the Section 5310 program must be officially designated through a process consistent with 49 U.S.C. 5302(4), which defines designated recipient as:

an entity designated in accordance with the planning process under Sections 5303 and 5304 by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population.

The Urbanized Area Formula (Section 5307)–designated recipient provides and coordinates transportation services for the region and is familiar with FTA’s program oversight requirements; therefore, it is appropriate for the designated recipient for the Section 5310 program to be the same as the designated recipient for Section 5307 funds. Alternatively, the Section 5317 (New Freedom program)–designated recipient, the metropolitan planning organization (MPO), state, or another public agency may be a preferred choice based on local circumstances. A state agency may be the designated recipient of Section 5310 funds for a large urbanized area, and all apportioned funds for the large urbanized area must be allocated to agencies within the large urbanized area.

FTA recommends the MPO initiate the designation process as soon as possible in large urbanized areas receiving Section 5310 funds for the first time. The designation letter must be on file with the FTA regional office before grant applications may be submitted for FTA review and funds awarded.

Designations remain in effect until changed by the governor by official notice of redesignation to the appropriate FTA regional office.

2. DESIGNATION OF MULTIPLE RECIPIENTS IN URBANIZED AREAS. FTA encourages the designation of a single designated recipient for each large urbanized area over 200,000 in population, including multi-state urbanized areas, in order to streamline the administration of the program and foster coordination. The governor or an official designee may also designate a single recipient for contiguous large urbanized areas. However, nothing precludes the designation of multiple designated recipients.

When more than one recipient is designated for a single large urbanized area, the designated recipients must agree on how they will split the single apportionment and notify FTA annually of the split and the geographic part of the urbanized area each recipient will be responsible for managing.

For multi-state small urbanized areas of less than 200,000 in population, the governor of each state must designate a state agency for that respective state's portion.

3. ROLE OF THE DESIGNATED RECIPIENT. The designated recipient is responsible for selection of projects, and may, but is not required to, include a competitive selection process. If the designated recipient decides to hold a competitive selection, it may conduct the competitive selection itself or establish alternative arrangements to administer and conduct the competitive selection. For example, the MPO could be the lead agency for the competitive selection, even if it is not the designated recipient. Alternatively, the designated recipient may, through interagency agreement or third party contracts, provide for the administrative management and oversight of the competitive selection process.

The designated recipient will apply to FTA for funding using the designated FTA electronic grant management system on behalf of itself and/or eligible subrecipients for Section 5310 projects within the recipient's area. The designated recipient is responsible for the following actions:

- a. Developing the program of projects (POP). Developing project selection processes, including deciding whether to conduct an areawide (or statewide) competitive selection process and, if so, conducting the competition;
- b. Certifying that all projects are included in a locally developed, coordinated public transit-human service transportation plan (coordinated plan) developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public. The designated recipient is not directly responsible for developing the coordinated plan, but is responsible for ensuring that the plan from which a selected project was included was developed in compliance with the statutory requirements. An agency or organization other than the designated recipient may take the lead in developing the coordinated plan;
- c. Overseeing the implementation of projects as developed and prioritized in the coordinated plan, including, where not specified in the coordinated plan, selecting entities

to carry out projects consistent with procedures approved in the coordinated plan and/or documented in the designated recipient's state or program management plan. In cases where the designated recipient is responsible for allocating funding among localities or regions that have developed and approved individual coordinated plans, the designated recipient shall select projects consistent with a process developed in collaboration with organizations responsible for developing local or regional coordinated plans;

- d. Certifying a fair and equitable distribution of funds to subrecipients, if any;
- e. Managing all aspects of grant distribution and oversight for subrecipients receiving funds under this program; and
- f. Submitting reports as required by FTA.

Funds are obligated based on the annual program of projects included in a grant application. FTA does not conduct project-by-project review and approval of each project. The recipient must ensure that local applicants and project activities are eligible and in compliance with federal requirements and that the program provides for maximum feasible coordination of transportation services assisted under Section 5310 with transportation services assisted by other federal sources. In addition, the recipient monitors local projects; ensures that all program activities are included in a transportation improvement program (TIP) for activities in urbanized areas; ensures that all program activities are included in a statewide transportation improvement program (STIP); and oversees project audits and closeouts. The recipient must certify to FTA annually that the recipient and subrecipients have met or will meet all federal requirements, including all metropolitan and statewide planning requirements. Once FTA has approved the application, funds are available for administration and for allocation to individual subrecipients.

Under Department of Transportation (DOT) regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR part 18 (sometimes referred to as the "common grant rule" or "common rule"), the state relies on its own laws and procedures in the areas of financial management systems, equipment, and procurement for itself and its public entity subrecipients. For private nonprofit agencies, grant management requirements are contained in 49 CFR part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations." States may have uniform requirements for all of their subrecipients, both private nonprofit agencies and governmental authorities, as long as such requirements are not inconsistent with part 19. Designated recipients other than states must follow the provisions of 49 CFR part 18; subrecipients follow part 18 if they are public entities and part 19 if they are private nonprofit entities.

4. ELIGIBLE DIRECT RECIPIENTS.

- a. Urbanized Areas over 200,000. Except as noted below, the 5310 designated recipient will apply directly to FTA for a Section 5310 grant for itself and on behalf of subrecipients.

As discussed, the designated recipient for Section 5310 in a large UZA over 200,000 in population may or may not be the same agency as the designated recipient for Section 5307 funds.

The coordinated planning and project selection process may result in Section 5310 funds being allocated to a transit agency that is not the designated recipient for the Section 5310 program, but is a designated recipient for Section 5307 funds, and thus, typically receives funds directly from FTA. Instead of entering into a subrecipient relationship with the Section 5310 designated recipient, the selected agency may request that FTA make the Section 5310 grant for the project directly to the transit agency that is a designated recipient for Section 5307. If this occurs, the Section 5310–designated recipient must enter into a supplemental agreement with the Section 5307–designated recipient as part of the application to release the Section 5310–designated recipient from any liability under the grant agreement. Supplemental agreements are provided in the electronic grants management system and must be electronically executed.

- b. Rural and Small Urbanized Areas under 200,000 in population. The state is the designated recipient and will apply directly to FTA for grant funds for itself and its subrecipients. The state is the only eligible direct recipient for Section 5310 funds in rural areas and small UZAs.
 - c. Tribes. Federally recognized Indian tribes are eligible direct recipients under the Section 5311 program. A tribe may also apply directly to FTA for Section 5310 funds that a state or designated recipient has awarded to the tribe.
5. ELIGIBLE SUBRECIPIENTS FOR TRADITIONAL SECTION 5310 PROJECTS. Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Further, the law provides that, for these projects, a recipient may allocate the funds apportioned to it to:
- a. A private nonprofit organization; or
 - b. A state or local governmental authority that:
 - (1) is approved by a state to coordinate services for seniors and individuals with disabilities; or
 - (2) certifies that there are no nonprofit organizations readily available in the area to provide the service.

These provisions, found at 49 U.S.C. 5310(b)(1) and (b)(2), essentially maintain the status quo for traditional Section 5310 projects.

Governmental authorities eligible to apply for Section 5310 funds as “coordinators of services for seniors and individuals with disabilities” are those designated by the state to coordinate human service activities in a particular area. Examples of such eligible governmental authorities are a county agency on aging or a public transit provider which the state has identified as the lead agency to coordinate transportation services funded by multiple federal or state human service programs.

6. ELIGIBLE SUBRECIPIENTS FOR OTHER SECTION 5310 PROJECTS. Eligible subrecipients for other eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.
7. PRIVATE TAXI OPERATORS AS SUBRECIPIENTS. Private operators of public transportation are eligible subrecipients. The definition of “public transportation” includes “... shared-ride surface transportation services ...” Private taxi companies that provide shared-ride taxi service to the general public on a regular basis are operators of public transportation, and therefore eligible subrecipients. “Shared-ride” means two or more passengers in the same vehicle who are otherwise not traveling together. Similar to general public and ADA demand response service, every trip does not have to be shared-ride in order for a taxi company to be considered a shared-ride operator, but the general nature of the service must include shared rides.

Local (municipal/state) statutes or regulations, or company policy, will generally determine whether a taxi company provides shared-ride or exclusive-ride service. For example, if the local regulation permits the driver to determine whether or not a trip may be shared, the service is not shared-ride. Similarly, if the regulation requires consent of the first passenger to hire a taxi be obtained before the taxi may take on additional riders, the service is not shared-ride. In essence, services that can be reserved for the exclusive use of individuals or private groups, either by the operator or the first passenger’s refusal to permit additional passengers, is exclusive-ride taxi service. A recipient should request documentation from the taxi company to ensure the company is providing shared-ride service prior to award in order to determine whether the company qualifies as a subrecipient.

Taxi companies that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the Section 5310 program as contractors. Exclusive-ride taxi companies may receive Section 5310 funds to purchase accessible taxis under contract with a state, designated recipient, or eligible subrecipient such as a local government or nonprofit organization. The taxi company may hold title to the accessible vehicle(s) as long as the agreement between the state, designated recipient, or subrecipient and the taxi company is sufficient to establish satisfactory continuing control. Acceptable means of establishing satisfactory continuing control could include a state, designated recipient, or subrecipient’s lien on the vehicle, or contract provisions that require the accessible taxi to be used to provide transportation for seniors and people with disabilities, and that the vehicle

may not be removed from service or disposed of prior to the end of its useful life without the express written consent of the FTA recipient or subrecipient.

8. APPORTIONMENT OF SECTION 5310 FUNDS. Of the total Section 5310 funds available, FTA apportions 60 percent among designated recipients in large UZAs; 20 percent to the states for small UZAs; and 20 percent to the states for rural areas with less than 50,000 in population. Section 5310 funds are apportioned among the recipients by formula. The formula is based on the ratio that the number of seniors and individuals with disabilities in each such area bears to the number of seniors and individuals with disabilities in all such areas. Example: a large UZA's apportionment is based on the ratio that the number of seniors and individuals with disabilities in that large UZA bears to the number of seniors and individuals with disabilities in all large UZAs. The number of seniors and individuals with disabilities in an area is determined according to the latest available U.S. Census data for adults over the age of sixty-five and individuals with disabilities over the age of five. The annual apportionment for Section 5310 is published in the *Federal Register* following the enactment of the annual DOT appropriations act.
9. FUNDS AVAILABILITY. Section 5310 funds are available for obligation during the fiscal year of apportionment plus two additional years. Thus, for example, funds apportioned in FY 2013 are available until the end of FY 2015 (September 30, 2015). Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all areas.
10. TRANSFER OF FUNDS.
 - a. Transfer to Other FTA Programs. Transfers of Section 5310 funds to other programs are not permitted.
 - b. Transfer to Other Areas within the Program. A State may use funds apportioned for small urbanized and rural areas for projects serving another area of the State if the Governor of the State certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to urbanized areas of less than 200,000 in population. Funds apportioned to small urbanized and rural areas may also be transferred for use anywhere in the State, including large urbanized areas, if the State has established a statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large UZAs may not be transferred to other areas.
 - c. Transfer of FHWA Flexible Funds. Flexible funds from the Federal Highway Administration (FHWA) may be transferred to the Section 5310 program for use by the recipient. The funds will be treated under the Section 5310 program requirements, with the exception of the local match and the minimum requirement for 55 percent to be spent

on traditional Section 5310 projects. The FHWA funds will maintain the FHWA eligible match, including the application of the sliding scale for a higher federal share. The funds are available for obligation by the state for two additional years after the year in which they are transferred.

- d. For transfers of flexible funds to Section 5310, the recipient must notify both FHWA and FTA and request FHWA to transfer the funds to the appropriate FTA account. The transfer must be completed prior to grant award.

11. CONSOLIDATION OF GRANTS TO INSULAR AREAS. FTA grants to insular areas may be consolidated under the provisions of 48 U.S.C. 1469a. This provision permits federal agencies to streamline and consolidate certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These insular areas receive Section 5311 apportionments and Rural Transportation Assistance Program (RTAP) allocations annually as well as Section 5310 funds, and, in some cases, Section 5307 funds. [Note: Section 5307(g) provides that the Virgin Islands shall be treated as a small urbanized area for the purposes of Section 5307. FTA does not apportion Section 5311 or RTAP funds to the Virgin Islands]. Specifically, 48 U.S.C. 1469a permits:

- a. Federal agencies to consolidate any or all grants to each of the insular areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants; and
- b. Each insular area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

For these areas, FTA will consolidate Section(s) 5307, 5310, and 5311 funding into a single grant by transferring funds from one section to another. The insular areas may transfer all or a portion of the funds apportioned for Sections 5307 and 5310 to Section 5311 for use under any of these sections. This should improve the efficiency of grant making and grant management for these areas which have limited staff resources and receive small amounts of funds under each of these programs. Those insular areas interested in submitting applications for consolidated grants should notify the appropriate FTA regional office for application procedures and consolidation requirements. Among other things, the area should identify the intended use of consolidated funds and should document that the transportation of seniors and individuals with disabilities will not be adversely affected.

In addition, 48 U.S.C. 1469a(d) allows a federal agency to waive any local matching share requirements for grants to insular areas. FTA has no authority under 48 U.S.C. 1469a to waive any cross-cutting requirements, such as Buy America, Title VI, or drug and alcohol testing.

12. RECIPIENT ADMINISTRATIVE EXPENSES. Up to 10 percent of the recipient's total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance for projects funded under this program.

Recipients may pass any portion of funds available for administrative expenses, up to the allowable 10 percent, on to subrecipients for the same purpose. Program administration costs may be funded at 100 percent federal share.

The state and the designated recipient in urbanized areas have pre-award authority to incur administrative costs for Section 5310. Because the program is continuously managed, oldest funds available are drawn first regardless of the year of award for program activity.

FTA encourages recipients to identify all the available Section 5310 administrative funds they intend to use routinely in each annual grant application. However, recipients may choose to accumulate Section 5310 administrative funds within their period of availability to augment the funds available for a special administrative need in a subsequent year. Recipients may accumulate Section 5310 administrative funds in the year of apportionment plus two years.

If a recipient includes program administration expenses in excess of the 10 percent in its grant application, it must document the unused Section 5310 administrative funds from prior years available to augment the amount of Section 5310 administrative funds in the current apportionment.

The recipient must document the availability of Section 5310 administrative funds in each grant application. The grant application should include a list of all other grants for administrative expenses that utilize funds from the same apportionment. The list must include the total amount of administrative funds included in each grant and the fiscal year in which the funds were apportioned. The list should account for all funds for administrative expenses added through grant budget revisions or amendments. The list should include all other pending grant applications, budget revisions, or amendments that include administrative expenses that utilize funds from the same apportionment.

Allowable administrative costs may include, but are not limited to, general administrative and overhead costs, staff salaries, office supplies, and development of specifications for vehicles and equipment. Guidance on eligible costs is in Office of Management and Budget (OMB) Circular A-87 (codified at 2 CFR part 225). The program administration budget line item may also include technical assistance and planning activities, including allocations to subrecipients to support the local coordinated planning process. Any general overhead costs must be supported by an indirect cost allocation plan that has been approved by FTA or another cognizant federal agency.

These eligible program administrative costs may be used directly by the designated recipient or may be passed through by the designated recipient to subrecipients for administration, planning, or technical assistance purposes. The funds can be obligated before the completion of the coordinated planning process and project selection process in order to assist with either activity.

13. ELIGIBLE ACTIVITIES. Section 5310 funds are available for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities.

Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Notably, this 55 percent is a floor, not a ceiling—recipients may use more than 55 percent of their apportionment for this type of project.

This means that at least 55 percent of any rural, small urbanized area, or large urbanized area's annual apportionment must be utilized for public transportation capital projects that are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities. It is not sufficient that seniors and individuals with disabilities are merely included (or assumed to be included) among the people who will benefit from the project.

Eligible projects for the required 55 percent of capital projects include the capital cost of contracting for the provision of transit services for seniors and individuals with disabilities and other specialized shared-ride transportation services. The purchase of rolling stock for or the acquisition of ADA-complementary paratransit service are eligible capital expenses that may also qualify as public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate, provided the projects are carried out by eligible subrecipients (see section 5, above) and these projects are included in the area's coordinated plan.

In addition to the above required capital projects, up to 45 percent of an area's apportionment may be utilized for additional public transportation projects that:

- a. Exceed the ADA minimum requirements,
- b. Improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA-complementary paratransit service, or
- c. Provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

Such projects must be targeted toward meeting the transportation needs of seniors and individuals with disabilities, although they may be used by the general public. It is not sufficient that seniors and individuals with disabilities are included (or assumed to be included) among the people who will benefit from the project. FTA encourages projects that are open to the public as a means of avoiding unnecessary segregation of services.

Recipients must clearly identify the projects that are part of the required 55 percent capital projects as part of the grant activity line item narrative descriptions. Many projects may be eligible under both the required and optional criteria, but a discrete set of projects that meet the required criteria constituting at least 55 percent of the grant amount, exclusive of administrative expenses, must be identified. Alternatively, the grant application may assign less than the required 55 percent to such projects if other grants in the same fiscal year utilize more than the required 55 percent, so long as at least 55 percent of the total annual apportionment will be used for required projects. In such cases, a list of the other grants and the funding amounts must be included within the new grant application.

14. ELIGIBLE CAPITAL EXPENSES THAT MEET THE 55 PERCENT REQUIREMENT.

Funds for the Section 5310 program are available for capital expenses as defined in Section 5302(3) to support public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Examples of capital expenses that meet the 55 percent requirement, which must be carried out by an eligible recipient or subrecipient as described in section 5 of this chapter above, include, but are not limited to:

- a. Rolling stock and related activities for Section 5310-funded vehicles
 - (1) Acquisition of expansion or replacement buses or vans, and related procurement, testing, inspection, and acceptance costs;
 - (2) Vehicle rehabilitation or overhaul;
 - (3) Preventive maintenance;
 - (4) Radios and communication equipment; and
 - (5) Vehicle wheelchair lifts, ramps, and securement devices.
- b. Passenger facilities related to Section 5310-funded vehicles
 - (1) Purchase and installation of benches, shelters, and other passenger amenities.
- c. Support facilities and equipment for Section 5310-funded vehicles
 - (1) Extended warranties that do not exceed the industry standard;
 - (2) Computer hardware and software;
 - (3) Transit-related intelligent transportation systems (ITS);
 - (4) Dispatch systems; and
 - (5) Fare collection systems.

- d. Lease of equipment when lease is more cost effective than purchase. Note that when lease of equipment or facilities is treated as a capital expense, the recipient must establish criteria for determining cost effectiveness in accordance with FTA regulations, “Capital Leases,” 49 CFR part 639 and OMB Circular A-94, which provides the necessary discount factors and formulas for applying the same;
- e. Acquisition of transportation services under a contract, lease, or other arrangement. This may include acquisition of ADA-complementary paratransit services when provided by an eligible recipient or subrecipient as defined in section 5 of this chapter, above. Both capital and operating costs associated with contracted service are eligible capital expenses. User-side subsidies are considered one form of eligible arrangement. Funds may be requested for contracted services covering a time period of more than one year. The capital eligibility of acquisition of services as authorized in 49 U.S.C. 5310(b)(4) is limited to the Section 5310 program;
- f. Support for mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management is an eligible capital cost. Mobility management techniques may enhance transportation access for populations beyond those served by one agency or organization within a community. For example, a nonprofit agency could receive Section 5310 funding to support the administrative costs of sharing services it provides to its own clientele with other seniors and/or individuals with disabilities and coordinate usage of vehicles with other nonprofits, but not the operating costs of service. Mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service. Mobility management activities may include:
 - (1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, seniors, and low-income individuals;
 - (2) Support for short-term management activities to plan and implement coordinated services;
 - (3) The support of state and local coordination policy bodies and councils;
 - (4) The operation of transportation brokerages to coordinate providers, funding agencies, and passengers;
 - (5) The provision of coordination services, including employer-oriented transportation management organizations’ and human service organizations’ customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;

- (6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
 - (7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system, and single smart customer payment systems. (Acquisition of technology is also eligible as a standalone capital expense).
- g. Capital activities (e.g., acquisition of rolling stock and related activities, acquisition of services, etc.) to support ADA-complementary paratransit service may qualify toward the 55 percent requirement, so long as the service is provided by an eligible recipient/subrecipient as defined in section 5, above, and is included in the coordinated plan.

15. OTHER ELIGIBLE CAPITAL AND OPERATING EXPENSES.

- a. General. Up to 45 percent of a rural, small urbanized area, or large urbanized area's annual apportionment may be utilized for:
- (1) Public transportation projects (capital only) planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;
 - (2) Public transportation projects (capital and operating) that exceed the requirements of ADA;
 - (3) Public transportation projects (capital and operating) that improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA-complementary paratransit service; or
 - (4) Alternatives to public transportation (capital and operating) that assist seniors and individuals with disabilities with transportation.

Since the 55 percent requirement is a floor, and not a ceiling, the activities listed in section 14, above, are eligible expenses for all funds available to a recipient under Section 5310. For example, mobility management and ITS projects may be eligible under both categories; the difference to note, in order for the project to qualify toward the 55 percent requirement, is that the project must meet the definition of a capital project, be specifically geared toward the target population, and carried out by an eligible subrecipient, which is limited for this category of projects. The list of eligible activities is intended to be illustrative, not exhaustive. FTA encourages recipients to develop

innovative solutions to meet the needs of seniors and individuals with disabilities in their communities and discuss proposed projects with FTA regional staff to confirm eligibility.

- b. Public Transportation Projects that Exceed the Requirements of the ADA. The following activities are examples of eligible projects meeting the definition of public transportation service that is beyond the ADA.
 - (1) Enhancing paratransit beyond minimum requirements of the ADA. ADA-complementary paratransit services can be eligible under the Section 5310 program in several ways:
 - (a) Expansion of paratransit service parameters beyond the three-fourths mile required by the ADA;
 - (b) Expansion of current hours of operation for ADA paratransit services that are beyond those provided on the fixed-route services;
 - (c) The incremental cost of providing same day service;
 - (d) The incremental cost (if any) of making door-to-door service available to all eligible ADA paratransit riders, but not on a case-by-case basis for individual riders in an otherwise curb-to-curb system;
 - (e) Enhancement of the level of service by providing escorts or assisting riders through the door of their destination;
 - (f) Acquisition of vehicles and equipment designed to accommodate mobility aids that exceed the dimensions and weight ratings established for wheelchairs under the ADA regulations, 49 CFR part 38 (i.e., larger than 30" × 48" and/or weighing more than 600 pounds), and labor costs of aides to help drivers assist passengers with oversized wheelchairs. This would permit the acquisition of lifts with a larger capacity, as well as modifications to lifts with a 600-pound design load, and the acquisition of heavier duty vehicles for paratransit and/or demand-response service in order to accommodate lifts with a heavier design load; and
 - (g) Installation of additional securement locations in public buses beyond what is required by the ADA.
 - (2) Feeder services. Accessible "feeder" service (transit service that provides access) to commuter rail, commuter bus, intercity rail, and intercity bus stations, for which complementary paratransit service is not required under the ADA.
- c. Public Transportation Projects that Improve Accessibility. The following activities are examples of eligible projects that improve accessibility to the fixed-route system.

- (1) Making accessibility improvements to transit and intermodal stations not designated as key stations. Improvements for accessibility at existing transportation facilities that are not designated as key stations established under 49 CFR 37.47, 37.51, or 37.53, and that are not required under 49 CFR 37.43 as part of an alteration or renovation to an existing station, so long as the projects are clearly intended to remove barriers that would otherwise have remained. Section 5310 funds are eligible to be used for accessibility enhancements that remove barriers to individuals with disabilities so they may access greater portions of public transportation systems, such as fixed-route bus service, commuter rail, light rail, and rapid rail. This may include:
 - (a) Building an accessible path to a bus stop that is currently inaccessible, including curbscuts, sidewalks, accessible pedestrian signals, or other accessible features;
 - (b) Adding an elevator or ramps, detectable warnings, or other accessibility improvements to a non-key station that are not otherwise required under the ADA;
 - (c) Improving signage or wayfinding technology; or
 - (d) Implementation of other technology improvements that enhance accessibility for people with disabilities including ITS.
 - (2) Travel training. Training programs for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services.
- d. Public Transportation Alternatives that Assist Seniors and Individuals with Disabilities with Transportation. The following activities are examples of projects that are eligible public transportation alternatives.
- (1) Purchasing vehicles to support accessible taxi, ride-sharing, and/or vanpooling programs. Section 5310 funds can be used to purchase and operate accessible vehicles for use in taxi, ride-sharing, and/or vanpool programs provided that the vehicle meets the same requirements for lifts, ramps, and securement systems specified in 49 CFR part 38, subpart B, at a minimum, and permits a passenger whose wheelchair can be accommodated pursuant to part 38 to remain in his/her personal mobility device inside the vehicle.
 - (2) Supporting the administration and expenses related to voucher programs for transportation services offered by human service providers. This activity is intended to support and supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment of alternative transportation services to supplement available public transportation. The Section 5310 program can provide vouchers to seniors and individuals with disabilities to purchase rides, including: (a) mileage reimbursement as part of a volunteer driver program; (b) a

taxi trip; or (c) trips provided by a human service agency. Providers of transportation can then submit the voucher for reimbursement to the recipient for payment based on predetermined rates or contractual arrangements. Transit passes or vouchers for use on existing fixed-route or ADA complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50/50 (federal/local) match.

- (3) Supporting volunteer driver and aide programs. Volunteer driver programs are eligible and include support for costs associated with the administration, management of driver recruitment, safety, background checks, scheduling, coordination with passengers, other related support functions, mileage reimbursement, and insurance associated with volunteer driver programs. The costs of enhancements to increase capacity of volunteer driver programs are also eligible. FTA encourages communities to offer consideration for utilizing all available funding resources as an integrated part of the design and delivery of any volunteer driver/aide program.

- e. Limits on operating assistance. Given the 55 percent requirement for traditional Section 5310 capital projects, a recipient may allocate up to 45 percent of its apportionment for operating assistance. However, this funding is limited to eligible projects as described in 49 U.S.C. 5310(b)(1)(B-D) and described in this section (b, c, and d), above. Operating assistance for required ADA complementary paratransit service is not an eligible expense.

SAMPLE ALLOCATIONS OF AN AREA’S APPORTIONMENT:

Activity	Amount Awarded	% of Total Allocation	Amount Awarded	% of Total Allocation
Total Amount Allocated	\$1,000,000	100%	\$1,000,000	100%
State or Designated Recipient Program Administrative Funding	\$100,000	10%	\$0	0%
Traditional Section 5310 Projects	\$550,000	55%	\$550,000	55%
Other Section 5310 Projects	\$350,000	35%	\$450,000	45%

Included here are two different examples of allocating an area’s apportionment. In the first example, the designated recipient retains 10% of the apportionment for administrative expenses. In that case, with the mandatory 55% set aside for traditional Section 5310 projects, 35% of the apportionment remains for other Section 5310 projects.

In the second example, the designated recipient does not retain any funds for administrative expenses. After the mandatory 55% set aside for traditional Section 5310 projects, 45% of the apportionment remains available for other Section 5310 projects.

16. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. General. Section 5310 funds may be used to finance capital and operating expenses. The federal share of eligible capital costs shall be in an amount equal to 80 percent of the net cost of the activity. The federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity. Recipients may use up to 10 percent of their apportionment to support program administrative costs including administration, planning, and technical assistance, which may be funded at 100 percent federal share.

The local share of eligible capital costs shall be not less than 20 percent of the net cost of the activity, and the local share for eligible operating costs shall be not less than 50 percent of the net operating costs. The local share may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a state or local service agency or private social service organization, or new capital. Some examples of these sources of local match include: state or local appropriations; dedicated tax revenues; private donations; revenue from service contracts; transportation development credits; and net income generated from advertising and concessions. Non-cash share such as donations, volunteered services, or in-kind contributions is eligible to be counted toward the local match as long as the value of each is documented and supported, represents a cost which would otherwise be eligible under the program, and is included in the net project costs in the project budget.

Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5310 operating assistance. In either case, the cost of providing the contract service is included in the total project cost. No FTA program funds can be used as a source of local match for other FTA programs, even when used to contract for service. All sources of local match must be identified and described in the grant application at the time of grant award.

In addition, the local share may be derived from federal programs that are eligible to be expended for transportation, other than DOT programs, or from DOT's Federal Lands Highway program. Examples of types of programs that are potential sources of local match include: employment, training, aging, medical, community services, and rehabilitation services. Specific program information for other types of federal funding is available at www.unitedweride.gov.

- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA and Clean Air Act (CAA) compliance as follows:
 - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with ADA (42 U.S.C. 12101 *et seq.*)

or the CAA. A revenue vehicle that complies with 49 CFR part 38 may be funded at 85 percent federal share.

- (2) Vehicle-Related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA (42 U.S.C. 7401 *et seq.*), or required by the ADA, is 90 percent. FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.
- c. Sliding Scale—FHWA Transfers Only. Higher federal share rates for capital costs are available to 14 states described in 23 U.S.C. 120(b). The higher federal shares under 23 U.S.C. 120 (b)(1) are based on the ratio of designated public lands area to the total area of these 14 states. For FHWA transfers to FTA 5310 for capital projects, the federal share increases from 80 percent in proportion to the share of public lands in the state. The sliding scale rates in public lands states can be found on the following website:
<http://www.fhwa.dot.gov/legregs/directives/notices/n4540-12.htm>

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CHAPTER IV

PROGRAM DEVELOPMENT

1. COORDINATION REQUIREMENTS. Title 49 U.S.C. 5310, as amended by MAP-21, requires a recipient of Section 5310 funds to certify that projects selected for funding under this program are included in a locally developed, coordinated public transit-human service transportation plan and that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human service providers; and other members of the public. (See Chapter V of this Circular for further information.) This coordinated transportation plan should be prepared through a process that is consistent with the applicable metropolitan or statewide planning process, as described below. Transit service and demographic information developed and used in the broader metropolitan and statewide processes may provide a useful starting point for the more detailed review that will take place in preparing the coordinated plan. Similarly, the extensive public participation and stakeholder consultation provisions of metropolitan and statewide planning can provide a useful context and basis for the more focused local public involvement involved in preparing the coordinated plan. For these reasons, FTA strongly encourages coordination and consistency between the local coordinated public transit-human service transportation plan and metropolitan or statewide transportation planning processes, as described in 23 CFR part 450 and 49 CFR part 613.
2. PLANNING REQUIREMENTS. To be eligible for funding, Section 5310 projects in UZAs must be included in the metropolitan transportation plan (MTP) prepared and approved by the metropolitan planning organization (MPO), the transportation improvement program (TIP) approved jointly by the MPO and the governor, and the statewide transportation improvement program (STIP) developed by a state and jointly approved by FTA and FHWA. Projects outside UZAs must be included in, or be consistent with the statewide long-range transportation plan, as developed by the state, and must be included in the STIP. With limited exceptions, all federally-funded highway or transit projects must be included in the applicable plan and program documents according to state and local procedures. Areas may choose to include project level information or more aggregated program level information. For purposes of convenience, the recipient may group its planned expenditures of Section 5310 funds into statewide or metropolitan areawide projects, such as vehicle acquisitions or services contracted for rural and urban recipients, and administration costs. All projects must adhere to the requirements of 49 U.S.C. 5303 and 5304. See Appendix D for further information on how the various planning processes relate to one another.
3. PROGRAM OF PROJECTS. The program of projects (POP) identifies the subrecipients and projects for which the recipient is applying for financial assistance. The Section 5310 annual POP the recipient submits to FTA for approval must indicate the total number of subrecipients; identify each subrecipient and indicate whether they are governmental authorities or private nonprofit agencies; and identify any that are Indian tribal governments

or tribal transit agencies (including both federally recognized and other tribal governments). In addition, the POP must include a brief description of each project, including what type of project it is, the counties served, and any tribal transportation needs served by the project. The POP must show, for each project, the total project cost and the federal share. The total federal funding level for the POP cannot exceed the total amount of Section 5310 funds available. The POP must indicate whether a project is a capital or an operating expense and clearly identify which projects meet the 55 percent minimum for traditional section 5310 projects. A sample POP is included in Appendix B. The POP must be identical to, or consistent with, listings contained in the applicable TIP and STIP.

So that FTA can comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L 109–282), enacted September 26, 2006, the recipient must provide FTA with the following information for each subrecipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award, and the primary location of performance under the award, including the city, state, and congressional district. The recipient may choose to submit this information as a separate attachment in FTA's electronic grant management system (TEAM, or a successor thereto) or to include the information in the POP.

4. CATEGORIES OF APPROVAL. FTA's approval of a POP does not reflect unconditional approval of all projects within the program. Nor does FTA's approval of a POP reflect unconditional approval of all prospective subrecipients identified in the program. FTA recognizes that not all projects in a state or designated recipient's (recipient) POP may be at the same stage of development, and therefore, not all applications to the recipient may be complete at the time the recipient forwards its annual POP to FTA. FTA also recognizes that all subrecipients identified in the POP may not yet be in compliance with all applicable federal requirements. To expedite grant award, FTA allows recipients to separate projects and funds included in its POP into two different categories, depending on whether all federal requirements have been met.
 - a. Category A. Projects in Category A include those projects that the recipient has certified as having met all the federal statutory and administrative requirements for approval applicable to both the project activities and subrecipients that will carry out those activities. FTA's approval of Category A projects is unconditional upon grant award. When FTA executes the grant, the recipient may start drawing down funds to implement projects in Category A. FTA expects most, if not all, of the projects included in the recipient's POP to be in this category.
 - b. Category B. Projects in Category B are those projects the recipient anticipates approving during the current year, but which have not met all of the federal statutory or administrative requirements or are proposed to be implemented by a subrecipient that has not yet met all applicable federal requirements. For example, a major capital project other than vehicle purchase in Category B may be a project that has not yet completed the

National Environmental Policy Act (NEPA) process or other federal environmental requirements.

Category B may also include contingency projects that may be funded if any selected project is deleted from the program of projects. However, contingency projects should be shown at the zero funding level and not calculated in the total program costs. When the recipient determines that the necessary federal requirements have been satisfied for a project, FTA's approval of that project becomes unconditional, and the recipient may advance the project to Category A. Cash drawdowns for that project may commence after the recipient advances it to Category A.

In addition, any Category B project requires issuance of a NEPA record of decision (ROD), a finding of no significant impact (FONSI), or determination that the project meets the conditions of a categorical exclusion (CE) from FTA before being advanced to Category A. Chapter VIII provides additional information on NEPA and other federal environmental laws, regulations, and executive orders. If a recipient can list all its projects in Category A, it would not list any projects in Category B, except contingency projects.

5. APPROVAL. FTA is committed to promptly processing grants upon receipt of a complete and acceptable grant application. FTA awards grants and obligates funds for the total amount the recipient requests for both categories. FTA grant award constitutes FTA approval of the recipient's annual POP.

FTA approval of the Section 5310 POP does not constitute unqualified approval of each project in the program. Grant award does constitute FTA approval of those projects in Category A. Thus the recipient may drawdown federal funds to reimburse expenses incurred for Category A projects immediately upon execution of the grant agreement.

Grant award also constitutes FTA's unconditional approval of those projects in Category B, if the subrecipient meets all applicable federal requirements. The recipient must ensure that subrecipients meet all federal requirements, and advance the projects to Category A before it may drawdown funds to support those projects.

6. REVISIONS TO PROGRAM OF PROJECTS. Prior FTA approval is not required to advance projects from Category B to Category A, or to reallocate funds among projects included in the approved POP, so long as any single change does not exceed 20 percent of the affected project and is consistent with the local coordinated plan from which the projects were selected. Any other changes to the POP require prior FTA approval. The recipient's request for approval should include documentation that the proposed changes in the POP are projects that are included in a locally developed coordinated plan.

If appropriate, revisions to the POP should be accompanied by a budget revision to the grant in the electronic grant management system (TEAM or a successor thereto). The recipient should attach the revised POP (after approval if required) to the project management

milestones section in the electronic grant management system. In the annual program status report, the recipient should reference the date that a new POP was attached. The most recently updated program of projects submitted by the recipient to FTA in its quarterly or annual report or in the course of making revisions will be considered the current approved program of projects, incorporated by reference in the grant agreement.

Below are examples of project and funding revisions that do not change the scope of the approved POP. Unless FTA notifies the designated recipient otherwise, the following levels of notification and FTA approval apply to revisions:

- a. Revisions Not Requiring Prior FTA Notification or FTA Approval. The recipient may make the following revisions without prior notification to FTA:
 - (1) Delete a project from the POP, if the project cost is less than 20 percent of the total of the affected POP;
 - (2) Advance projects from Category B to A, provided the prospective subrecipient is in compliance with all applicable federal requirements;
 - (3) Reallocate funds within an approved POP among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in vehicle or equipment requirements; and
 - (4) Add equipment or property transferred from one subrecipient to another subrecipient listed in the POP, regardless of whether the items were originally funded from a different grant.
- b. Revisions Requiring Notification to FTA, but not FTA Approval. The recipient may make the following revisions after notifying FTA:
 - (1) Create new projects that are less than 20 percent of the total of the POP, so long as the designated recipient has confirmed eligibility and confirms the project was included in the coordinated plan;
 - (2) Delete or reduce a project by more than 20 percent of the total POP.
- c. Revisions Requiring FTA Approval. The designated recipient may make the following revisions to an approved POP, and relevant project listing in the TIP and STIP, only after obtaining approval from FTA:
 - (1) Prior FTA approval is required when the federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions since the last one specifically approved by FTA) exceeds 20 percent;

- (2) Prior FTA approval is required when the revision would transfer funds between operating and capital categories, or between activity line items with different federal matching ratios;
 - (3) Prior FTA approval is required if the budget revision would:
 - (a) Change the size or physical characteristics of the activities specified in the grant.
 - (b) Increase or decrease the number of revenue rolling stock vehicles to be purchased by more than two units.
 - (4) Advance to Category A any prospective subrecipient with serious questions of compliance with federal requirements remaining unresolved; or
 - (5) Advance to Category A any project for the acquisition of property with a value in excess of 20 percent of the total value of the POP.
- d. Update of Program of Projects. The most recently updated POP submitted by the recipient to FTA in its annual program status report or in the course of making revisions will be considered the approved POP, incorporated by reference in the grant agreement. Only the addition of federal funds or a change in the scope of the approved POP requires amendment of the grant agreement.
7. CERTIFICATIONS AND ASSURANCES. FTA's annual certifications and assurances include basic requirements for Section 5310. States and designated recipients should maintain adequate files documenting the basis for all assurances made to FTA.

Each fiscal year, FTA publishes the required certifications and assurances in the *Federal Register* and updates the certifications and assurances in FTA's electronic grant management system (TEAM or a successor thereto). This notice indicates which certifications and assurances apply to all recipients or to certain kinds of awards, and which are required for grants under specific sections.

Each state and designated recipient electronically submits the appropriate certifications and assurances each fiscal year for all active grants and new grants that it expects FTA to make during that fiscal year. Recipients should use the most recent version of the current year notice for a list of required certifications and assurances FTA has issued. Recipients can find the current list in TEAM.

8. PRE-AWARD AUTHORITY. FTA allows recipients to incur costs before grant award in the formula programs. In order for the pre-award costs to be eligible for subsequent reimbursement, the project must have met all FTA statutory, procedural, and contractual requirements, thus must qualify as a “Category A” project in the POP. Reimbursement is subject to the availability of funds and grant award. Specific information is included in FTA’s annual apportionment notice. See Chapter VIII, paragraph 14, for more information on pre-award authority.
9. LABOR PROTECTIONS. Title 49 U.S.C. 5333(b) requires that, as a condition of FTA financial assistance, fair and equitable arrangements must be made to protect the interests of employees affected by such assistance. The Department of Labor (DOL) is responsible under federal law for the administration of Section 5333(b).

Section 5310 gives the Secretary of Transportation the discretion to determine the terms and conditions “necessary and appropriate” for grants under this section. In 1974 the Secretary determined that it was not “necessary or appropriate” to apply the conditions of Section 5333(b) to subrecipients participating in the Section 5310 program. Nevertheless, case-by-case determinations of the applicability of 49 U.S.C. 5333(b) will be made for all transfers of “flex funds” for Section 5310 purposes.

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CHAPTER V

COORDINATED PLANNING

1. THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLAN. Federal transit law, as amended by MAP-21, requires that projects selected for funding under the Section 5310 program be “included in a locally developed, coordinated public transit-human services transportation plan” and that the plan be “developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers and other members of the public.” The experiences gained from the efforts of the Federal Interagency Coordinating Council on Access and Mobility (CCAM), and specifically the United We Ride (UWR) initiative, provide a useful starting point for the development and implementation of the local public transit-human services transportation plan required under the Section 5310 program.

Many states have established UWR plans that may form a foundation for a coordinated plan that includes the required elements outlined in this chapter and meets the requirements of 49 U.S.C. 5310. In addition, many states and designated recipients may have coordinated plans established under SAFETEA-LU, and those plans may be updated to account for new stakeholders, eligibility, and MAP-21 requirements. FTA maintains flexibility in how projects appear in the coordination plan. Projects may be identified as strategies, activities, and/or specific projects addressing an identified service gap or transportation coordination objective articulated and prioritized within the plan.

2. DEVELOPMENT OF THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLAN.
 - a. Overview. A locally developed, coordinated public transit-human services transportation plan (“coordinated plan”) identifies the transportation needs of individuals with disabilities, seniors, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services and projects for funding and implementation. Local plans may be developed on a local, regional, or statewide level. The decision as to the boundaries of the local planning areas should be made in consultation with the state, designated recipient, and the MPO, where applicable. The agency leading the planning process is decided locally and does not have to be the state or designated recipient.

In UZAs where there are multiple designated recipients, there may be multiple plans and each designated recipient will be responsible for the selection of projects in the designated recipient’s area. A coordinated plan should maximize the programs’ collective coverage by minimizing duplication of services. Further, a coordinated plan must be developed through a process that includes participation by seniors, individuals with

disabilities, representatives of public, private and nonprofit transportation and human service transportation providers, and other members of the public. While the plan is only required in communities seeking funding under the Section 5310 program, a coordinated plan should incorporate activities offered under other programs sponsored by federal, state, and local agencies to greatly strengthen its impact.

- b. Required Elements. Projects selected for funding shall be included in a coordinated plan that minimally includes the following elements at a level consistent with available resources and the complexity of the local institutional environment:
- (1) An assessment of available services that identifies current transportation providers (public, private, and nonprofit);
 - (2) An assessment of transportation needs for individuals with disabilities and seniors. This assessment can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service;
 - (3) Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery; and
 - (4) Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified.
- c. Local Flexibility in the Development of a Local Coordinated Public Transit-Human Services Transportation Plan. The decision for determining which agency has the lead for the development and coordination of the planning process should be made at the state, regional, and local levels. FTA recognizes the importance of local flexibility in developing plans for human service transportation. Therefore, the lead agency for the coordinated planning process may be different from the state or the agency that will serve as the designated recipient for the Section 5310 program. Further, FTA recognizes that many communities have conducted assessments of transportation needs and resources regarding individuals with disabilities and seniors. FTA also recognizes that some communities have taken steps to develop a comprehensive, coordinated human service transportation plan either independently or through United We Ride efforts. FTA supports communities building on existing assessments, plans, and action items. As new federal requirements must be met, communities may need to modify their plans or processes as necessary to meet these requirements. FTA encourages communities to consider inclusion of new partners, new outreach strategies, and new activities related to the targeted programs and populations.

Plans will vary based on the availability of resources and the existence of populations served under these programs. A rural community may develop its plans based on

perceived needs emerging from the collaboration of the planning partners, whereas a large urbanized community may use existing data sources to conduct a more formal analysis to define service gaps and identify strategies for addressing the gaps.

This type of planning is also an eligible activity under four other FTA programs—the Metropolitan Planning (Section 5303), Statewide Planning (Section 5304), Formula Grants for Rural Areas (Section 5311), and Urbanized Area Formula (Section 5307) programs—all of which may be used to supplement the limited (10 percent) planning and administration funding under this program. Other resources may also be available from other entities to fund coordinated planning activities. All “planning” activities undertaken in urbanized areas, regardless of the funding source, must be included in the Unified Planning Work Program of the applicable MPO.

- d. Tools and Strategies for Developing a Coordinated Plan. States and communities may approach the development of a coordinated plan in different ways. The amount of available time, staff, funding, and other resources should be considered when deciding on specific approaches. Regardless of the method chosen, seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public must be involved in the development and approval of the coordinated plan. The following is a list of potential strategies for consideration:
 - (1) Community planning session. A community may choose to conduct a local planning session with a diverse group of stakeholders in the community. This session would be intended to identify needs based on personal and professional experiences, identify strategies to address the needs, and set priorities based on time, resources, and feasibility for implementation. This process can be done in one meeting or over several sessions with the same group. It is often helpful to identify a facilitator to lead this process. Also, as a means to leverage limited resources and to ensure broad exposure, this could be conducted in cooperation, or coordination, with the applicable metropolitan or statewide planning process.
 - (2) Self-assessment tool. *The Framework for Action: Building the Fully Coordinated Transportation System*, developed by FTA and available at www.unitedweride.gov, helps stakeholders realize a shared perspective and build a roadmap for moving forward together. The self-assessment tool focuses on a series of core elements that are represented in categories of simple diagnostic questions to help groups in states and communities assess their progress toward transportation coordination based on standards of excellence. There is also a *Facilitator’s Guide* that offers detailed advice on how to choose an existing group or construct an ad hoc group. In addition, it describes how to develop elements of a plan, such as identifying the needs of targeted populations, assessing gaps and duplication in services, and developing strategies to meet needs and coordinate services.

- (3) Focus groups. A community could choose to conduct a series of focus groups within communities that provides opportunity for greater input from a greater number of representatives, including transportation agencies, human service providers, and passengers. This information can be used to inform the needs analysis in the community. Focus groups also create an opportunity to begin an ongoing dialogue with community representatives on key issues, strategies, and plans for implementation.
- (4) Survey. The community may choose to conduct a survey to evaluate the unmet transportation needs within a community and/or available resources. Surveys can be conducted through mail, e-mail, or in-person interviews. Survey design should consider sampling, data collection strategies, analysis, and projected return rates. Surveys should be designed taking accessibility considerations into account, including alternative formats, access to the Internet, literacy levels, and limited English proficiency.
- (5) Detailed study and analysis. A community may decide to conduct a complex analysis using inventories, interviews, Geographic Information Systems (GIS) mapping, and other types of research strategies. A decision to conduct this type of analysis should take into account the amount of time and funding resources available, and communities should consider leveraging state and MPO resources for these undertakings.

3. PARTICIPATION IN THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLANNING PROCESS. Recipients shall certify that the coordinated plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public. Note that the required participants include not only transportation providers but also providers of human services, and members of the public who can provide insights into local transportation needs. It is important that stakeholders be included in the development, approval, and implementation of the local coordinated public transit-human service transportation plan. A planning process in which stakeholders provide their opinions but have no assurance that those opinions will be considered in the outcome does not meet the requirement of “participation.” Explicit consideration and response should be provided to public input received during the development of the coordinated plan. Stakeholders should have reasonable opportunities to be actively involved in the decision-making process at key decision points, including, but not limited to, development and approval of the proposed coordinated plan document. The following possible strategies facilitate appropriate inclusion:
 - a. Adequate Outreach to Allow for Participation. Outreach strategies and potential participants will vary from area to area. Potential outreach strategies could include notices or flyers in centers of community activity, newspaper or radio announcements, e-mail lists, website postings, and invitation letters to other government agencies,

transportation providers, human services providers, and advocacy groups. Conveners should note that not all potential participants have access to the Internet and they should not rely exclusively on electronic communications. It is useful to allow many ways to participate, including in-person testimony, mail, e-mail, and teleconference. Any public meetings regarding the plan should be held in a location and time where accessible transportation services can be made available and adequately advertised to the general public using techniques such as those listed above. Additionally, interpreters for individuals with hearing impairments and English as a second language and accessible formats (e.g., large print, Braille, electronic versions) should be provided as required by law.

- b. Participants in the Planning Process. Metropolitan and statewide planning under 49 U.S.C. 5303 and 5304 require consultation with an expansive list of stakeholders. There is significant overlap between the lists of stakeholders identified under those provisions (e.g., private providers of transportation, representatives of transit users, and representatives of individuals with disabilities) and the organizations that should be involved in preparation of the coordinated plan.

The projects selected for funding under the Section 5310 program must be “included in a locally developed, coordinated public transit-human services transportation plan” that was “developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and non-profit transportation and human services providers and participation by other members of the public.” The requirement for developing the local public transit-human services transportation plan is intended to improve services for people with disabilities and seniors. Therefore, individuals, groups, and organizations representing these target populations should be invited to participate in the coordinated planning process. Consideration should be given to including groups and organizations such as the following in the coordinated planning process if present in the community:

- (1) Transportation partners:
 - (a) Area transportation planning agencies, including MPOs, councils of government (COGs), rural planning organizations (RPOs), regional councils, associations of governments, state departments of transportation, and local governments;
 - (b) Public transportation providers, including ADA paratransit providers and agencies administering the projects funded under FTA urbanized and rural programs;
 - (c) Private transportation providers, including private transportation brokers, taxi operators, vanpool providers, school transportation operators, and intercity bus operators;
 - (d) Nonprofit transportation providers, including volunteer programs;

- (e) Past or current organizations funded under the Section 5310, JARC, and/or the New Freedom programs; and
 - (f) Human service agencies funding, operating, and/or providing access to transportation services.
- (2) Passengers and advocates:
- (a) Existing and potential riders, including both general and targeted population passengers (individuals with disabilities and seniors);
 - (b) Protection and advocacy organizations;
 - (c) Representatives from independent living centers; and
 - (d) Advocacy organizations working on behalf of targeted populations.
- (3) Human service partners:
- (a) Agencies that administer health, employment, or other support programs for targeted populations. Examples of such agencies include but are not limited to departments of social/human services, employment one-stop services, vocational rehabilitation, workforce investment boards, Medicaid, community action programs (CAP), Agency on Aging (AoA), Developmental Disability Council, community services board;
 - (b) Nonprofit human service provider organizations that serve the targeted populations;
 - (c) Job training and placement agencies;
 - (d) Housing agencies;
 - (e) Healthcare facilities; and
 - (f) Mental health agencies.
- (4) Other:
- (a) Security and emergency management agencies;
 - (b) Tribes and tribal representatives;
 - (c) Economic development organizations;
 - (d) Faith-based and community-based organizations;

- (e) Representatives of the business community (e.g., employers);
- (f) Appropriate local or state officials and elected officials;
- (g) School districts; and
- (h) Policy analysts or experts.

Note: Participation in the planning process will not bar providers (public or private) from bidding to provide services identified in the coordinated planning process. This planning process differs from the project selection process, and it differs from the development and issuance of a request for proposal (RFP) as described in the common grant rule (49 CFR part 18 and part 19).

- c. Levels of Participation. The suggested list of participants above does not limit participation by other groups, nor require participation by every group listed. Communities will have different types of participants depending on population and size of community, geographic location, and services provided at the local level. FTA expects that planning participants will have an active role in the development, approval, adoption, and implementation of the plan. Participation may remain low even though a good faith effort is made by the lead agency to involve passengers; representatives of public, private, and nonprofit transportation and human services providers; and others. The lead agency convening the coordinated planning process should document the efforts it utilized, such as those suggested above, to solicit involvement.

In addition, federal, state, regional, and local policy makers, providers, and advocates should consistently engage in outreach efforts that enhance the coordinated process because it is important that all stakeholders identify the opportunities that are available in building a coordinated system. To increase participation at the local levels from human service partners, state department of transportation offices are encouraged to work with their partner agencies at the state level to provide information to their constituencies about the importance of partnering with human service transportation programs and the opportunities that are available through building a coordinated system.

- d. Adoption of a Plan. As a part of the local coordinated planning process, the lead agency in consultation with participants should identify the process for approving and adopting the plan, and this process must include participation by stakeholders identified in the law: seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public. A strategy for adopting the plan could also be included in the state's SMP and the designated recipient's PMP, further described in Chapter VII.

FTA will not formally review and approve coordinated plans. The recipient's grant application (see Appendix A) will document the plan from which each project listed is included, including the lead agency, the date of adoption of the plan, or other appropriate

identifying information. This may be done by citing the section of the plan or page references from which the project is included.

4. RELATIONSHIP TO OTHER TRANSPORTATION PLANNING PROCESSES.

- a. Relationship Between the Coordinated Planning Process and the Metropolitan and Statewide Transportation Planning Processes. The coordinated plan may either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans, or be developed as a part of the metropolitan and statewide transportation planning processes. If the coordinated plan is not prepared within the broader process, the lead agency for the coordinated plan should ensure coordination and consistency between the coordinated planning process and metropolitan or statewide planning processes. For example, planning assumptions should not be inconsistent.

Projects identified in the coordinated planning process and selected for FTA funding must be incorporated into both the TIP and STIP in UZAs with populations of 50,000 or more; and incorporated into the STIP for rural areas under 50,000 in population. Depending on the projects resulting from the coordinated planning and selection process, a single line item on the TIP/STIP for capital or operating projects may be sufficient. However, given the expanded project and subrecipient eligibility under MAP-21, a designated recipient and state may need to consider more detailed programming, such as categorizing the projects based on the types of projects (capital or operating) and/or types of subrecipients, e.g., nonprofit, public entity, etc.

In some areas, where the coordinated plan or project selection is not completed in a time frame that coincides with the development of the TIP/STIP, the TIP/STIP amendment processes will need to be utilized to include selected projects in the TIP/STIP before FTA grant award.

The lead agency developing the coordinated plan should communicate with the relevant MPOs, state departments of transportation or regional planning agencies at an early stage in plan development. States with coordination programs may wish to incorporate the needs and strategies identified in local coordinated plans into statewide coordination plans.

Depending upon the structure established by local decision makers, the coordinated planning process may or may not become an integral part of the metropolitan or statewide transportation planning processes. State and local officials should consider the fundamental differences in scope, time horizon, and level of detail between the coordinated planning process and the metropolitan and statewide transportation planning processes. However, there are important areas of overlap between the planning processes, as well. Areas of overlap represent opportunities for sharing and leveraging resources between the planning processes for such activities as: (1) needs assessments based on the distribution of targeted populations and locations of employment centers, employment-

related activities, community services and activities, medical centers, housing, and other destinations; (2) inventories of transportation providers/resources, levels of utilization, duplication of service, and unused capacity; (3) gap analysis; (4) any eligibility restrictions; and (5) opportunities for increased coordination of transportation services. Local communities may choose the method for developing plans that best fits their needs and circumstances.

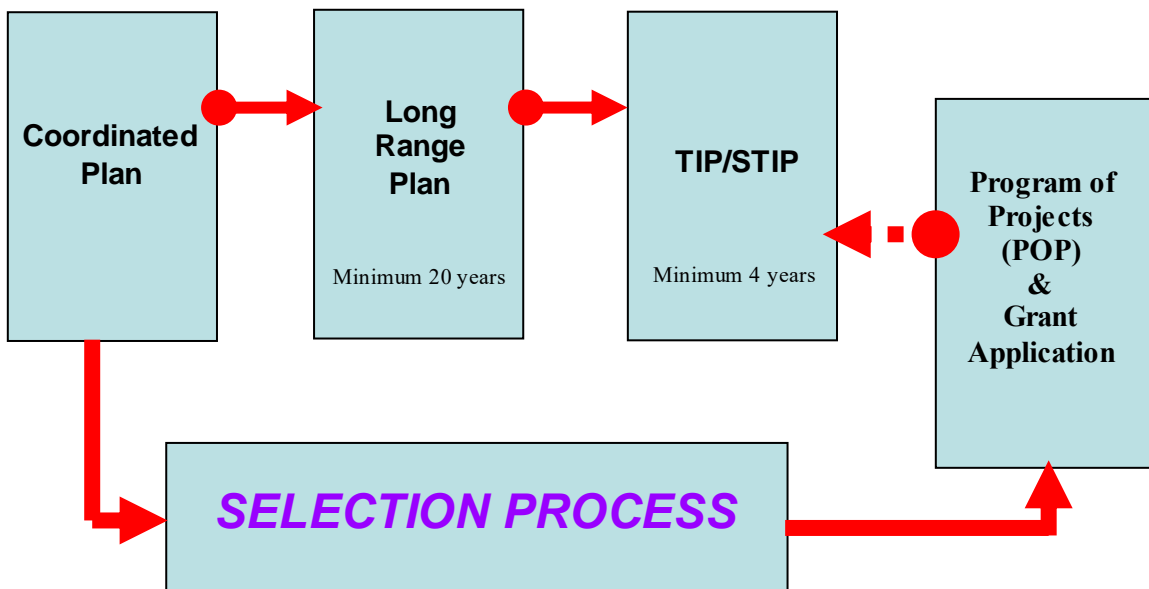
- b. Relationship Between the Requirement for Public Participation in the Coordinated Plan and the Requirement for Public Participation in Metropolitan and Statewide Transportation Planning. Title 49 U.S.C. 5303(i)(6) and 5304(f)(3), as amended by MAP-21, require MPOs and states to engage interested parties in preparing transportation plans, TIPs, and STIPs. “Interested parties” include, among others, affected public agencies, private providers of transportation, representatives of users of public transportation, and representatives of individuals with disabilities.

MPOs and/or states may work with the lead agency developing the coordinated plan to coordinate schedules, agendas, and strategies of the coordinated planning process with metropolitan and statewide planning in order to minimize additional costs and avoid duplication of efforts. MPOs and states must still provide opportunities for participation when planning for transportation related activities beyond the coordinated public transit-human services transportation plan.

- c. Cycle and Duration of the Coordinated Plan. At a minimum, the coordinated plan should follow the update cycles for metropolitan transportation plans (MTPs) (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas). States, MPOs, designated recipients, and public agencies that administer or operate major modes of transportation should set up a cycle that is conducive to and coordinated with the metropolitan and statewide planning processes to ensure that selected projects are included in the TIP and STIP and to receive funds in a timely manner.
- d. Role of Transportation Providers that Receive FTA Funding Under the Urbanized and Rural Area Formula Grant Programs in the Coordinated Planning Process. Recipients of Section 5307 and Section 5311 assistance are the “public transit” in the public transit-human services transportation plan and their participation is assumed and expected. Further, 49 U.S.C. 5307(b)(5), as amended by MAP-21, requires that, “Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services ... with transportation services assisted from other United States Government sources.” In addition, 49 U.S.C. 5311(b)(2)(C)(ii) requires the Secretary of DOT to determine that a state’s Section 5311 projects “provide the maximum feasible coordination of public transportation service ... with transportation service assisted by other federal sources.” Finally, under the Section 5311 program, states are required to expend 15 percent of the amount available to support intercity bus service.

FTA expects the coordinated planning process in rural areas to take into account human service needs that require intercity transportation.

The schematic here illustrates the relationship between the coordinated plan and the metropolitan and statewide planning processes.



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CHAPTER VI

PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. GENERAL. The basic grant management requirements for state and local governments are contained in the Department of Transportation (DOT) regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18. The comparable DOT rule for private nonprofit organizations is “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19. Parts 18 and 19 are collectively known as the “common rule,” or the “common grant rule.” The provisions of these rules apply except where inconsistent with federal statutes or authorizing legislation.
2. PROGRAM ADMINISTRATIVE REQUIREMENTS. The common rule identifies three areas in which the administrative requirements for state recipients and their subrecipients which are governmental authorities may differ from federal requirements for local government designated recipients: equipment management, procurement, and financial management systems. The basic intent of establishing common requirements in these areas is to shift the emphasis from national uniformity to uniformity of procedures and requirements within a state, in order to provide greater flexibility to the states in standardizing the management of related state and federal programs. These three areas are discussed in detail later in this chapter.

Part 18 permits states to pass down state procedures in these three areas to subrecipients that are governmental authorities. Part 19 does not allow states to pass down state procedures to subrecipients that are private nonprofit organizations. However, as long as the state procedures are not inconsistent with part 19, the state may apply the same procedures for all its subrecipients. The state may use procedures that are more restrictive than part 19, but state procedures may not be more permissive than part 19. The basic intent of part 19 is to establish nationally uniform procedures and requirements for private nonprofit organizations that receive funds from multiple federal agencies.

Designated recipients that are not states must follow the provisions in 49 CFR part 18. Designated recipients must ensure that subrecipients that are public providers of public transportation follow the requirements of part 18, and that subrecipients that are private organizations (whether nonprofit or for-profit) follow the requirements of part 19.

Unless an issue is specifically addressed in this circular or in other FTA guidance specific to the Section 5310 program, recipients should reference the current FTA Circular 5010.1 “Grant Management Guidelines,” which provides guidance for other FTA programs, for project management issues not unique to Section 5310.

The recipient must enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

3. CAPITAL RESERVE ACCOUNTS. Recipients of Section 5310-funded vehicles are permitted to establish capital reserve accounts to replace existing equipment as long as no FTA funds or proceeds from the sale or lease of FTA assisted property are placed in those accounts.

4. EQUIPMENT MANAGEMENT.

- a. General. Under the common grant rule, states may use, manage, and dispose of equipment acquired under a Section 5310 grant in accordance with state laws and procedures. States are free to adopt the procedures established in part 18 for other public entity subrecipients or use the procedures as a guide in developing state procedures for equipment use, management, and disposition, but are not required to do so. States may use the same procedures for private nonprofit subrecipients as for public entity subrecipients, so long as those procedures are consistent with 49 CFR part 19.

Common grant rule procedures and requirements for designated recipients that are not states, and their subrecipients, are more explicit and can be found in 49 CFR 18.32.

- b. Transfer of Property. Section 5310(g) permits a recipient to transfer facilities and equipment acquired with assistance under Section 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53 with the consent of the entity currently in possession of such facilities or equipment, if the facility or equipment will continue to be used in accordance with the requirements of Section 5310. This provision complements the recipient's flexibility under the common grant rule to manage equipment and extends the recipient's flexibility in the management of facilities, including real property.

The entity receiving equipment or facilities under this provision to provide Section 5310 service must comply with all the state and federal requirements for Section 5310 recipients. The names of the entities involved in the transfer of equipment or real property, along with a description of the equipment or real property transferred should be included in a new or revised program of projects (POP). The transfer may be shown in the POP for any active grant. It does not have to be in the grant under which the equipment or property was originally funded. The non-add scope code 998-00 is used to reflect transfers of federal equity in the grant.

In addition, 49 U.S.C. 5334(h)(1) through (3) allows facilities and equipment and other assets (including land) that are no longer needed for the purposes for which they were acquired to be transferred to a local governmental authority to be used for a public purpose with no further obligation to the federal government, if authorized by the Secretary of Transportation (i.e., approved by FTA). Recipients should review the current FTA Circular 5010.1 and contact their FTA regional office for further information.

c. Vehicle Useful Life and Replacement Standards. The common grant rule gives states flexibility in managing and disposing of equipment. In keeping with the intent of the rule, FTA holds states responsible for establishing and implementing their own rolling stock requirements for all categories of vehicles acquired under the Section 5310 program, consistent with the state's standards for equipment purchased with state funds. FTA permits state recipients to do the following:

- (1) Establish their own minimum useful life standards for vehicles;
- (2) Use their own procedures for determining fair market value; and
- (3) Develop their own policies and procedures for maintenance and replacement of vehicles. Maintenance requirements and insurance coverage must be adequate to protect the federal interest in the vehicle within the useful life determined by the state.

Designated recipients that are not a state must adhere to the vehicle useful life criteria that are detailed in the current FTA Circular 5010.1, Grant Management Requirements.

d. Disposition. States and their subrecipients should follow state laws and procedures for disposing of equipment. States are not required to return to FTA proceeds from the disposition of equipment, regardless of the fair market value at the time the equipment is sold, but should follow their own procedures regarding the use of proceeds, so long as the proceeds remain in use for public transportation purposes. This applies to all equipment currently in use that was purchased by states with Section 5310 funds. This blanket disposition instruction satisfies the provision of 49 CFR part 19 requiring private nonprofit organizations to seek disposition instructions from the federal awarding agency.

All other designated recipients and their subrecipients must follow the disposition procedures established in part 18 of the common rule at 49 CFR 18.32(e). Designated recipients are not required to return to FTA proceeds from the disposition of equipment where the fair market value of the per unit item being disposed of is less than \$5,000. If the per unit fair market value exceeds \$5,000, FTA will calculate the amount of proceeds it is owed based on the approved disposition method applied.

5. VEHICLE USE. FTA encourages maximum use of vehicles funded under the Section 5310 program. Consistent with the requirements of 49 CFR parts 18 and 19, vehicles are to be used first for program-related needs for which a Section 5310 grant is made and then to meet other federal programs or project needs, providing these uses do not interfere with the project activities originally funded. If the vehicle is no longer needed for the original program or project, the vehicle may be used in other activities currently or previously supported by a federal agency. Vehicles may be used:

a. For Section 5310 Project and Program Purposes. Recipients should consider how best to meet the needs of all seniors and people with disabilities in a particular community in the

recipient's project selection process. The program must provide for maximum feasible coordination with transportation services assisted by other federal sources. Subrecipients should be encouraged to the extent feasible to also provide service to seniors and people with disabilities not affiliated with their agency, as well as to the general public, on an incidental basis if such service does not interfere with transportation services for seniors and people with disabilities. In some situations it may be appropriate to provide Section 5310 assistance to an agency to provide transportation exclusively to its own clients, but even in situations in which it is not feasible for the agency to provide services to those in the community beyond its own clients, that agency must, when practicable, make the vehicle itself available to provide transportation service to other seniors and people with disabilities at times the agency is not using the vehicle for grant-related purposes. The recipient shall use the vehicle in the project or program for which it was acquired as long as needed, even if the project does not continue to receive federal funding.

- b. For Other Federal Programs or Project Purposes. During the period the vehicle is used to serve the project or program needs for which it was acquired, the recipient or subrecipient shall make it available for use on other projects or programs, as long as such other use does not interfere with the service for which the vehicle was originally acquired. First preference for such other use will be given to other projects or programs sponsored by FTA, and second preference will be given to projects or programs sponsored by other federal agencies. Finally, vehicles may be used by non-federally funded providers, first to meet the needs of seniors and people with disabilities, and then to serve the transportation needs of the general public on an incidental basis.
- c. When No Longer Needed for Original Project or Program Purposes. If the original recipient or subrecipient no longer needs the vehicle for the purposes for which it was acquired, the state or designated recipient may choose to keep the vehicle in use for Section 5310 program purposes by transferring the vehicle to another designated recipient or subrecipient. The transfer may be shown in the POP for any active grant. It does not have to be in the grant under which the vehicle was originally funded. Once the vehicle is no longer needed for Section 5310 program purposes, the vehicle may be used first in connection with other FTA-sponsored activities, and then for activities sponsored by other federal agencies.
- d. For Meal Delivery. Transit service providers receiving assistance under this section may coordinate and assist in providing meal delivery services for homebound people on a regular basis if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. The number and size of vehicles applied for under Section 5310 must be determined only by the number of passengers to be transported, not meal delivery capacity. Section 5310 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

6. LEASING VEHICLES ACQUIRED WITH SECTION 5310 FUNDS. Vehicles acquired under the Section 5310 program may be leased to other entities such as local governmental authorities or agencies, other private nonprofit agencies, or private for-profit operators. Under such a lease, the lessee operates the vehicles on behalf of the Section 5310 subrecipient and provides transportation to the subrecipient's clientele as described in the grant application.

The lease between the Section 5310 subrecipient and the lessee contains the terms and conditions that must be met in providing transportation service to seniors and people with disabilities. Because the purpose of the Section 5310 grant is to provide transportation service to seniors and people with disabilities, other uses of the vehicle are permitted only as long as such uses do not interfere with service to seniors and people with disabilities.

The state or designated recipient, being responsible for ensuring that the terms and conditions of the original grant with FTA are met, must agree, in writing, to each lease between the subrecipient and the lessee. Such an agreement should specify that the leased vehicle shall be used to provide transportation service to seniors and people with disabilities, that the vehicle may be used for incidental purposes only after the needs of these individuals have been met, and that the subrecipient, state, or designated recipient must retain title to the vehicle.

Recipients may lease any of their assets to others on an incidental basis so long as the lease agreement holds the lessee responsible for compliance with all of the requirements the recipient itself is responsible for. Thus, the lessee must adhere to applicable and relevant terms and conditions of FTA's master agreement in the maintenance and use of the asset. For example, a recipient may not lease its revenue vehicles to a private company to conduct charter operations except to the extent the recipient itself would be able to conduct charter operations.

A recipient may lease its assets to a private entity to operate in public transit service so long as the entity has been selected through a competitive process and so long as the lease agreement obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement. A finite lease term should be established as well as a clear price and scope of work.

7. TITLE TO VEHICLES. The recipient is encouraged to either hold title or record a lien against the title to vehicles. This is not mandatory, however. What is mandatory is that the recipient establish continuing control over the vehicles and accept the responsibility for continued public transit use of the vehicles, and more particularly use for Section 5310 purposes, whether by the recipient or a subrecipient. If there is a substantial public transit benefit to be gained, such as low-cost, blanket insurance or bulk purchase of fuels or maintenance and supplies at rates less expensive than available to the subrecipient, then the recipient should consider retaining title in a governmental entity that can provide for the same and agrees to be bound by all the terms and conditions of the grant.
8. SATISFACTORY CONTINUING CONTROL AND RESPONSIBILITY. When vehicles, capital equipment, or facilities are acquired, built, or improved for use by any entity utilizing FTA funding, provisions must be made to ensure satisfactory continuing control of the vehicles, capital equipment, and facilities funded. While the recipient may delegate these responsibilities to another entity, the recipient is ultimately responsible for compliance with this requirement.
9. PROCUREMENT.
 - a. General. When procuring property, supplies, equipment, or services with funds from an FTA grant, designated recipients that are not states and their subrecipients must comply with FTA procurement requirements at 49 CFR part 18 and guidance contained in the current FTA Circular 4220.1. States will follow the same policies and procedures used for procurements from nonfederal funds, to the extent permitted by federal statutes and regulations. While the federal threshold for small purchases is currently \$100,000, the state may set a lower threshold for itself and its subrecipients. All governmental authority subrecipients may follow state procurement procedures. However, because of differences between 49 CFR part 18 and 49 CFR part 19, FTA third party contracting requirements are fewer for states and subrecipients that are local or tribal governments than for subrecipients that are private nonprofit organizations. For the sake of consistency, the state may choose to use the more detailed FTA requirements included in the current FTA Circular 4220.1 for all subrecipients as part of its state procurement procedures.

In some cases, a state may choose to grant Section 5310 assistance to a subrecipient through an intermediary subrecipient. For example, for public policy reasons, the state might pass funds to a nonprofit organization through a local governmental authority. The arrangement between the first tier and second tier subrecipient is not a third party contract if the ultimate subrecipient would otherwise be eligible under Section 5310 to receive funds directly from the state and the ultimate subrecipient intends to use those funds to pursue its own transit project to meet the needs of seniors and people with disabilities.

Each FTA recipient seeking federal assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party

procurement provisions of federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with federal laws, regulations, and directives governing procurements financed with FTA assistance.

Procurement procedures used by states and their public agencies and instrumentalities must comply with the following specific federal procurement requirements:

- (1) States. State procurement practices must, at a minimum, comply with five specific federal requirements contained in the current FTA Circular 4220.1. These include the following:
 - (a) For rolling stock, a five-year limitation on contract period of performance;
 - (b) A requirement for full and open competition;
 - (c) A prohibition against geographic preferences;
 - (d) The use of Brooks Act procedures for procurement of architectural and engineering services if the state has not adopted a statute governing procurement of such services; and
 - (e) Inclusion in contracts of all federal clauses required by federal statutes and executive orders and their implementing regulations. These clauses are identified in specific federal regulations cited in FTA's master agreement and incorporated by reference into the grant agreement. Additional technical assistance for third party contracting is available in FTA's "Best Practices Procurement Manual," which can be found online at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html;
- (2) Subrecipients that are Governmental Authorities. Subrecipients of states that are governmental authorities such as local or Indian tribal governments must comply with the same federal requirements governing state procurements. States are responsible for ensuring that subrecipients are aware of and comply with federal requirements.
- (3) Subrecipients that are Private Nonprofit Organizations. Subrecipients that are private nonprofit organizations must comply with FTA procurement requirements contained in the current FTA Circular 4220.1. States and designated recipients are responsible for ensuring that private nonprofit subrecipients are aware of and comply with these additional requirements.

- (4) Designated Recipients that are Not States. Other recipients and their subrecipients must comply with FTA procurement requirements at 49 CFR part 18 and guidance contained in the current FTA Circular 4220.1.
- b. Pre-Award and Postdelivery Reviews. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement” on FTA’s website: http://www.fta.dot.gov/legislation_law/12921_5424.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and postdelivery review to ensure compliance with its bid specifications, Buy America requirements, and federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than twenty vehicles for use in areas under 200,000 in population (more than ten, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated state procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if a single subrecipient will receive more than ten or more than twenty vehicles, depending on area size.
- c. New Model Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with the requirements in 49 CFR part 665 and must obtain a copy of the resulting test report before FTA funds can be released. FTA provides a bus testing section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

The bus testing provisions under 49 U.S.C. 5318 require FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if the bus has received a passing score. This requirement will take effect after FTA has issued regulations establishing the standard.

- d. Buy America. Title 49 U.S.C. 5323(j) provides that with limited exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States. Section 5310 recipients and subrecipients must comply with FTA regulations, 49 CFR part 661. FTA’s Buy America requirements at 49 CFR part 661 differ from Federal Buy American regulations at 48 CFR part 25. The former applies to all purchases, including materials or supplies funded as operating costs when funded by FTA, if the purchase exceeds the threshold for small purchases (currently \$100,000), whereas the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as the current FTA Circular 4220.1, “Third Party Contracting Guidance,” before undertaking any procurement. In addition, 49 U.S.C. 5323(j)(9) allows a party adversely affected by an FTA action the right to seek review. FTA has

created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.

- e. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” TVMs must establish—and submit to the FTA Office of Civil Rights for approval—an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. The recipient is obligated to determine, by checking the TVM listing on FTA’s website, <http://www.fta.dot.gov/civilrights/12891.html>, or by checking with FTA’s Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26. For further guidance, contact the FTA Regional Civil Rights Officer in the FTA regional office in which the recipient is located.

10. DEBARMENT AND SUSPENSION. The purpose of the DOT Nonprocurement Suspension and Debarment regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration’s (GSA) System for Award Management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a website, at <https://www.sam.gov>, which is updated in real time as changes to the data occur.

- a. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, incorporating OMB’s debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (such as those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
- b. Both participants in third party contracts of any tier and subagreements of any tier are expected to ensure the status of persons participating therein.
- c. The awarding party must verify that the person is not excluded or disqualified by:

- (1) Checking the SAM list of excluded parties maintained by the GSA and available at <https://www.sam.gov> (**Note:** Strongly recommended by FTA);
 - (2) Collecting a certification from the prospective awardee; or
 - (3) Adding a clause or condition to the third party contract or subagreement with that awardee.
- d. In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the these regulations.

11. FINANCIAL MANAGEMENT.

a. Financial Management Systems.

- (1) Designated recipients that are states. The common grant rule requires a designated recipient that is a state to expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the state, as well as its subrecipients and cost-type contractors must be sufficient to:
 - (a) Permit preparation of reports described in this circular and reports necessary to comply with other program and statutory requirements; and
 - (b) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions applicable to the program.

Subrecipients that are private entities must comply with the standards for financial management systems provided in 49 CFR part 19. If states purchase vehicles and equipment for subrecipients, and subrecipients receive no cash, this requirement does not apply.

- (2) Designated recipients that are not states. The financial management system for designated recipients that are not states must meet the standards set forth in 49 CFR 18.20(b) of the common grant rule. These standards include:
 - (a) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

- (b) Accounting records. Designated recipients and subrecipients must maintain records that adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to designated recipient or subrecipient awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
 - (c) Internal control. Effective control and accountability must be maintained for all designated recipient and subrecipient cash, real and personal property, and other assets. Designated recipients and subrecipients must adequately safeguard all such property and must ensure that it is used solely for authorized purposes.
 - (d) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
 - (e) Allowable cost. Applicable Office of Management and Budget (OMB) cost principles, FTA program regulations, and the terms of the FTA master agreement and grant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
 - (f) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payroll, time and attendance records, contract and subgrant award documents, etc.
 - (g) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by designated recipients and subrecipients must be followed whenever advance payment procedures are used. Designated recipients must establish reasonable procedures to ensure the receipt of reports on subrecipients' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to FTA. When advances are made by letter-of-credit or electronic transfer of funds methods, the designated recipient must make drawdowns as close as possible to the time of making disbursements. Designated recipients must monitor cash drawdowns by their subrecipients to ensure that they conform substantially to the same standards of timing and amount as apply to advances to the designated recipients.
12. FTA ELECTRONIC GRANT MANAGEMENT SYSTEM. FTA provides a streamlined electronic interface between recipients and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, recipients apply for grants, inquire about the status of grants, file the required federal

financial status and milestone progress reports, and submit annual certifications and assurances in this system.

The User Guide can be found on FTA's website in the "Grants and Financing" Section under "Apply for and Manage Grants." The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the electronic grant management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO) system (see section 16 of this chapter). To access the FTA electronic grant management system, a new applicant must complete the grantee/recipient user access request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is: http://www.fta.dot.gov/funding/grants_financing_36.html.

13. SYSTEM FOR AWARD MANAGEMENT (SAM) REQUIREMENTS. The System for Award Management (SAM) is a free website (www.sam.gov) that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance. On July 30, 2012, the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) were migrated into SAM. Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA or receives its final payment under the project, whichever is later. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance.
14. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENT. Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.
15. SUBRECIPIENT DUNS REQUIREMENT. If it is authorized to make subawards under its agreement with FTA, the recipient must notify potential subrecipients that no entity may receive a subaward from the recipient unless the entity has provided its DUNS number to the

recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.

16. ELECTRONIC CLEARING HOUSE OPERATING (ECHO) REQUIREMENTS. FTA makes all payments by electronic funds transfer, regardless of the dollar amount involved. Payments are made under the Electronic Clearing House Operation Web (ECHO-Web) system, by means of a control number assigned to the state. The state agrees to comply with the ECHO-Web requirements contained in the U.S. Department of Treasury regulations, 31 CFR part 205, “Rules and Procedures for Funds Transfers,” and as established by the “Guidelines for Disbursements” set forth in FTA’s ECHO-Web system operations manual. Detailed information about ECHO-Web can be found in Appendix A.

a. In general:

- (1) The recipient may initiate cash drawdowns only when actually needed for immediate disbursements for project purposes. The recipient must disburse the funds drawn down according to their Treasury-State Agreement or 31 CFR part 205, subpart B. The recipient’s access to the ECHO-Web system may be revoked or suspended, or other remedies may be invoked, if the recipient fails to expend the federal funds within a reasonable period, to return the funds to FTA within a reasonable period, or is unwilling or unable to establish procedures that will minimize the time elapsing between cash advances and the disbursement.
- (2) Costs incurred and available balances are reported annually on an accrual basis on the Financial Status Report in FTA’s electronic grant management system (Transportation Electronic Award and Management [TEAM] or the successor thereto).
- (3) The recipient agrees to provide for control and accountability for all project funds consistent with federal requirements and procedures for use of the ECHO-Web system.
- (4) The recipient may not drawdown funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.
- (5) The recipient shall limit drawdowns to eligible project costs and ensure that subrecipients also follow applicable financial requirements.

b. Financial Records. FTA does not maintain detailed financial records on individual projects within a program of projects. Financial records, supporting documentation, and all other records pertinent to a recipient must be retained by the recipient (and its subrecipients) and must be made readily available to authorized representatives of DOT and the comptroller general of the United States for a period of three years from the date the state electronically submits the final Federal Financial Report. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be

retained beyond three years, until all litigation, claims, or audit findings involving the records have been resolved.

The recipient's financial records should adequately document the computation of the federal share and the provision of the required local share for each kind of project. The eligibility of any ADA, clean air, or bicycle projects for which the increased federal share is claimed should be adequately documented.

17. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

REQUIREMENT. FTA's recipients must report the information about each first tier subaward over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the state or designated recipient makes any subaward or obligation (not the month after FTA awarded the direct grant). For example if FTA awarded the grant to the state or designated recipient in November, and the recipient did not sign subrecipient agreements until February, the FTA recipient would have until March 31 to report the subaward into Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). Once the recipient submits an initial report, the recipient can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.

- a. No report is required until the month after the recipient makes a subaward. For example, if a recipient received a Section 5310 grant in November and listed 16 subrecipients in the program of projects but does not consider the subawards to be made until each subrecipient signs a letter of agreement, the recipient would not have to report any subawards in December, but would report them by the end of the month after the subrecipient signs the agreement. On the other hand, if the recipient has a standing agreement with subrecipients and considers the subawards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the recipient. If the state or designated recipient allowed subrecipients to use pre-award authority, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept subaward reports before the federal obligation is recorded in the system.
- b. The required data elements in FSRS for each first tier subaward over \$25,000 :
 - (1) Name of entity receiving subaward Doing Business As (DBA) Name;
 - (2) DUNS of the entity and its parent and DUNS+4 (is used to identify specific units within a larger entity);
 - (3) Amount of subaward;
 - (4) Subaward number (Note: assigned by recipient);
 - (5) CFDA number (Note: The same CFDA associated with the FTA award);

- (6) Place of performance (including congressional district);
 - (7) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds);
 - (8) Award title descriptive of the purpose of the funding action; and
 - (9) Location of the entity (including congressional district)
- c. The amount that is to be reported for each subrecipient is the amount of the total subaward, not payments to date. Payment/drawdown information is not included in the data fields requested.
 - d. After the recipient reports the subaward data in FSRS, the information will be published with the original direct award information at <http://www.usaspending.gov>.
 - e. Information and training materials about FFATA subaward reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to USASpending.gov as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Recipients should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff are available to help with FTA grant award information and requirements.
18. **ALLOWABLE COSTS.** Office of Management and Budget (OMB) Circular A–87 (codified at 2 CFR part 225) provides the federal guidelines for allowable costs for recipients that are governmental authorities. OMB Circular A–122 (codified at 2 CFR part 230) provides comparable guidance for nonprofit organizations. Expenses such as indirect costs or payments to a self-insurance fund must be documented appropriately. The restrictions on advertising and public relations in A–87 permit advertising and public relations for “specific purposes necessary to meet the requirements of the federal award.” Similar provisions are also contained in A–122. Transit marketing and promotion are allowable project costs under these provisions, since transit ridership is the ultimate purpose of the federal grant.
19. **CLOSEOUT.** Recipients should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. Recipients should similarly initiate POP closeout with FTA within ninety days after all work activities for the POP are completed. A final Federal Financial Report, final budget, and final POP must be submitted electronically via the electronic grant management system at the time of closeout.

FTA expects grants awarded for a specific POP to be completed within a reasonable, specified time frame, generally not to exceed two to three years. Although this circular

provides recipients with a great deal of flexibility in developing and subsequently revising programs of projects, it is not FTA's intent that grants be continually revised or amended in ways that will excessively prolong the life of the grant, and consequently result in a large number of active Section 5310 grants. If small amounts of funds remain in an inactive grant, the recipient should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the recipient along with other currently available funds. Otherwise the deobligated funds lapse and are reapportioned by FTA among states and UZAs in a subsequent year.

20. AUDIT. States and designated recipients are responsible for ensuring that audits are performed pursuant to the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," resolving audit findings, and bringing problems to FTA's attention. FTA has not required States and designated recipients to ensure an annual financial audit of a subrecipient is performed when assistance is provided solely in the form of capital equipment procured directly by the state or designated recipient. Even if the amount of FTA funds the recipient passes to a particular subrecipient does not trigger the requirement for an A-133 audit, the recipient may wish to review A-133 audit reports prepared for subrecipients that are required to be audited because the total federal funds from all sources exceed the threshold (currently \$750,000). At a minimum recipients should require subrecipients to bring to the attention of the recipient any audit findings relevant to their use of FTA funds.
21. REAL PROPERTY. Real property acquisition standards are included in the current FTA Circular 5010.1, "Grant Management Guidelines" with a summary in Chapter VIII of this Circular, "Other Provisions." Subrecipients may use the recipient's staff appraisers to prepare required independent appraisals.
22. CONSTRUCTION MANAGEMENT AND OVERSIGHT. The responsibility for construction management and oversight lies with the state or designated recipient. FTA does not approve design plans, specifications, contract terms, etc. for construction projects.
23. REPORTING REQUIREMENTS.
 - a. Annual Program of Projects Status Reports. By October 31 each year, the state or designated recipient should submit to FTA a program status report for each active grant, covering the twelve-month period ending September 30. Designated recipients in large urbanized areas must submit quarterly status reports. The status reports should be submitted electronically and are intended to meet minimal program information needs at the regional and national levels. Reports should include an updated POP for each approved grant that contains active projects. The updated POP should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories, if applicable. The updated POP can be imported as text into the project summary section of the electronic status report.

If revisions to the POP result in changes to the line item budget for the grant, these changes should be submitted as budget revisions. Significant civil rights compliance issues occurring during the year (such as Title VI, Equal Employment Opportunity (EEO), or Disadvantaged Business Enterprise (DBE) complaints against the recipient or subrecipients), should be addressed in the annual status report. In addition, the recipient may report notable accomplishments or problems involving Section 5310 subrecipients.

- b. Milestone Progress Reports (MPR). For activity line items for which milestones were required at the time of grant application (e.g., for vehicle procurements, construction projects, and program reserve), the recipient should enter revised milestone dates as part of the annual report. If the estimated completion date for the grant has changed, the revised date should be entered, with an explanation as to why the date has changed.
- c. Federal Financial Report (FFR). The recipient must submit electronically an annual FFR for each active grant, for the period ending September 30. For the purpose of this report, funds are considered encumbered when agreements are signed with subrecipients. Reports should be prepared using the accrual method of accounting.
- d. Program Measures. As indicated in Chapter II of this Circular, FTA will be capturing overall program measures to be used with the Government Performance Results Act (GPRA) and the Performance Assessment Rating Tool process for the OMB. The following indicators are targeted to capture overarching program information as part of the annual report that each recipient submits to FTA. Until new measures are established, FTA intends to continue to use the following indicators. Designated recipients and states should submit both quantitative and qualitative information available on each of the following measures with its fourth quarter or annual milestone progress reports.

Traditional Section 5310 Projects

- (1) Gaps in Service Filled: Provision of transportation options that would not otherwise be available for seniors and individuals with disabilities, measured in numbers of seniors and individuals with disabilities afforded mobility they would not have without program support as a result of traditional Section 5310 projects implemented in the current reporting year.
- (2) Ridership: Actual or estimated number of rides (as measured by one-way trips) provided annually for seniors or individuals with disabilities on Section 5310 supported vehicles and services as a result of traditional Section 5310 projects implemented in the current reporting year.

Other Section 5310 Projects

- (1) Service Improvements: related to geographic coverage, service quality, and/or service times that impact availability of transportation services for seniors and individuals

with disabilities as a result of other Section 5310 projects implemented in the current reporting year

- (2) Physical Improvements: Additions or changes to environmental infrastructure (e.g., transportation facilities, sidewalks, etc.), technology, and vehicles that impact availability of transportation services for seniors and individuals with disabilities as a result of other section 5310 projects implemented in the current reporting year.
- (3) Ridership: Actual or estimated number of rides (as measured by one-way trips) provided annually for seniors or individuals with disabilities on Section 5310 supported vehicles and services as a result of other Section 5310 projects implemented in the current reporting year.

Recipients should ensure that the above information is reported in TEAM or its successor thereto for all recipients and subrecipients of Section 5310 funding in projects selected by the state or designated recipient. The recipient may consolidate information for all projects in the annual report for any open Section 5310 grant awarded to the recipient.

- e. National Transit Database: Section 5335(c) requires all FTA grant recipients, including grant recipients under Section 5310, to report an asset inventory or condition assessment conducted by the recipient to the National Transit Database (NTD). This requirement is subject to a rulemaking and recipients will not be required to report until the rulemaking is complete.
- f. Disadvantaged Business Enterprise (DBE) Reports. If the state or designated recipient receives planning, capital, and/or operating assistance and awards prime contracts exceeding \$250,000 in FTA funds in a federal fiscal year, DOT regulations require the state or designated recipient to have a DBE program and establish a DBE goal methodology that applies to all direct and subrecipient contracting activity resulting from those funds. Subrecipients must follow the recipient's established DBE program. FTA recipients that meet the above thresholds must submit a DBE goal to FTA for review by August 1 at three-year intervals, based on a schedule established by FTA. Detailed requirements are described in Chapter VIII, "Other Provisions."

24. MANAGEMENT PLAN. The SMP is a document that describes the state's policies and procedures for administering the Section 5310 program. The SMP required for the Section 5310 and 5311 (Rural Area Formula) programs may be included in the same document. All states are required to have an approved SMP on file in the FTA regional office. Additions or amendments to the SMP must be made and submitted to FTA whenever a state significantly changes its management of the program, or when new program management requirements are imposed by FTA. Changes may be required as the result of a state management review by FTA. FTA has provided detailed requirements in Chapter VII, State and Program Management Plans.

Designated recipients that are not states must have a Program Management Plan (PMP). This plan shall adhere to the "Management Plan" provisions in Chapter VII.

25. FTA MANAGEMENT REVIEW. FTA's administration of the Section 5310 program results in relatively little federal involvement in the day-to-day program activities or in the review of individual applications from subrecipients. To ensure that the program objectives are being carried out, the FTA regional office, with contractor assistance, conducts periodic state management reviews every three years or as circumstances warrant. The review includes an inspection of documentation on file at the regional office, a visit to the state offices to examine the procedures the state uses in administering the program, and local site visits. The review assesses the accuracy and adequacy of the SMP, and may result in recommendations for changes to the SMP. A draft report with preliminary findings is presented at an exit conference. The state has an opportunity to comment on the report and to take corrective actions before a final report is issued. The FTA regional office follows up on corrective actions required in the final report.

FTA periodically conducts state management review seminars to help states understand the federal requirements being reviewed and to provide technical assistance. States may contact the regional office for a current schedule of seminars.

FTA management of other designated recipients will occur through the monitoring of grant progress and activities by FTA regional offices and from the triennial reviews that are conducted by FTA's Office of Oversight on Section 5310 designated recipients that also receive Section 5307 funding. Designated recipients that are not a state or a Section 5307 recipient may be subject to periodic spot reviews that include: an inspection of documentation on file at the regional office, a visit to the designated recipient's offices to examine the procedures used in administering the program, and local site visits. The review assesses the accuracy and adequacy of the PMP, and may result in recommendations for changes to the PMP. A draft report with preliminary findings is presented at an exit conference. The designated recipient has an opportunity to comment on the report and to take corrective actions before a final report is issued.

26. OTHER FTA REVIEWS. FTA also conducts more specific compliance reviews of recipients and subrecipients in particular areas, for example financial management, procurement, drug

and alcohol testing compliance, and the various aspects of civil rights compliance, usually in response to a risk assessment or other indication of a possible problem. FTA coordinates reviews of subrecipients with the recipient.

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CHAPTER VII

STATE AND PROGRAM MANAGEMENT PLANS

1. GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5310 and 5311 programs. The program management plan (PMP) is a document that describes the designated recipient's policies and procedures for administering FTA's Section 5310 program in a large urbanized area. The requirements for the PMP are the same as those for the SMP with exception that the PMP is developed by designated recipients in large urbanized areas whereas the SMP is developed by the state.

Each recipient, whether a state or a designated recipient in a large urbanized area, is required to have an approved SMP/PMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. In addition, development of SMP/PMPs should be done in the context of local and statewide planning processes. Certain contents of the SMP/PMP, such as coordination of service, project selection criteria, and method of distributing funds, should be coordinated with the statewide transportation improvement program (STIP) and transportation improvement program (TIP).

At the state level, the state may include the required SMP for Section 5310 and 5311 programs in a single document or separate documents. Further, where designated recipients serve multiple population areas (e.g., the state is the designated recipient for a large urbanized area[s] and areas under 200,000 in population), the designated recipient may choose to have a single management plan, provided it adequately addresses policies and procedures for each of the areas, and subrecipients from the respective population areas know which policies and procedures are relevant to them.

All public documents developed under a grant from FTA must be prepared and submitted in electronic format.

2. PURPOSE. The SMP/PMP is intended to facilitate both recipient management and FTA oversight by documenting the state's and designated recipient's procedures and policies for administering the Section 5310 program. The SMP/PMP should be a document that is useful to the state, designated recipient, and subrecipients, as well as to FTA. At a minimum, this document must include the recipient's program objectives, policies, procedures, and administrative requirements, in a form readily accessible to potential subrecipients, recipient staff, FTA, and the public. The SMP/PMP's primary purposes are to serve as the basis for FTA to perform recipient-level management reviews of the program, and to provide public information on the recipient's administration of the Section 5310 program. It may also be used internally by the recipient as a program guide for local project applicants. If the

recipient has other relevant documentation that provides the same information requested for the SMP/PMP, such as an annual application instructions manual, it may be included by reference, as an attachment.

3. MANAGEMENT PLAN REVIEWS. FTA conducts oversight reviews to examine each designated recipient's management procedures, and the relationship of the procedures to its management plan. When a state management or triennial review is scheduled, FTA and its contractors examine the SMP or PMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP/PMP satisfy current requirements. At the site visit, the reviewers document whether or not the designated recipient is following its own stated procedures. Review findings relating to the SMP might include recommendations that the designated recipient revise the SMP/PMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP/PMP.
4. MANAGEMENT PLAN CONTENT. While there is no prescribed format for the SMP/PMP, the plan should address the following topics and provide the information as requested for each topic below.
 - a. Program Goals and Objectives. Describe the philosophy and policy underlying the recipient's management of the Section 5310 program. Include a description of any process that exists for establishing long-term goals for providing transportation services to seniors and people with disabilities in the recipient's area, including the process for long range planning and consultation with elected officials.
 - b. Roles and Responsibilities. Specify the agencies designated to administer the Section 5310 program. Explain the respective roles and responsibilities of the recipients and their subdivisions, other recipient agencies or review boards, local governments, private providers, local applicants, and other involved parties.
 - c. Coordination. Describe how the recipient coordinates with other agencies at the state or designated recipient level and encourages and enhances coordination at the project level. This could include a description of any recipient-level coordinating mechanisms, legislation, review boards, and state or designated recipient policies that encourage or mandate coordination at the local level.
 - d. Eligible Subrecipients. Describe which entities are eligible to apply for funds, and describe any recipient eligibility requirements that are more restrictive than federal eligibility.
 - e. Local Share and Local Funding Requirements. Describe any recipient policies on provision of local matching share. Include a description of any programs which provide matching funds for Section 5310.
 - f. Project Selection Criteria and Method of Distributing Funds. A competitive selection process is not required; whether or not the recipient engages in a competitive selection

process, the recipient should describe the recipient's criteria for selecting projects and distributing funds among various applicants. Whether the recipient uses a formula for allocation, imposes its own limitations on use of the funds, or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used. This description should include the recipient's procedures for (1) assuring equity of distribution of benefits among eligible groups within the state or urbanized areas, as required by Title VI of the Civil Rights Act; (2) assuring that projects were included in a locally developed coordinated plan; and (3) documenting evidence that the local coordinated plan was developed and approved in cooperation with stakeholders, including individuals with disabilities and seniors utilizing transportation services.

- g. Annual Program of Projects Development and Approval Process. Describe the recipient's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the state's annual POP for Section 5310. The SMP/PMP may include instructions to potential subrecipients on how to prepare local project applications.
- h. State Administration, Planning, and Technical Assistance. Describe how the recipient uses Section 5310 funds within the 10 percent limitation for administration, planning, and technical assistance. Also describe additional resources including planning, technical, and management assistance the recipient makes available to local areas and/or subrecipients.
- i. Transfer of Funds. Describe any policy the state has for transferring funds between rural and small urbanized areas, or to any area of the state if the state has a statewide program for meeting the objectives of Section 5310.
- j. Private Sector Participation. Describe the recipient's procedures for providing for maximum feasible participation by private providers of public transportation.
- k. Civil Rights. Describe how the recipient meets federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, Equal Employment Opportunity (EEO), and Disadvantaged Business Enterprise (DBE). The management plan must include the program-specific Title VI requirements detailed in Chapter VIII, "Other Provisions," including the recipient's efforts to assist minority applicants and to include subrecipients serving significant minority populations. (Inclusion in the SMP/PMP may satisfy certain requirements for one-time submissions in the civil rights areas.)
- l. Section 504 and ADA Reporting. Describe the recipient's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports, and certifications submitted to it under the provisions of those regulations.
- m. Program Measures. Describe the recipient's method for collecting and reporting the data for program measurement described in Chapter II and VI of this circular.

- n. Program Management. Describe how the recipient administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit, and closeout. In addition, include any procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the recipient for matters such as productivity, cost effectiveness, or service standards. Detail any reporting requirements.
 - o. Other Provisions. Describe the process by which the recipient complies with other federal requirements such as environmental protection, Buy America provisions, pre-award and postdelivery reviews, restrictions on lobbying, prohibition of exclusive school transportation, and drug and alcohol testing, including the state's procedures for monitoring compliance by subrecipients.
5. MANAGEMENT PLAN REVISIONS. All recipients must have an SMP/PMP approved by FTA on file with the FTA regional office. An approved SMP/PMP remains valid until FTA approves a later plan submitted by the recipient or an FTA management review results in a specific request to the recipient by FTA for a revised SMP/PMP, or FTA announces significant new program documentation requirements. FTA strongly encourages the recipient to issue timely revisions to the SMP/PMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the recipient proposes significant revisions to the SMP/PMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other state agencies and representatives of other funding sources, and any relevant state associations and professional organizations.

If revisions are substantive, but not pervasive, the recipient may submit changes and additions in the form of page changes that can be approved by FTA and incorporated into the SMP/PMP on file. If the recipient changes the SMP/PMP significantly, however, it should submit the entire revised plan to FTA for approval. The recipient is responsible for ensuring that FTA has a complete copy of the current SMP/PMP. The recipient may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The recipient should reexamine the SMP/PMP to make sure it reflects current requirements of this circular and revise the SMP/PMP by May 1, 2014.

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CHAPTER VIII

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements and guidance provided in this circular, FTA recipients are held to a number of FTA-specific and other federal requirements. This chapter highlights the major requirements and provides citations to the statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. Readers should use this chapter in conjunction with FTA's "master agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (via FTA's electronic grant management system) to establish or renew their funding relationship with FTA. The master agreement and the certifications and assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grants.

Some of the topics covered in the master agreement and the certifications and assurances are summarized throughout this chapter, as a reminder to recipients of their obligations to FTA. More information about individual requirements can be found in the master agreement, the certifications and assurances on the FTA public website www.fta.dot.gov, the FTA Electronic Grants Management System's website, and in the references provided throughout this chapter.

2. PROCUREMENT RESTRICTIONS. An applicant seeking federal assistance pursuant to the federal transit laws as codified at 49 U.S.C. 5301 *et seq.* to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third party procurement requirements. FTA's procurement requirements are codified at 49 U.S.C. 5325. In addition, regulations promulgated at 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) establish uniform administrative rules for federal grants, cooperative agreements and subawards to state, local, and Indian tribal governments (private, nonprofit organizations must comply with similar regulations in 49 CFR part 19). Provisions of the common rule pertaining to procurement requirements for FTA recipients are set forth at 49 CFR 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's master agreement (FTA MA(20) October 1, 2013, as amended) at Section 17, "Procurement," updated annually with the issuance of each new master agreement. Finally, FTA has published additional guidance relative to recipients' compliance with third party procurement requirements within the current FTA Circular 4220.1 and its "Best Practices Procurement Manual." The regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process

including planning, solicitation, award, administration, and documentation of all federally funded contracts.

Each recipient of FTA assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party procurement provisions of federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of federal assistance, if FTA determines that its procurement practices and procurement system are incapable of compliance with federal laws, regulations, and directives governing procurements financed with FTA assistance.

3. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with the National Environmental Policy Act (NEPA) implementing regulations (40 C.F.R. § 1500-1508), FHWA and FTA's Environmental Impact and Related Procedures (23 C.F.R. § 771), Efficient Environmental Reviews for Project Decision-making (23 U.S.C. § 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion, environmental assessment, or environmental impact statement) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., engineering and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE). Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until a ROD, FONSI, or CE is issued.
4. ENVIRONMENTAL JUSTICE. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and the FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on our programs, policies, and activities on minority populations and/or low-income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 "Environmental Justice Policy Guidance for Federal Transit Administration Recipients" provides FTA recipients and subrecipients with guidance and instructions necessary to carry out the executive order.
5. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and

they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and TIPs. Determining conformity for transportation plans and TIPs is the responsibility of the MPO, and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

6. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.
7. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use federal financial assistance in a project which will require real property, the applicant must provide assurances—required by Sections 305 and 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)—that it will comply with the Uniform Act and with U.S. DOT implementing regulations (49 CFR part 24).

DOT regulations at 49 CFR part 24 implement a governmentwide regulation that applies to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced people. Grantees in the process of planning a federally assisted project that will require the displacement of people should be aware of the regulatory need for relocation planning during the early stages of project development.

The 49 CFR part 24 regulation is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html. Upon request, FTA regional offices can provide a copy of the uniform act or regulation in its amended form. In addition, the grantee should inform itself of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contribution-in-kind property will be valued at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. Please consult with your FTA regional office about any property issues.

8. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. Section 5333(a) applies Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the Secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under 49 U.S.C. Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign FTA's master agreement.
- b. Transit Employee Protection. Title 49 U.S.C. Section 5333(b) does not apply to the Section 5310 program.

9. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

- a. Nondiscrimination in Federal Transit Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability, and prohibit discrimination in employment or business opportunity.
- b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

- (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) ADA, as amended (42 U.S.C. 12101 *et seq.*), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a subrecipient or under a contract or other arrangement) providing fixed-route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regard to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (5) Providers of fixed-route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed-route service as defined in 49 CFR 37.121.
 - (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964

- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons.
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005). This guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out U.S. DOT Order 5610.2 to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice that describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.
 - (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended (20 U.S.C.

1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.

- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE). To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
 - (1) The recipient agrees and assures that it will comply with MAP-21 Section 1101(b) (23 U.S.C. 101 note), which directs the Secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBEs. This 10 percent national goal is aspirational and is used by DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities.
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.
 - (3) The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin, in the award and performance of any third party contract, or subagreement supported with federal assistance derived from DOT, or in the administration of its DBE program, and will comply with the requirements of 49 CFR part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the recipient’s DBE program is incorporated by reference and made part of the grant agreement or cooperative agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as

a violation of the grant agreement or cooperative agreement. Upon notification by DOT to the recipient of a failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, (31 U.S.C. 3801 *et seq.*).

For further guidance, refer to the federal laws, regulations, and executive orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

10. CHARTER BUS SERVICES. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604—Charter Service, amended effective April 30, 2008 (73 FR 2326, Jan.14, 2008). Each recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of certifications and assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter registration website (http://www.fta.dot.gov/laws/leg_reg_179.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

The charter rule defines a qualified human service organization (QHSO) as an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age. The term QHSO is used consistent with the president's executive order on human service transportation coordination (February 24, 2004). If an organization serving seniors or individuals with disabilities receives Section

5310 funding, directly or indirectly, the QHSO is not required to register on the FTA charter registration website.

Appendix C to 49 CFR part 604 provides the following additional guidance: Q: If I receive funds under 49 U.S.C. Sections 5310, 5311, 5316, or 5317, may I provide charter service for any purpose? A: No. You may only provide charter service for “program purposes,” which is defined in this regulation as “transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals) * * *” 49 CFR Section 604.2(e). Thus, your service only qualifies for the exemption contained in this section if the service is designed to serve the needs of targeted populations. Charter service provided to a group, however, that includes individuals who are only incidentally members of those targeted populations, is not “for program purposes” and must meet the requirements of the rule (e.g., an individual chartering a vehicle to take their relatives including elderly aunts and a cousin who is a disabled veteran to a family reunion).

11. **DRUG AND ALCOHOL TESTING.** Recipients or subrecipients that receive only Section 5310 program assistance are not subject to FTA’s drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver’s licenses (49 CFR part 382). Section 5310 recipients and subrecipients that also receive funding under one of the covered FTA programs (Section 5307, 5309, or 5311) should include any employees funded under Section 5310 projects in their testing program.

An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5311), may be used for Section 5310 employees; there is no need to have separate testing programs. Employees of a subrecipient of Section 5310 funds from a state or designated recipient of another FTA program (e.g., 5307 or 5311) should also be included in the designated recipient’s testing program.

States and designated recipients that receive funds for Sections 5307, 5309, or 5311, in addition to Section 5310, should consult FTA’s regulation at 49 CFR part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.” The regulation applies to recipients of funds identified above. The regulation requires that FTA recipients follow the drug and alcohol testing procedures found in applicable FTA (49 CFR part 655) and DOT (49 CFR part 40) regulations.

Technical assistance materials and training information to help recipients implement the rules are available at FTA’s website <http://www.fta.dot.gov> or through contacting the FTA Office of Safety and Oversight, FTA Headquarters.

12. **DRUG-FREE WORKPLACE.** In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all

requirements of 49 CFR part 32. These provisions apply only to FTA's direct recipients and do not extend to subrecipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link:

<http://www.dol.ehaws/drugfree.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and drug and alcohol testing rules are available on FTA's website <http://www.fta.dot.gov> or by contacting FTA's Office of Safety and Oversight, FTA Headquarters, 1200 New Jersey Ave. SE, Washington, DC 20590.

13. RESTRICTIONS ON LOBBYING. Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or cooperative agreement. The state, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

14. PRE-AWARD AUTHORITY.

- a. General. FTA provides blanket, or automatic, pre-award authority in certain program areas. This pre-award authority allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant

approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This automatic pre-award spending authority permits a recipient to incur costs on an eligible transit capital or planning project without prejudice to possible future federal participation in the cost of the project or projects.

The authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual *Federal Register* Notice of Apportionments and Allocations triggers pre-award authority for design and environmental work on the project. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for other capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental ROD, FONSI, or a determination that the project is a categorized exclusion, and included in the STIP.

FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements.

Pre-award authority for operating and planning projects under the formula grant programs is not limited to the authorization period.

- b. Conditions. In general, all federal grant requirements must be met at the appropriate time for the project to remain eligible for federal funding. Specifically,
- (1) Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).
 - (2) All FTA statutory, procedural, and contractual requirements must be met.
 - (3) The recipient must take no action that prejudices the legal and administrative findings that FTA must make in order to approve a project.
 - (4) Local funds expended by the recipient pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the recipient before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (i.e., the completion of the environmental review process) would compromise FTA's ability to comply with federal environmental laws and may render the project ineligible for FTA funding.

- (5) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the federal/local match ratio at the time the funds are obligated.
 - (6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.
 - (7) When a grant for the project is subsequently awarded, the Federal Financial Report must indicate the use of pre-award authority.
 - (8) More information regarding pre-award authority can be found in FTA's annual apportionment notice published in the *Federal Register*.
15. SAFETY AND SECURITY. MAP-21 amended 49 U.S.C. 5329 to provide FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that FTA issue a National Public Transportation Safety Plan, establish safety performance criteria for all modes of public transportation, define a "state of good repair," establish minimum safety performance standards for public transportation vehicles, and a safety certification training program for transit agency and state safety oversight (SSO) staff responsible for safety oversight. States are required to strengthen their SSO programs and submit the programs to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will issue interim guidance and regulations to implement these new requirements in consultation with public transportation industry stakeholders.

Note: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers. The MOU is available on FTA's bus safety website:

http://bussafety.fta.dot.gov/show_resource.php?id=3949

16. LEASE VERSUS BUY CONSIDERATIONS. A recipient may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. All recipients, including those using pre-award authority, must conduct the cost comparison before entering into the lease. Recipients should refer to regulations for further details on conducting the cost effectiveness comparison (49 CFR part 639).

Recipients should submit the cost comparison to the appropriate FTA regional office for review before entering into the lease or before approval of the grant that supports the lease.

The cost comparison should be retained on file for later review or audit. When a recipient intends to enter into a lease of considerable duration (rather than paying for the lease in a lump sum at the beginning of the lease period), the recipient must be able to complete the acquisition with local funds in the event FTA funds are not available in later years.

17. SCHOOL BUS TRANSPORTATION. Title 49 U.S.C. 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose of FTA’s school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start program limit the types of vehicles that may be used to transport children participating in a Head Start program.
18. COMMERCIAL DRIVER’S LICENSE (CDL). All drivers of motor vehicles designed to transport sixteen or more passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.

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APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. PRE-APPLICATION STAGE.

- a. System Access. Applications for FTA grant program funds must be submitted electronically through the electronic grant management system. Applicants must have access to FTA's electronic grant management system in order to enter a grant. If an applicant does not have access to the system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA regional offices can be found in Appendix F.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded must be included in a federally approved STIP and TIP, a applicable, for capital and/or operating projects or a Unified Planning Work Program for planning projects. In addition, all projects included in Section 5310 grant applications shall be included in a locally developed, coordinated public transit-human service transportation plan, which should be integrated into and consistent with the metropolitan and statewide planning processes. (See Chapter V for more details.) The coordinated public transit-human service transportation plan must be developed and approved through a process that includes participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public.
- c. Environmental Determination. The impact that a proposed FTA assisted project will have on the environment shall be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Section 5310 program, or any other FTA grant program, must annually submit certifications and assurances that are applicable to the grant applicant's active and new grants during the fiscal year. The certifications and assurances are discussed in Chapter IV, "Program Development." The certifications and assurances should be examined annually for changes and additions resulting from legislation.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Program, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program and annual goal, and ADA Paratransit Plan. The FTA regional civil rights officer must verify that all required civil rights submissions are current at the time that the grant application is entered into the electronic grant management system. The required documentation must be submitted before the official submission of the

grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. (See Chapter VIII, “Other Provisions,” Section 10, “Civil Rights.”)

- f. Transferred Funds. The request for transfer of funds should be made before applying for a grant, if the grant application will fund projects using funds transferred from other programs. This includes funds flexed from FHWA. (See Chapter II, “Program Overview,” Section 6, “Relationships to Other Programs.”)

19. APPLICATION STAGE. Applicants for Enhanced Mobility of Seniors and Individuals with Disabilities Program (Section 5310) funds should submit their grant applications electronically through the electronic grant management system. This is a database system, which is accessible via the Internet. The user guide covers the creation, submission, award, and execution of a grant application. The user guide also addresses reporting requirements, grant amendments, budget revisions, and close-out procedures. Information entered into the system when preparing an application includes:

- a. Recipient Information. Applicants shall enter all required information about their organization in the appropriate fields, including: recipient address, union information, urbanized area identification number (UZA ID), congressional district(s), data universal numbering system (DUNS) number, etc. The information shall be current and accurate for each grant and periodically updated as changes occur.
- b. Project Information. Applicants shall identify whether the application is a new grant, a grant amendment, or a budget revision. In addition, applicants shall identify the project start/end date, program date, EO 12372 review date, MPO concurrence date (if applicable), and grant project costs.
 - (1) Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. The POP will be included in this section. At a minimum, the project description must identify subrecipients funded through the grant application and the projects being implemented by each subrecipient. The applicant must clearly identify the capital projects satisfying the 55 percent minimum requirement. (See Chapter III, General Program Information, Section 13, “Eligible Activities”). There is a project description field as well as a specific text field for this information associated with each activity line item. Project activities shall be sufficiently described to assist the reviewer in determining eligibility under the program, and shall include the page number of the coordinated plan where the project was included, as well as the date the plan was adopted.
 - (2) Program DATE and PAGE (STIP/UPWP). All projects for capital and operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless FTA has approved the STIP. The application should note the page(s) in the most recently

approved STIP on which the project(s) contained in the application are listed. The electronic grant system has a field designated “program date” where the date of the most recent FTA/FHWA STIP approval must be entered.

- c. Budget. The appropriate scopes and activity line items shall be used when developing the project budget. All sources of funds shall be identified and confirmed. All rolling stock procurements shall include vehicle description and fuel type; expansion activities shall include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for specific funding programs.

At least 55 percent of the annual apportionment must be identified for traditional 5310 projects, as defined in Chapter III of this circular. The extended budget descriptions should confirm which activities are supporting this requirement. For public transportation projects that exceed the requirements of the ADA or for alternatives to public transportation that assist seniors and individuals with disabilities (e.g., New Freedom type projects), the applicant should use scope 647-00.

If the grant contains funding for tribal governments, the non-add scope (992-00) should also be added to the budget and identify the amount of funding in the application allocated to each tribe. The non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Other non-add scopes are used for ITS, security funds, and other special emphasis areas.

- d. Project Milestones. Estimated completion dates for all milestones should be provided; revenue vehicles have particular milestone requirements. If milestones are not prepopulated by the system for a particular activity line item, use the add function to add milestones for that activity line item to the grant application.
- e. Environmental Findings. The application should include a proposed classification of each activity line item in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR parts 771.115 and 771.118.) Grant applicants should refer to 23 CFR 771.118(c) and (d) for a listing of the Class II projects. Most Section 5310 funded projects meet the criteria for a categorical exclusion (CE) and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact the appropriate FTA regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- f. Fleet Status. Fleet status data is not required for Section 5310 grant applications.
- g. Application Submission. Once FTA deems the activities eligible and determines that all pre-application requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (approved) and submitted in the electronic grant management system by the designated recipient/recipient.

- h. Certification of Labor Protective Arrangements. Section 5310 grants are not submitted to the Department of Labor (DOL) for certification.
 - i. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements have been met, FTA awards and obligates funds requested in the grant.
 - j. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. The applicant must execute the grant within 90 days of its approval. Grants that indicate the use of pre-award activity require the submission of a federal financial report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.
20. APPLICATIONS CONTAINING SAFETEA-LU FUNDS. An applicant may submit a grant application containing unobligated SAFETEA-LU funds prior to their lapse date as part of a grant application also including projects to be funded under MAP-21. Any such application must explicitly identify the projects to be funded under each source in addition to identifying the grant year. This information must be contained in the project description and the extended budget descriptions. SAFETEA-LU funds may only fund eligible activities pursuant to Section 5310 under SAFETEA-LU; thus, only traditional 5310 projects (capital only) would be eligible if any SAFETEA-LU funds are combined in a grant with MAP-21 funds.

21. SECTION 5310 APPLICATION CHECKLIST.

Part I—Recipient Information		Part IV—Budget	
1.	Are annual certifications and assurances pinned?	1.	Are activity line item (ALI) codes entered under the appropriate scope codes?
2.	Is the recipient contact and other information complete?	2.	Have funding percentages been verified to ensure that federal funds are not over the allowable share?
3.	Is UZA/congressional district information entered and accurate?	3.	Does the funding amount entered in the budget match financial information entered in the “project information” field?
4.	Has Civil Rights Program Documentation been approved by FTA?	a.	Federal funds
5.	Has the applicant’s DUNS number been entered in the appropriate field?	b.	Local match
		4.	Does the rolling stock (vehicle) line item contain accurate information such as:
Part II—Project Details		a.	Description
1	Does the project description (including the POP and other attachments) include adequate descriptive information of funded subrecipients and projects?	b.	Fuel type
Part III—Project Information Have the following fields been completed if applicable?		5.	Details (extended budget description)
1	New application or amendment?	a.	Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item?
2.	Start/end date?	6.	Have the appropriate non-add scopes been included (e.g., ITS, tribal, etc.)?
3.	Program date (STIP and TIP date) (UPWP if planning activities included)?	Part V—Project Milestones	
4.	Have control totals been entered by the recipient?	1.	Are milestones listed for each ALI? (If an ALI does not have milestones, they should be added.)
5.	If pre-award authority is applicable, has “yes” been selected?	2.	Have estimated completion dates been entered?
6.	Has the EO 12372 review been completed, if applicable?	Part VI—Environmental Findings (NEPA)	
7	Has the 55 percent floor for traditional Sec. 5310 (capital only) projects been identified?	1.	Has an environmental finding been entered for each ALI?
8	Are New Freedom type projects appropriately listed under scope 647-00?		

22. ECHO INFORMATION.


- a. Title 49 CFR parts 18 and 19, and 31 CFR part 205, govern payments to recipients for financing operations under federal grant and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA “ECHO System Users’ Manual for Recipients”:
<http://www.fta.dot.gov/documents/ECHOWebRecipientUserManual.pdf>.
- b. Instructions for completing form:
 - (1) Fill in your ECHO control number. If this is an initial ECHO setup, FTA will assign ECHO control number.
 - (2) Check appropriate box(es).
 - (3) Initial setup.
 - (4) Change in bank information.
 - (5) Change in recipient information.
 - (6) Fill out information in the appropriate section(s) listed below:
 - (a) Recipient information section—Print or type the name of the recipient and address that will receive ECHO/ACH payments. Also include a contact person’s name, date, and telephone and FAX numbers.
 - (b) Financial institution information section—Have your bank fill out this section. They should print or type the name and address of the financial institution that will receive the ECHO/ACH payment. Also included are the ACH coordinator’s name, telephone number, nine-digit routing transit number (ABA #), depositor (recipient) account title, depositor (recipient) account number, and type of account (type can ONLY be designated as checking or savings), signature and title of representative, date, and FAX number.
 - (7) Mail the form to the name and address shown in the agency information section. This section also includes a contact person’s name and telephone number.

ECHO Control Number (ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

Initial Setup 

Info. Change 

Grantee Information Change 

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a grantee's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See the bottom for instructions on completing this form.

RECIPIENT INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ()
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ()
DATE: / /	

AGENCY INFORMATION	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>1200 New Jersey Avenue, SE Washington, DC 20590</i>	
CONTACT PERSON NAME:	<i>202-366-9748</i>

FINANCIAL INSTITUTION INFORMATION (Note: Have Your Bank Complete This Section)	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: / /	FAX NUMBER: ()

Revised 7/98. If there are any questions, please call 202-366-9748 and ask for the agency's ACH contact.

APPENDIX B

SAMPLE SECTION 5310 PROGRAM OF PROJECTS

State: _____

5310: FY ____ Apportionment (DS, DM, DL): \$ _____; Carryover: _____
(DS = Rural Areas (under 50,000); DM - Small Urbanized Areas (50,000-200,000); DL = Large Urbanized Areas (200,000 or more))

Transfer Funds (plus or minus): _____

Total Funds Available: _____

Total number of subrecipients funded in this Program of Projects: _____

LIST OF PROJECTS

Required subrecipient information includes: name of entity receiving the award, amount of award, location of the entity receiving the award and the primary location of performance under the award, including the city and/or county and Congressional District.

CAPITAL, OPERATING, AND PROGRAM ADMINISTRATION

(Projects may include reasonable contingencies)

(Subrecipient Types may include: a non-profit organization or a local governmental authority).

Program of Projects & Subrecipients	City	Service Area Urban/Rural	Sub Type Private Public	Project Description/ALI	Quantity	FTA Amount	Local Amount	Total Amount	Coordination Plan Date & Page	Eligible Project Type *	Capital / Operating
Category A											
Sub A										(A)	
Sub B										(C)	
Sub C										(D)	
Sub D										(A)	
Sub E										(B)	
Total											
Category B											
Sub F										(A)	
Total											
Program Admin											
Grand Total											
Total Traditional 5310 55% Capital Amount											
Total Other Capital Amount											
Total Operating Expense Amount											

* Eligibility Project Type refers to 49 U.S.C. 5310
(b)(1) criteria

STATE ADMINISTRATION, PLANNING AND TECHNICAL ASSISTANCE

Not to exceed 10 percent of Section 5310 apportionment and any flex funds transferred to the Section 5310 account may be used to provide a 100 percent Federal share.

Subtotal State Administration (funded at 100 percent) _____

SUBTOTAL STATE ADMINISTRATION _____

APPENDIX C

TECHNICAL ASSISTANCE IN HUMAN SERVICE TRANSPORTATION

The Department of Transportation (DOT), the Federal Transit Administration (FTA), and partners at the Departments of Health and Human Services, Labor, and Education support a range of technical assistance initiatives for coordinating human service transportation. These programs and centers are charged with providing training, resources, and direct assistance to communities and states interested in enhancing the mobility and transportation options for all citizens, including seniors, individuals with disabilities, and people with low incomes. The following list includes technical assistance and training resources available for various aspects of human service transportation.

National Rural Transportation Assistance Program

C/O American Public Works Association

1401 K Street NW, 11th Floor

Washington, DC 20002

202-408-9542

www.APWA.net

The National Rural Transportation Assistance Program (RTAP) was established by FTA in 1987 to provide a wide range of professional services and products. The National RTAP, administered by the American Public Works Association, provides outreach and training to each state's RTAP and coordinates with other organizations involved in rural transit. The National RTAP also works collaboratively with the Community Transportation Association of America to operate a national toll-free telephone line, a Web page, a national peer-to-peer technical assistance network, and various presentations and publications and fulfillment services for national RTAP products.

Project ACTION

1425 K Street, Suite 200

Washington, DC 20005

1-800-659-6428

www.projectaction.org

Easter Seals Project ACTION (Accessible Community Transportation in Our Nation) is a national technical assistance project funded through a cooperative agreement with FTA. The mission of Easter Seals Project ACTION is to encourage and facilitate cooperation between the disability and transportation communities with the goal of achieving universal access through transportation for people with disabilities nationwide.

Easter Seals Project ACTION offers various resources, including a toll-free hotline, website, publications clearinghouse, and quarterly newsletter, as well as training and technical assistance, in an effort to make the Americans with Disabilities Act of 1990 (ADA) work for everyone, every day.

National Job Links Employment Transportation Initiative

341 G Street NW, 10th Floor

Washington, DC 20005

1-800-527-8279

<http://www.ctaa.org/ntrc/atj/joblinks/index.asp>

The National Joblinks Employment Transportation Initiative, known as Joblinks, is funded by the Departments of Transportation and Labor. Joblinks is a program designed to help communities overcome one of the most significant barriers preventing individuals with low incomes from getting and keeping jobs: transportation. Joblinks has a national peer-to-peer network that links local agencies with experienced practitioners familiar with the human services and workforce development environments and knowledgeable about special client transportation needs.

Through Joblinks, communities can receive access to technical assistance and training specialists who can provide solid problem-solving technical support, particularly in the areas of coordinating client transportation resources and operations, marketing, system start-up and financing, human resource management, and developing accessible services. Joblinks also supports an online information center that connects you with employment transportation news, resources and ideas. Joblinks is administered by the Community Transportation Association of America.

National Technical Assistance Center in Senior Transportation

1425 K Street, Suite 200

Washington, DC 20005

1-800-659-6428

www.projectaction.org

The National TA Center in Senior Transportation focuses on the transportation needs of seniors. The Center conducts analysis of technical assistance needs assist local communities and states. Through analysis and assessment, the national center also provides technical assistance and training on specific strategies for enhancing senior mobility. The Center focuses on a family of services that includes driving transition, travel training for fixed-route bus, paratransit services, and alternative transportation options including door through door, volunteer, and taxi programs.

Intelligent Transportation System (ITS) Peer to Peer Program

Federal Highway Administration

1200 New Jersey Ave. SE

Washington, DC 20590
1-866-367-7487
www.its.dot.gov

The ITS Peer-to-Peer program provides assistance through its network of over one hundred and twenty DOT approved ITS professionals who have planned, implemented, and operated ITS in urban and rural areas. Most of the program's peers are public sector ITS practitioners.

The Peer-to-Peer program delivers short-term assistance according to an agency's ITS needs. Assistance may include telephone consultations, off-site document reviews, presentations, and visits to the site. The program continues to assist metropolitan and rural clients to create solutions for a variety of highway, transit, and motor carrier interests. The program offers assistance in virtually all areas of ITS planning, design, deployment, and operations.

National Transit Institute
120 Albany Street 7th Floor
New Brunswick, NJ 08901
732-932-1700
www.ntionline.com

The National Transit Institute at Rutgers University was established in 1992 to conduct training and educational programs related to public transportation. Funded by FTA, NTI's mission is to provide training, education, and clearinghouse services in support of public transportation and quality of life in the United States. Training is available to public transportation agencies, metropolitan planning organizations (MPOs), state departments of transportation, and other agencies providing transportation services.

Transit Cooperative Research Program
C/O American Public Transportation Association
1666 K Street NW, 11th Floor
Washington, DC 20006
202-496-4800
www.TCRPonline.org

The Transportation Cooperative Research Program (TCRP) is your ticket to information central. Practical research that yields near term results can do much to help—by solving operational problems, adoptions of useful technologies from related industries, and, in general, finding ways for public transportation to be innovative. Funded by DOT and FTA, the program places primary emphasis on putting the results in the hands of organizational and individuals that can use them to solve problems. The information is easily accessible through print, Web documents, CD ROMS, and diskettes, and it is free through the American Public Transportation Association's TCRP Dissemination Center.

Multi-State Technical Assistance Program
C/O American Association of Highway and Transportation Officials

444 North Capitol Street NW, Suite 249
Washington, DC 20001
Telephone: 202-624-3625
FAX: 202-624-3625
www.mtap.org

The purpose of Multi-State Technical Assistance Program (MTAP) is to provide a forum through which state-level public transportation agencies can communicate with each other about federal transit regulations, grant program management, and technical issues pertaining to everyday administration of public transportation service. MTAP was developed to benefit the member states as well as their federal program counterparts and local transit operators. Networking among the states is conducted through two annual meetings, peer-to-peer assistance, conference calls, and electronic communication. MTAP is administered by the American Association of State Highway and Transportation Officials (AASHTO).

APPENDIX D

RELATIONSHIP BETWEEN COORDINATED PLANNING AND METROPOLITAN AND STATEWIDE PLANNING (TABLE)

<p>Coordinated Public Transit - Human Services Transportation Plan</p>	<p>49 U.S.C. 5310 requires preparation of a locally developed, coordinated public transit-human services transportation plan (coordinated plan) for all FTA human service transportation programs.</p> <p>The coordinated plan is required to be developed and approved through a process that includes participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human service providers; and other members of the public. The services funded will be coordinated with transportation services assisted by other federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services to the maximum extent feasible. This plan includes:</p> <ul style="list-style-type: none"> • An assessment of available services that identifies current transportation providers (public, private, and nonprofit); • An assessment of transportation needs for individuals with disabilities, seniors, and people with low incomes; • Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to improve efficiencies in service delivery; and • Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified. <p>The coordinated plan serves as the foundation for the program of projects and should be integrated into the metropolitan and statewide transportation planning processes and documents to demonstrate local policy support and federal fund eligibility.</p>
<p>Metropolitan Transportation Plan or Statewide Long-Range Transportation Plan</p>	<p>The metropolitan transportation plan (MTP) is the official multimodal transportation plan that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process. The MTP represents the consensus of state and local officials in metropolitan areas of long-range (no less than twenty years) policies and investment priorities for the transportation system. The MTP includes both long-range and short-range program strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods.</p> <p>The statewide long-range transportation plan is a comparable plan including rural portions of the state as well as the MTP.</p> <p>The MTP or statewide long-range transportation plan has several elements, for example:</p> <ul style="list-style-type: none"> • Identify policies, strategies, and projects for the future; • Determine project demand for transportation services over twenty years; • Focus at the systems level, including roadways, transit, nonmotorized transportation, and intermodal connections;

	<ul style="list-style-type: none"> • Estimate costs and identify reasonably available financial sources for operation, maintenance, and capital investments; and • Articulate regional land use, development, housing, mobility, and employment goals and plans.
	<p><i>Connections to the coordinated plan: Projects or strategies serving human service transportation needs over the twenty-year planning horizon should be referenced in the MTP or statewide long-range transportation plan, by direct inclusion or by explicit reference to the coordinated plan.</i></p>
<p>Transportation Improvement Program</p>	<p>The transportation improvement program (TIP) is a prioritized, financially constrained four-year program of federally supported projects addressing the most immediate implementation priorities from the MTP. The TIP is developed and adopted by the MPO as part of the metropolitan transportation planning process, thereby representing the consensus of state and local decision makers for allocating funds among the various capital and operating needs of the area.</p> <p>Under federal law, the TIP:</p> <ul style="list-style-type: none"> • Covers a minimum four-year period of investment and is updated at least every four years; • Is realistic in terms of available funding (known as a fiscally constrained TIP) and is not just a “wish list” of projects; • Is incorporated into the statewide transportation improvement program (STIP); and • Has projects that are drawn from, or consistent with, the MTP. <p><i>Connections to the coordinated plan: All strategies proposed for funding under FTA’s human services transportation programs are required to be listed in the TIP, which may include discrete projects or more aggregated program-level information. For example: a nonprofit seniors vanpool service could be listed in the TIP if it received a Section 5310 funding federal grant, or the TIP may just reference the amount of Section 5310 funding available to the area on an annual basis.</i></p>

<p>Statewide Transportation Improvement Program</p>	<p>The statewide transportation improvement program (STIP) is a statewide prioritized, financially constrained four-year program of federally supported projects that is consistent with the statewide long-range transportation plan, MTPs, and TIPs. Joint approval by FTA and FHWA of the STIP renders the projects, programs, and strategies contained eligible for funding under FTA and FHWA programs.</p> <p>Under federal law, the STIP:</p> <ul style="list-style-type: none"> • Covers a minimum four-year period of investment and is updated at least every four years; • Is realistic in terms of available funding (known as a fiscally constrained STIP) and is not just a “wish list” of projects; and • Contains the projects, strategies, and programs of TIPs from throughout the state, as well as projects, programs, and strategies from non-metropolitan areas. <hr/> <p><i>Connections to the coordinated plan: All strategies proposed for funding under FTA’s human services transportation programs are required to be listed in the STIP, which may include discrete projects or more aggregated program-level information. For example: a nonprofit seniors vanpool service could be listed in the STIP if it received Section 5310 funding federal grant, or the STIP may just reference the amount of Section 5310 funding available to the area on an annual basis. Strategies and/or projects that receive federal funding are required to be listed in the STIP—verbatim or by reference to—the project listing included in TIPs of metropolitan areas of the state.</i></p>
<p>Program of Projects</p>	<p>FTA requires a program of projects for processing Section 5310 grants.</p> <p>The POP is submitted to FTA for approval with the electronic grant management grant application. The POP lists the subrecipients and indicates whether they are private nonprofit agencies, governmental authorities, or private operators of public transportation services and, in the case of a state application, designates whether they serve urbanized or rural populations, and identifies any Indian tribal agencies. In addition, the POP includes a brief description of the projects, total project costs, and the 5310 share for each project. The amount of funds required for planning, technical assistance, and program administration is also laid out in the POP.</p>

APPENDIX E

SAMPLE DESIGNATED RECIPIENT LETTER

Governor of ABC State

December 7, 2012

Regional Administrator
Federal Transit Administration
Regional Office

Dear Regional Administrator,

In compliance with changes required by Moving Ahead for Progress in the 21st Century (MAP-21), the Governor of ABC State has officially designated a recipient to administer the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. 5310). The **Regional Transportation Authority (RTA)** will serve as the designated recipient for the urbanized area for Federal Transit Administration Section 5310 funds. This designation was endorsed by the ABC MPO Transportation Policy Committee, acting as the designated policy board of the MPO on December 6, 2012.

As the designated recipient, the RTA will be responsible for administering the program by ensuring that all subrecipients comply with Federal requirements, notifying eligible local entities of funding availability, developing a program selection processes, determining project eligibility, and developing the yearly program of projects. We thank RTA for their leadership and ongoing contribution in supporting our area's efforts to reduce congestion, enhance safety, and provide individual mobility.

Should you have any questions related to this matter, I am available to assist you.

Sincerely,

GOVERNOR

APPENDIX F

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

APPENDIX G

REFERENCES

- a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
- b. Federal-aid highway and surface transportation laws, Title 23, United States Code.
- c. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005).
- d. Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998).
- e. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, Dec. 18, 1991).
- f. Federal Public Transportation Act of 1978 (Pub. L. 95–599, Nov. 6, 1978).
- g. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*
- h. Government Performance Results Act of 1993, as amended (Pub. L. 103-62, 107 Stat. 285, Aug. 3, 1993).
- i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
- j. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
- k. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e.
- l. Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*
- m. Section 404 of the Clean Water Act, as amended, 33 U.S.C. 1344.
- n. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. 303.
- o. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f.
- p. Internal Revenue Code, Nonprofit Organizations, 26 U.S.C. 501.
- q. Lobbying Restrictions, 31 U.S.C. 1352.
- r. Disadvantaged Business Enterprises, 23 U.S.C. 101 note.

- s. Congressional Declaration of Policy Respecting Insular Areas, 48 U.S.C. 1469a.
- t. Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*
- u. Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*
- v. Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*
- w. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*
- x. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
- y. Federal Funding Accountability and Transparency Act of 2006 (Pub. L 109–282, 120 Stat. 1186, Sept. 26, 2006).
- z. Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*
- aa. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 701 *et seq.*
- bb. U.S. DOT regulations, “Organization and Delegation of Powers and Duties,” 49 CFR part 1.
- cc. U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR part 18.
- dd. U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19.
- ee. U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR part 20.
- ff. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.
- gg. U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR part 24.
- hh. U.S. DOT regulations “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- ii. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26.

- jj. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 27.
- kk. U.S. DOT regulations, “Government wide Debarment and Suspension (Nonprocurement),” 49 CFR part 29.
- ll. U.S. DOT regulations, “Government wide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR part 32.
- mm. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR part 37.
- nn. U.S. DOT regulations, “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR part 38.
- oo. U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR part 40.
- pp. FTA regulations, 49 CFR Subtitle B Chapter VI.
- qq. Joint Federal Highway Administration/FTA regulations, “Planning Assistance and Standards,” 23 CFR part 450 and 49 CFR part 613.
- rr. Joint Federal Highway Administration/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR part 771 and 49 CFR part 622.
- ss. Federal Motor Carrier Safety Administration regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR part 382.
- tt. U.S. Department of Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR part 205.
- uu. U.S. Environmental Protection Agency regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR part 93.
- vv. Executive Order 12372, “Intergovernmental Review of Federal Programs,” July 14, 1982.
- ww. Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” Feb. 11, 1994.
- xx. Executive Order 13330, “Human Service Transportation Coordination,” Feb. 24, 2004.
- yy. Office of Management and Budget Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” codified at 2 CFR part 225, Aug. 31, 2005.

- zz. Office of Management and Budget Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” Oct. 29, 1992.
- aaa. Office of Management and Budget Circular A-122, “Cost Principles for Non-Profit Organizations,” codified at 2 CFR part 230, Aug. 31, 2005.
- bbb. Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” June 23, 2003.
- ccc. U.S. Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377 (Apr. 15, 1997).
- ddd. U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (Dec. 14, 2005).
- eee. FTA Circular 4220.1E, “Third Party Contracting Requirements,” June 19, 2003.
- fff. FTA Circular 4702.1, “Title VI Program Guidelines for FTA Recipients,” Oct. 1, 1998.
- ggg. FTA Circular 5010.1C, “Grant Management Guidelines,” Oct. 1, 1998.
- hhh. FTA Circular 9030.1C, “Urbanized Formula Program Guidance and Application Instructions,” Oct. 1, 1998.
- iii. FTA Circular 9040.1F, “Rural Area Formula Program Guidance and Application Instructions,” Apr. 1, 2007.
- jjj. Federal Highway Administration Notice N 4540.12, Attachment 1 (Mar. 17, 1992).
- kkk. U.S. General Services Administration, “Excluded Parties List System,” www.epls.gov.
- lll. FTA Master Agreement FTA MA(13), Oct. 1, 2006.
- mmm. FTA ECHO-Web System Operations Manual,
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**Rules and Regulations by the
Colorado Department of
Transportation for Implementation
of the Section 5310 Program of the
Federal Transit Laws, 49 U.S.C.
Section 5300 et seq, 2 CCR 603-2**

RULES AND REGULATIONS
BY THE
COLORADO DEPARTMENT OF TRANSPORTATION
FOR
IMPLEMENTATION OF THE SECTION 5310 PROGRAM
OF THE FEDERAL TRANSIT LAWS,
49 U.S.C. SECTION 5300 ET SEQ,
2 CCR 603-2 (THE RULES)

I. PURPOSE

The purpose of the Rules is to prescribe procedures for application to the Department for federal assistance for transportation projects designed to meet the special needs of elderly and disabled persons as authorized by Section 5310 (formerly Section 16(b)(2) of the Federal Transit Laws, 49 U.S.C. Section 5300 et seq.

Section 5310 offers federal assistance to private nonprofit organizations and certain public bodies for the purchase of capital equipment for the purpose of providing transportation services to elderly and disabled persons by way of a grant program. The Section 5310 program is administered by the State pursuant to the U.S. Department of Transportation's Federal Transit Administration (FTA) Circular 9070.1C, December 23, 1992, (FTA C 9070.1C) entitled "Section 5310 Capital Assistance Program Guidance."

II. AUTHORITY

The Rules are promulgated by the Department pursuant to the specific statutory authority of Sections 43-1-601 and 602 C.R.S. (1984).

A. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the January, 1990 revision to the Rules is hereby incorporated by reference.

B. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the February, 1992 revision to the Rules is hereby incorporated by reference.

C. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the May, 1996 revision to the Rules is hereby incorporated by reference.

Copies of the Statements of Basis, Specific Statutory Authority, and Purpose described above shall be available for copying or public inspection during regular business hours from the Transit Unit Manager, Colorado Department of Transportation.

III. DEFINITIONS

The following definitions shall apply to the Rules.

A. "Capital expense" means facilities or equipment with a unit cost over \$500.00 and a useful life of more than one year, including buses and other vehicles, and related equipment needed to support the provision of transportation services.

B. "Department" means the Colorado Department of Transportation.

C. "Disabled" means persons having physical or mental impairments which prevent such persons from driving automobiles or using conventional mass transit.

D. "Elderly" means all persons age 60 or older.

E. "Interagency Advisory Committee" (IAC) means the committee which evaluates and scores applications for FTA funding. The committee shall consist of representatives of State of Colorado agencies, including but not limited to, the Department of Local Affairs, the Department of Transportation, the Department of Human Services, and the Public Utilities Commission.

F. "Metropolitan Planning Organization" (MPO) means an organization within the State of Colorado designated by agreement among the units of general local government and the Governor, charged to develop the transportation plans and programs in a metropolitan area pursuant to 23 U.S.C. 134, as further described in 23 C.F.R. 450.104(b)(3).

G. "Multi-year application" means a grant application which covers a two or three year period.

H. "Program of Projects" means the annual summary of projects for transportation services to elderly and disabled persons recommended by the Department for receipt of federal Section 5310 funds and submitted by the Department to FTA for approval.

I. "Private nonprofit organization" means a private organization incorporated in the State of Colorado as a not-for-profit corporation, and which can demonstrate that it is recognized by the U.S. Internal Revenue Service as a private not-for-profit corporation.

J. "Project" means transportation services which an applicant proposes to provide within a given area, and has described in its application.

K. "Regional Transportation Plan" means a technically based, twenty-year plan designed to meet the future mobility needs for a Transportation Planning Region including, but not limited to, anticipated funding, priorities, and implementation plans, pursuant to, but not limited to, 43-1-1103(1) and (2) C.R.S.(1991), as further described in 43-1-1102(6) C.R.S.(1991).

L. "State Management Plan" (SMP) means the current document that is developed by the Department and submitted to FTA on a periodic basis and that describes those details of the Department's policies and procedures for administering the Section 5311 program which are not included in the Rules.

M. "Statewide Transportation Plan" means the twenty-year comprehensive, intermodal state transportation plan adopted by the Transportation Commission pursuant to the provisions of 43-1-1103(5), C.R.S.(1991), as further described in 43-1-1102(8) C.R.S.

N. "Transit Development Program" (TDP) means the document adopted by duly authorized public officials within an identified geographical area for a specific time period and accepted by the Department which identifies: general and specialized transit needs and coordination of transit

services within the service area; existing transit services and proposed additional services; capital and operating costs of the proposed services; existing and proposed sources of funding and an operations plan.

O. "Transportation Improvement Program" (TIP) means a staged multi-year program of transportation improvements including an annual or biennial element.

IV. APPLICATION PROCEDURE

The purpose of this section is to describe the procedures concerning applications for FTA funds.

Whether annual or multi-year applications are to be submitted, the Department will notify all known transit operators in Colorado of the availability of FTA funds, requirements for requesting an application package, and the deadline to submit an application to the Department for FTA funds.

The application package will contain instructions and guidelines for completion of the application, as more fully described in the SMP. The SMP and the application package will be available upon request 45 days in advance of the application deadline, from the Department Transit Unit Manager. It is the responsibility of an interested party to request an application package and a SMP from the Department.

An application must be submitted by the deadline. The application must be completed as described in the application package. If an application is received by the Department after the deadline or is incomplete it shall be rejected and not considered for funding.

V. THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY

The purpose of this section is to describe the threshold criteria the Department will use to determine if an applicant will be eligible for funding. The threshold criteria are more fully described in the SMP.

An applicant must comply with all the following threshold criteria:

A. Applicants for Section 5310 funds must be one of the following:

1. Private nonprofit organization.
2. Public body that meets at least one of the following qualifications:

- a. The public body must be approved by the Department to coordinate services for elderly persons and persons with disabilities.

In order for the Department to approve a public body to coordinate services, the public body must demonstrate the following:

- 1.) that it has established a formal working relationship with those with whom it will coordinate;

- 2.) that its coordination plan will integrate both ADA and non-ADA eligible services; and,

- 3.) that its coordination plan will not only utilize proposed capital equipment purchases in an effective manner, but also will utilize capital equipment purchased with FTA funds awarded in the past.

- b. The public body must certify to the Department that no nonprofit corporations or associations are readily available to provide the services described in the Project.

In order for a public body to certify that no nonprofit corporations or associations are readily available to provide this Project service, the public body must notify all such known organizations in its service area by letter and by means of a legal notice in a newspaper of general circulation. Any nonprofit organization which indicates an interest in applying must prove it can readily provide the services described in the local TDP. If the Project cannot be completed by a private nonprofit

organization, the public body may be the applicant.

B. An applicant must ensure that a current Transportation Development Program (TDP) or a Regional Transportation Plan (RTP) which contains the elements of a TDP, is on file with the Transit Unit Manager, Colorado Department of Transportation, by the application deadline. To be current, the TDP shall cover a minimum time period of six years including the year for which funds are requested, and also include a twenty-year element unless otherwise approved by the Department. The Project services for which an applicant requests Section 5310 funding must have been described in and consistent with the TDP, or a RTP which contains the elements of a TDP, in order to be eligible.

C. An applicant providing services in an urbanized area must comply with the following:

1. An applicant must certify that the applicant will take all actions necessary to present the Project to the Metropolitan Planning Organization (MPO) and ensure that the MPO will include the Project(s) in the Transportation Improvement Program (TIP) for that urbanized area.

2. An applicant will take all actions necessary to demonstrate that there are no FTA Section 5307 and/or 5336 or Section 5308 and/or 5338 funds available for the Project(s).

D. An applicant must demonstrate in the application the fiscal and managerial capability to manage the funds being requested. To determine compliance with this criterion, the Department will consider the following factors:

1. Experience managing public funds.
2. Ability to maintain an accounting system that is consistent with generally accepted accounting principles, and that segregates funds.
3. Ability to establish reasonable safety and risk management procedures.
4. Demonstrated ability to comply with regulations and contractual requirements.

5. Any other relevant factors.

When considering such factors, the Department may also consider, in its discretion, the guidelines described in the SMP.

E. An applicant must ensure that all forms, assurances and resolutions required by the application are signed by the appropriate officer or individual with authority to legally bind the applicant.

F. An applicant requesting funding for vehicles must demonstrate in the application the ability to maintain such vehicles. To determine compliance with this criterion, the Department will consider the following factors:

1. Ability to follow the vehicle manufacturers' minimum maintenance requirements.
2. Ability to provide regularly scheduled preventive maintenance.
3. Ability to provide unscheduled maintenance.
4. Ability to maintain records of all maintenance.
5. Any other relevant factors.

When considering such factors, the Department may also consider, in its discretion, the guidelines described in the application package.

G. An applicant must demonstrate that the local match will be available when required.

H. An applicant must submit a completed application to the Department no later than 5:00 p.m. on the deadline date specified in the application package.

I. An applicant must provide transportation to elderly persons and persons with disabilities.

Compliance by an applicant with all threshold eligibility criteria does not obligate the Department to award funds, but only allows the applicant to be evaluated by the Department for consideration for available funding based upon the evaluation criteria described in Section VI. of the Rules.

VI. EVALUATION CRITERIA

The purpose of this section is to describe the evaluation criteria which will be used by the Department to determine whether an eligible applicant will be funded and to assist in determining the level of funding to be awarded. Guidelines, instructions, and details concerning such evaluation criteria are described in the application package.

The Department will use the following criteria to evaluate eligible applicants.

- A. Financial Justification, i.e. the extent to which the applicant demonstrates justification for capital funds, based upon:

1. The lack of funding resources available to an applicant.

2. The concerted, good faith effort to obtain funds for the Project from other sources.

3. The economic condition of the area described in the Project.

4. Other relevant factors.

This criterion will have a value of 30% out of a total of 100%.

B. Service Justification, i.e. the extent to which the applicant demonstrates justification for the Project, based upon:

1. Lack of appropriate transportation alternatives as demonstrated in the local TDP.

2. The transit dependency of the population in the geographical area of the Project.

3. Whether the Project service: is offered to a cross section of the elderly population and to both the elderly and non-elderly disabled population; serves the needs of both those covered and those not covered by the Americans with Disabilities Act (ADA); is offered for a variety of trip purposes; and, is provided over a wide geographic area.

4. Whether the Project is provided by the applicant on behalf of other organizations.

5. The type(s) and total number(s) of transit riders served and trips provided.

6. Other relevant factors.

This criterion will have a value of 30% out of a total of 100% .

C. Coordination of Services, the extent to which the applicant demonstrates coordination of services, based upon:

1. Coordination of Project services with other public and private transit providers, social services agencies, and community organizations.

2. Reduction of the total amount of miles traveled, operating expenses incurred, number of vehicles used, and lead time for passenger scheduling in administering and operating the Project, as a result of such coordination. This criterion applies only to a Project which primarily offers curb to curb, demand responsive services.

3. The absence of duplication or overlap of the Project and transit services provided by others.

4. Other relevant factors.

This criterion will have a value of 40% out of a total of 100%.

VII. SCORING PROCEDURES

The purpose of this section is to describe the general procedures to score annual and multi-year applications. In using such procedures, the Department and the IAC members may consider the guidelines described in the SMP.

A. The Interagency Advisory Committee (IAC) members will assign quantitative scores to the applicant based upon:

1. An evaluation of applicants' responses to the criteria described in Section VI, of the Rules.

2. The values assigned to such criteria described in Section VI, of the Rules.

The following scoring procedures will be used. Scores of 0, 1, 2, or 3 will be assigned by the IAC members to each criterion described in Section VI for each application, based upon the judgement of the IAC members of whether and the extent to which each application meets and satisfies

such criterion. In making such judgements, the IAC members may, at their discretion, consider the guidelines described in the SMP concerning such criteria. The scores assigned by IAC members will be averaged to arrive at a final score. An applicant must receive a final score of 1.45 out of a maximum score of 3 to be considered by the Department for funding.

B. The Department, in consultation with the IAC shall assign quantitative scores of 0, 1, 2, or 3 for each capital expense request in each application, based upon the following equipment need criteria:

1. The demonstrated need to replace or rehabilitate equipment, based upon the age, condition, and odometer reading of the respective equipment. If expansion equipment is requested, the demonstrated need for expansion equipment, based upon a review of ridership estimates and patterns.
2. The lack of suitable alternatives to obtain or rehabilitate capital equipment.
3. The relative operating effectiveness of the equipment to be obtained or rehabilitated, based upon hours per day in operation, days per week in operation, and passengers per miles per hours per capita.
4. Other relevant factors.

C. The Department will develop a ranked list of capital expense awards based upon the combined scores described in A. and B. above. The weighting of the scores for each capital expense request will be 60% for equipment need and 40% for evaluation score.

VIII. FUNDING PROCEDURES

The purpose of this section is to identify the procedures that the Department, in consultation with the IAC, will use for an annual or multi-year application to recommend awards of available FTA funds. These procedures may be further described in the SMP.

A. Annual Application

When the Department uses an annual application, it shall list proposed awards in its Program of Projects based on the amount of funding actually available for that year. Awards for the projects described in that program will be made subject to FTA approval.

B. Multi-year Application

1. When the Department uses a multi-year application, in year one of that application the Department will do the following.

a. List proposed awards for that year, based on the amount of funding actually available for that year, as described in A. above.

b. List the projects it anticipates funding in any succeeding year(s) of that application, based on the amount of funding estimated by the Department to be available for those years. Such list shall not be a commitment to provide funds in those years.

2. In any succeeding year(s) of that application, the Department also will do the following.

a. Require applicants for funding in those years to provide an update in those years of certain information contained in their original application.

b. Determine whether each of the projects listed in year one are still eligible in those succeeding years.

c. Consider (based on their ranking) capital expenses applied for in year one but not funded in year one, concurrently with capital expenses applied for in year one for a succeeding year. In that ranking, an applicant's evaluation score will be used for all three years, but a

separate capital expense score will be assigned each year.

d. Adjust the listed projects based on the then current need, or on compliance with conditions established by the Department, or on the appropriation and budgeting and availability of funds therefor.

e. Develop a Program of Projects in each of those years to identify the projects to be actually funded in that year.

C. The federal share payable for Capital Expense Awards shall not exceed 80% of the eligible capital expenses. The local share for capital expenses must be provided by the applicant in cash from sources other than federal funds.

IX. APPEAL PROCEDURE

The Department shall notify all applicants of its annual program of projects. If an application is denied, the grounds therefore shall be given to the applicant. The notice shall be deemed received by the applicant three days after the date of mailing of the notice. An applicant that is aggrieved by a Department determination under the Rules may request a hearing pursuant to the provisions of Section 24-4-104, C.R.S., as amended, of the State of Colorado Administrative Procedures Act. If a hearing is requested, it will be conducted in accordance with 24-4-105 C.R.S., as amended. The request for a hearing must be made within 60 calendar days after an applicant is notified of the Department's decision.



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS *A2. Section 5311*

Draft August 2019

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- Flowchart A2-7. Personal Services Procurement
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- Flowchart A2-9. Project Closeout

Additional Attachments

FTA Circular: FTA C 9040.1G: Formula Grants for Rural Areas: Program Guidance and Application Instructions

Rules and Regulations by the Colorado Department of Transportation for Implementation of the Section 5311 Program of the Federal Transit Laws, 49 U.S.C. Section 5300 et seq, 2 CCR 603-1

Resolution #TC-18-03-03 FTA Section 5311 and FASTER Distribution Methodology

A2. SECTION 5311, 5311(F), 5311(B)(3)

The Section 5311 Rural Public Transportation program, including its sub programs, the Section 5311(b)(3) Rural Transit Assistance Program (RTAP) and the Section 5311(f) intercity bus (ICB) program, are designed to provide administrative, operating, and capital assistance to transportation providers in rural areas (less than 50,000 population).

Documents that govern how the Colorado Department of Transportation (CDOT) administers Section 5311 funds include:

- Federal Transit Administration (FTA) Circular 9040.1G:
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Circular_9040_1Gwith_index_-_Final_Revised_-_vm_10-15-14%281%29.pdf
- FTA Website Overview: <https://www.transit.dot.gov/rural-formula-grants-5311>
- Rules and regulations by the Colorado Department of Transportation for implementation of the Section 5311 program:
<https://www.codot.gov/programs/transitandrail/transit/transit-grant-programs/grant-information/transit-unit-state-guidance-for-grants/Rules5311.pdf/view>

A2.1 Program Goals

FTA's goal of the Section 5311 program is to enhance the access of people in rural areas to health care, shopping, education, recreation, public services and employment by encouraging the development, maintenance, improvement, and use of public transportation services.

CDOT's Division of Transit and Rail (DTR) has established the following policies for its programs for general public transportation in rural areas.

- Provide quality public transportation in Colorado to meet the needs of the general traveling public, especially those without ready access to other means of transportation.
- Provide for transit needs of special groups, particularly elderly persons, persons with disabilities, minority and low-income persons, and other transportation disadvantaged persons.
- Preserve and upgrade existing transportation services and facilities, and encourage new and innovative forms of transportation.
- Ensure that private sector transportation operators, minority organizations, disadvantaged business enterprises and the public have the maximum feasible opportunity to participate in the design, provision, and evaluation of public transportation services.

- Maximize the degree of coordination at both the state and local level in the provision of transportation services.
- Ensure a fair and equitable distribution of the Section 5311 funds across the state.
- Ensure that services are made widely available and not directly or indirectly limited to a particular client or population group.

A2.2 Roles and Responsibilities

The parts of CDOT’s organization that are involved in the administration of FTA and state transit funds are listed in the following table.

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
CRBRC = Civil Rights and Business Resource Center	MPO = Metropolitan Planning Organization
DAF = Division of Accounting & Finance	OFMB = Office of Financial Management & Budget
DTD = Division of Transportation Development	STIP = Statewide Transportation Improvement Program
DTR = Division of Transit and Rail	TIP = Transportation Improvement Program
FFATA = Federal Funding Accountability and Transparency Act	TPR = Transportation Planning Region
FFR = Federal Financial Report	TRAC = Transit and Rail Advisory Committee

CDOT Organization	Role
DTR	Primary entity responsible for the management of FTA funds and for the oversight of subrecipients that are the operating entities throughout the state who perform the work.
Transportation Commission	Approves high-level policy criteria and transit metrics by which transit funds are evaluated and allocated. Adopts statewide plans related to transit, including the STIP. Approves DTR’s annual budget and recommended project awards.
Executive Director	Reviews/approves FTA award amendments and award appeals, if required
Office of Policy and Governmental Relations	Submits CDOT lobbying certifications.

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
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FFATA = Federal Funding Accountability and Transparency Act	TPR = Transportation Planning Region
FFR = Federal Financial Report	TRAC = Transit and Rail Advisory Committee

CDOT Organization	Role
DAF	<p><u>OFMB</u>: Sets CDOT’s budget structure, prepares and approves STIP, approves FTA and state transit pool funds,</p> <p><u>Accounting</u>: Enters financial information into CDOT’s financial management system (SAP), manages the drawdown of federal funds, performs the FFR and FFATA reporting.</p> <p><u>Business Office</u>: Updates STIP, manages the accounts payable functions for all subaward agreements builds budgets in SAP, approves subrecipient reimbursement request, reconciles project budgets, approves final reimbursement request to FTA.</p> <p><u>Office of Procurement</u>: Sets CDOT procurement policies, maintains master subrecipient subaward agreements, reviews and executes subaward agreements, reviews subrecipient procurement processes for compliance with federal requirements and required federal clauses.</p>
CRBRC	Develops CDOT’s civil rights programs and policies, provides DTR guidance on civil rights requirements, oversees subrecipients’ compliance with civil rights requirements in providing services and third-party contracting, maintains CDOT and subrecipients’ required civil rights documentation
Division of Audit	Approves subrecipient cost allocation plans or indirect cost rates.
Office of Communications	Issues public notices of public comment periods for statewide planning process, issues statements of project awards
CDOT DTD (supported by TRAC)	Conducts statewide planning process, coordinates with MPOs and TPRs regarding TIPs and STIP
CDOT Regions	Participate in statewide planning process, manage Region transit construction projects

DTR’s direct access to the CDOT Executive Director to perform duties and functions under CDOT and the Executive Director is established in state law CRS 24-1-127.7(3)(e), CRS 24-1-103 through 105, and CRS 43-1-117.5.

Federal law, 49 Code of Federal Regulations (CFR) 26.25, requires that CDOT's Disadvantaged Business Enterprise (DBE) Liaison Officer has direct, independent access to the Chief Executive Officer concerning DBE program matters. CDOT meets this requirement under a notice of Assurance of Direct and Independent Access executed January 2016 by CDOT's Executive Director.

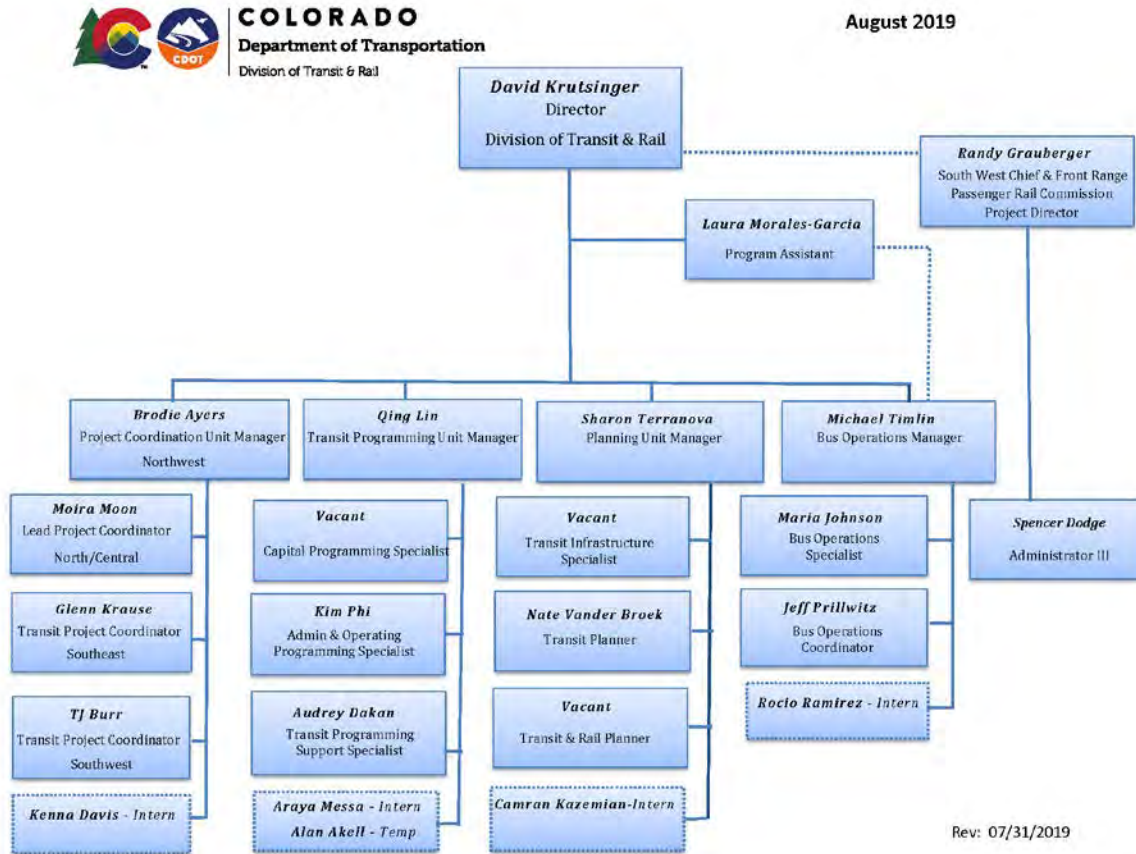
A2.2.1 Division of Transit and Rail

The DTR organization is shown in Figure A2.1.

Individual units within DTR have the following general responsibilities:

- **Planning Unit:** This group oversees the statewide planning process related to transit, and oversees distribution of federal and transit funds.
- **Programming Unit:** This group conducts and oversees the application process, award of projects, development and execution of the subaward agreement, and budgeting of federal and state funds.
- **Project Coordination Unit:** This group provides oversight and technical assistance to subrecipient agencies during the project and oversees the project close-out process.
- **Bus Operations Unit:** This group is responsible for regional, interregional, and ICB programs (Bustang and Outrider operations, Funding Advancement for Surface Transportation and Economic Recovery Act (FASTER) Operating assistance, and FTA 5311(f) programs).

Figure A2.1. DTR Organizational Chart



A2.2.2 Advisory Committees

There are several advisory committees that participate in CDOT’s transit and rail planning processes, as described in the following sections. As required by the FTA, CDOT encourages minority participation in its advisory committees.

A2.2.2.1 Transportation Commission and the Transit and Intermodal Committee

The state’s transportation system is managed by CDOT under the direction of the Transportation Commission. The commission comprising 11 commissioners who represent specific districts. Each commissioner is appointed by the Governor, confirmed by the Colorado Senate, and serves a 4-year term. To provide continuity, the commissioners’ term expiration dates are staggered every 2 years. Under state law, the powers and duties of the Transportation Commission include:

- Formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state.
- Advising and making recommendations to the Governor and the General Assembly relative to transportation policy; and promulgating and adopting CDOT's budgets and programs, including construction priorities and approval of extensions or abandonments of the state highway system. The General Assembly appropriates the administrative budget for CDOT.

The Transit and Intermodal Committee is one of three Standing Committees created by the Transportation Commission, as set forth in 2CCR 601-11, Rules Governing Practice and Procedures of the Transportation Commission of Colorado (<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6937&fileName=2%20CCR%20601-11>). The Chairman of the Transportation Commission with consent of the full Commission, appoints at least three but no more than five members of the Commission who meet periodically with executive management and the DTR Director to review transit and rail policies and practices.

A2.2.2.2 Statewide Transportation Advisory Committee (STAC)

The Statewide Transportation Advisory Committee (STAC) advises CDOT and the Transportation Commission on the needs of the transportation system in Colorado and reviews and comments on all Regional Transportation Plans and the Statewide Transportation Plan. STAC membership includes Colorado's 15 urban and rural Transportation Planning Regions (TPR) and 2 Indian Tribes. Voting representatives are selected by the 5 Metropolitan Planning Organizations (MPO), 10 rural Regional Planning Commissions, plus the Southern Ute and the Ute Mountain Ute Indian Tribes in southwest Colorado.

<https://www.codot.gov/programs/planning/planning-partners/stac.html>

A2.2.2.3 DTR's Transit and Rail Advisory Committee

The Transit and Rail Advisory Committee (TRAC) works with DTR to develop and promote the DTR's vision, policies, and priorities for transit and rail services in Colorado. The committee's 18 members are representatives from public and private transit providers, Class I and Shortline railroads, interest groups, CDOT TPRs, counties, cities and the general public. TRAC subcommittees are formed as needed to address specific issues—for example, FTA Sections 5310/5311 distribution, performance asset management, Bustang/Rural Regional Bus, and the Statewide Transit Plan (SWTP) implementation.

<https://www.codot.gov/about/committees/trac>

A2.2.2.4 Southwest Chief & Front Range Passenger Rail Commission

The Southwest Chief & Front Range Passenger Rail Commission was created by Senate Bill 17-153 in May 2017. It has 11 voting members (MPOs, freight railroads, Regional Transportation District, passenger rail advocacy, local leaders, and others) and 3 non-voting members

(Amtrak, Cheyenne Chamber of Commerce, and CDOT). It has two purposes: (1) to preserve and improve the existing Amtrak Southwest Chief service through track maintenance and other improvements, and (2) to facilitate the development of a passenger rail service along the greater I-25 corridor. Information about this Commission is located at <https://www.codot.gov/about/southwest-chief-commission-front-range-passenger-rail>.

A2.3 State and Local Coordination

Every 5 years DTR completes an SWTP to establish a framework for creating an integrated statewide transit system that meets the mobility needs of Coloradans, while minimizing duplication of services and leveraging limited funds. The plan also meets state and federal planning requirements and guides CDOT's transit investments, project processes, and actions over the short-, mid-, and long-term. The SWTP includes needs, funding, and recommendations across the entire state. The Plan also integrates Regional Transit Plans for each of the state's ten rural TPRs, inclusive of coordinated public transit Human Services Transportation Plans. Local transit agencies in rural areas that are not part of an MPO are encouraged to work with the appropriate rural planning region regarding transit needs. The SWTP is located at: <https://www.codot.gov/programs/colorado-transportation-matters/other-cdot-plans/transit/transit>.

Part of DTR's application process requires the subrecipient to demonstrate that the project has been coordinated at the local level through Regional Coordinating Councils or Local Coordinating Councils.

CDOT's Chief Engineer participates in a statewide Strategic Action Planning Group on Aging (SAPGA), which makes recommendations to the governor and state legislature about issues related to an aging population—transportation included.

A2.4 Eligible Recipients

Eligible subrecipients include states and local governmental authorities, nonprofit organizations, and operators of public transportation that receive FTA funds indirectly through a recipient.

The FTA Section 5311 program is available to public and private nonprofit agencies, as well as tribal governments, providing public transportation in rural areas.

The recipient or subrecipient must operate a year-round general public demand response or fixed route service in rural regions of Colorado, clearly promoting that service as open to the public.

CDOT expects that new applicants will have recently completed a study that demonstrates the need for transit service and that explores alternatives for expanding service under an

existing transit provider. The new applicant must provide operational plans and a multiyear budget that forecasts operational, administrative, and capital expenses, along with a long-term funding source. DTR staff are available to assist a new applicant in completing the required documentation.

All applicants are required to meet certain minimum (threshold) criteria to be considered for an award of funds. A new applicant (potential subrecipient) must submit a New Applicant Questionnaire that includes an overview of the agency's transit services, legal standing, financial management and capacity, technical capacity, asset management plan, procurement procedures, and civil rights policies. The agency must demonstrate that it meets minimum requirements in financial and managerial capability and capacity for managing awarded funds, as well as demonstrate that it has the resources necessary to operate the project on an ongoing basis. The applicant must also be willing to follow federal and state guidelines for third-party procurements. Should an applicant not meet these threshold criteria, DTR is available to work with the agency to meet the criteria and become eligible to apply for funds.

A2.5 Eligible Services and Services Areas

Service types include fixed-route, demand responsive, and deviated fixed service. In the application, applicants are required to select one of the following application types:

- **General public rural operating/administrative.** This funding is for rural agencies (less than 50,000 population) that provide transit service that is available to the general public. Agencies may seek administrative (reimbursed up to 80% of eligible costs) and operating (reimbursed up to 50% of eligible costs after deducting operating revenues). The recently approved Section 5311 Funding Distribution Methodology (see the Additional Attachments to this document) outlines the eligible funding amount for each agency. The applicant is asked to enter the amount of funding eligible to the agency in 2020, and then provide a budget to match this amount.
- **Purchased transit services for general public rural operating.** This funding is for rural agencies (less than 50,000 population) that contract out all of their operating service. The applicant is asked to enter the amount of funding eligible to the agency in 2020 and enter information about the contractor/subcontractor, such as the name of the provider, type of service provided, location of service, and estimated contract amount.

A2.6 Eligible Assistance Categories

Eligible project costs under the Section 5311 program are determined in accordance with Office of Management and Budget (OMB) Circular A-875, OMB Circular A-122, and 2 CFR PART 200 subparts A-F, FTA Circular 9040.1G, and guidance issued by DTR. Project costs are categorized as capital, operating, or administrative expenses.

FTA Section 5311 eligible operating activities are as follows:

- Operating expenses may include, but are not limited to: fuel, oil, driver salaries and fringe benefits, dispatcher salaries, and fringe benefits.
- Administrative costs may include, but are not limited to, general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing.

A2.7 Local Share and Local Funding Requirements

The Section 5311 program requires a local/state match. Eligible sources of the local match are outlined in FTA Circular C 9040.1G.

For FTA Section 5311 Operating projects, the local match is 50% of the net operating costs. Only net operating expenses—i.e., those expenses that remain after the provider subtracts operating revenues (e.g., farebox revenues, rider donations, bus advertising) from eligible operating expenses—are eligible for assistance. For Section 5311 Administration projects, the required local match percentage is 20% of expenses.

The federal share of eligible capital projects may not exceed 80%, and may not exceed 50% for operating assistance. For mobility management projects, the required local match percentage is 20% of expenses.

The operator must identify the type and amount of the in-kind match in the project budget submitted as part of its application. The in-kind match is approved by DTR as part of the subaward agreement and submitted to the FTA as part of the documentation for the FTA Award Application.

Local match may consist of any non-Department of Transportation (DOT) federal funds, such as Medicaid, Older Americans Act funding, or other funds that may be used for transportation; local tax revenues; local general operating funds; donations; or in-kind goods and services.

Local match may only be used once; that is, the same Older Americans Act funds may not be used for a Section 5311 application and a 5310 application. Local entities may choose to overmatch, meaning their portion of the total project budget may exceed 50% for operating and 20% for administration or mobility management projects.

In-kind goods and services may be used for the local share. If in-kind goods and services used for local match, they must have direct relevance to the project being matched. For example, volunteer driver hours may be used as part of the local match under 5310 operating if the volunteer drivers are providing service to seniors and persons with disabilities.

Fuel in lieu of contributed funding is not considered in-kind when the fuel is used solely for the provision of transportation under one of the operating projects. The cost of the fuel is considered contributed income and may be used as cash local match.

A2.7.1 Sliding Scale Share

Colorado is one of 14 states under 23 United States Code (U.S.C.) 120(b) that are allowed to have higher federal share rates for capital projects under the Section 5311 program. Because of the limited amount of funding available and because the state faces an increased demand for capital and operating assistance, CDOT policy is to not use the sliding scale match and to limit the federal share to the standard match for all Section 5311 projects.

A2.8 Project Selection Criteria and Method of Distributing Funds.

A2.8.1.1 Application Evaluation and Scoring

Section 5311 funds are announced through the DTR's annual Call for Capital Projects and Call for Local, Administrative, Operating, and Mobility Management Projects.

DTR staff reviews the applications to ensure that minimum eligibility requirements are met. Any applicant not meeting the criteria is contacted by DTR and given the opportunity to respond to the finding of ineligibility.

An evaluation committee made up of CDOT staff (DTR, Division of Transportation Development (DTD), the Policy and Government Relations Office, Civil Rights & Business Resource Center) evaluates and scores applications. In selecting projects for funding, consideration is given to geographic distribution.

The evaluation committee has two to three weeks to review applications and prioritize projects. The committee compiles scores and puts together a recommended prioritized award list.

After the committee evaluates the project according to the criteria included in the Notice of Funding Availability, each project is ranked according to its project type and score. Because of limited available funding, CDOT continues to put an emphasis on a fix-it-first approach—that is, giving higher priority to the replacement and refurbishment of buses, facilities, and equipment, rather than on new or expansion capital or planning projects. This does not mean, however, that expansion or planning projects are not funded—only that an applicant seeking funding for expansion projects must make a very strong case, with documented justification and evidence of sustainability, in order for the project to be considered.

In spring 2018, CDOT's Transportation Commission approved an updated funding methodology for the Section 5311 program that will be used for Fiscal Year (FY) 2019. The new

methodology was conceived by a subcommittee of the TRAC, which consisted of transit providers and other interested transit organizations. The new methodology consists of the following steps:

1. Divide the operating funds into two pools: the “Base” pool (Section 5311 funds, currently around \$8 million) and the “Equity” pool (\$2 million in FASTER funds).
2. Funds in the Base pool are allocated according to agency size, continuing what was approved in spring 2017.
 - Agencies are divided into five categories as determined by the agency’s size (calculated using the agency’s revenue miles, revenue hours, number of trips, and budget).
 - Depending on the agency’s size, the agency would be eligible to receive a base award up to a specific percentage of their operating budget, known as their budget factor. The table below shows the five categories and their associated budget factors. As shown in the table, agencies in the Very Small category will receive a base award equal to 50% of their operating budget, while agencies in the Large category will receive a base award equal to 14% of their budget.

Table A2.1. Base Pool Allocations

Category	Budget Factor
Very Small	50%
Small	45%
Medium	21%
Large	14%
Very Large	3-4%

3. Funds in the Equity pool are allocated according the demographic factors that represent transit need. Providers that have a greater number of transit dependent individuals within their service area will receive a higher award.

Under this new approach, several agencies are eligible for an award increase. However, local agencies will be expected to provide the same level of local match and not to substitute federal funds for local funds. A transition plan will be implemented to help any of the agencies proposed to receive an increase or decrease of funds with the needed time to adjust to the changes in funding. During the transition, awards will grow at a maximum of 10% per year over a 5-year period. For agencies whose funding will decrease, agencies will decrease by no more than a 3% per year. If any money remains “on the table” in a given year, after review of the applications, the residual money will be placed in a reserve account for new

agencies or unexpected growth of existing agencies. Once that pool is adequately funded, CDOT will provide flexibility for how leftover funds could be spent (e.g., capital needs).

A2.8.1.2 Coordinated Planning

Title 49 U.S.C. 5310, as amended by Moving Ahead for Progress in the 21st Century Act (MAP-21), requires a recipient of Section 5311 funds to certify that projects selected for funding under this program are included in a locally developed, coordinated public transit-human services transportation plan and that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human service providers; and other members of the public. FTA strongly encourages coordination and consistency between the local coordinated public transit-human service transportation plan and metropolitan or statewide transportation planning processes, as described in 23 CFR part 450 and 49 CFR part 613.

During the application process, DTR staff verify that proposed projects are part of the applicable TPR plans or the coordinated human services plans prepared by the MPOs. CDOT's statewide planning process includes the required participation and coordination for the projects eligible for Section 5311 funds.

DTR allows the use of Section 5310 funded vehicles in a coordinated setting with Section 5311 funded programs, so long as the service being provided is primarily for seniors and persons with disabilities, and provided general public ridership is approximately no more than 20%. A subrecipient is responsible for ensuring compliance with this requirement and for tracking ridership data to support this assertion

A2.8.1.3 Geographical Distribution

DTR undertakes a geographic equity analysis as part of the SWTP update process every 4 years that ensures that each part of the state, as defined by the TPRs, receives an equitable share of FTA funding. In addition, geographic equity is one of the criteria used to award projects under the Calls for Projects.

DTR enlists the assistance of the Denver Regional Council of Governments (DRCOG) in soliciting, evaluating, and selecting projects in the Denver-Aurora Urbanized Area (UZA). To avoid duplicative awards and facilitate a fair and equitable distribution of funds statewide, DTR coordinates with the MPOs of the Fort Collins and Colorado Springs large UZAs by sharing information about project requests. DTR coordinates with these entities so that state-managed funds like FASTER do not compete with or supplant regionally managed funds.

A2.8.1.4 Title VI

Representatives from the Civil Rights & Business Resource Center (CRBRC) participate on the Evaluation Committee and provide the Title VI perspective. DTR also works with each TPR to ensure that awarded projects fit within their Regional Transit Plans.

A2.8.1.5 Tribal Governments

The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe are the two federally recognized sovereign Tribal nations in Colorado. Currently, neither tribe participates in the Tribal Transit Program.

The major transit service in the area is the Road Runner Transit Dial-a-Ride Bus Replacement. The Road Runner Transit Dial-a-Ride bus service started as a part of Southern Ute Community Action Program (SUCAP), which provided three round trips services when it first began. Today, there are three different transportation services that help serve older residents and people with mobility needs. Two of the three transit services, Ignacio Area Dial-a-Ride and Deviated Fixed Route services operate under Road Runner Transit. While the third transit service is a part of the Road Runner Stage Lines. It is a daily inter-city bus service that covers a total of 237 miles one way, from Durango to Grand Junction, and travels through Cortez and Telluride. The development of the Road Runner Transit Dial-a-Ride bus service has helped rural residents in southwestern Colorado access needed resources more regularly. The Road Runner Transportation trip purposes recorded show that transit users were able to access medical, shopping, nutritional, and social resources, the highest ridership was seen for employment and/or educational purposes.

A2.9 Intercity Bus Transportation (Section 5311[f])

FTA requires that states commit 15% of their Section 5311 funds to develop, support, and promote a network of ICB transportation services, unless the governor certifies that ICB needs are being met in its state, after consultation with affected ICB providers. As part of its commitment to a fully integrated transportation network in Colorado, CDOT supports the operation of a statewide, ICB service. Presently, DTR is committing at the 15% or higher level of its funds and expects to do so into the future.

DTR awards Section 5311(f) funds to private, for profit ICB providers that operate on predetermined routes under CDOT's Bustang Outrider brand.

A2.9.1 Section 5311(f) Planning

CDOT and DTR prepare two plans that scope the needs for intercity and regional bus route needs throughout the state. Both of these plans are developed with input from transit agencies, ICB providers, and the Bustang/Rural Regional Bus Subcommittee of CDOT's TRAC.

The **Colorado Intercity and Regional Bus Network Plan** guides the development of bus services for both intercity and regional bus routes. The plan is anticipated to be updated every 5 years. The 2014 plan:

- Identified goals for the development of the intercity and regional bus network/routes.

- Identified station and connectivity needs.
- Defined preferred routes for intercity and regional bus services.
- Identified a phased implementation plan for the intercity and regional bus routes.
- Identified policy, performance, and financing issues associated with implementing the preferred routes.

The **Statewide Transit Plan** establishes the framework for an integrated transit system across Colorado, which includes bus services. In addition to extensive outreach conducted every 4 years as part of the plan update process, the SWTP integrates needs and recommendations from the Regional Transit Plans prepared by each of the state's ten rural TPRs. Bus route needs are included in the planning process.

A2.9.1.1 Methodology for Assessing Intercity Bus Mobility Needs

DTR uses a multistep process to assess the need for additional ICB services in the state.

First, there is a density ranking of potential transit-dependent persons. The system is divided by block groups, each block group is then ranked relative to the rest of the block groups. The ranking system is informed by four user categories that demonstrated need, including young adults, older adults, persons living below the poverty rate, and auto-less households. Block groups that demonstrated moderate or high need were determined to be potential candidates for additional ICB mobility services.

Next, to identify the specific corridors that could serve these potential locations, existing intercity and regional bus networks were mapped. The mapped bus network was analyzed further through 10-mile and 25-mile buffer zones centered around existing ICB stops. Communities situated outside of the 10-mile buffer zone, and who are not served by any form of local transit able to connect to an ICB service, were designated as candidates for new routes.

The next step filtered out regions with fewer than 2,500 people.

The final step of the ICB mobility needs assessment focused on feasibility. Each identified location was analyzed according to transfer options and travel and wait times. This served as a second filter for towns that did not have a reasonable transit connection. The result of the latest 2014 assessment was a list of 13 towns that demonstrated substantial need for additional or new ICB mobility services. Further research was required to determine actual routes that would help serve these stops and towns identified in the assessment.

A2.9.1.2 Consultation

CDOT meets FTA's Section 5311(f) requirement for consultation to identify bus routes and bus mobility needs in the state by coordinating with the Bustang/Rural Regional Bus

Subcommittee of CDOT's TRAC, ICB providers to the Outrider program, community service organizations, Greyhound Lines, and the public.

A2.9.2 Section 5311(f) Eligible Applicants

CDOT is developing the Bustang Outrider intercity transportation service to reinstate former Greyhound Line routes and provide meaningful connections between rural areas and urban centers. ICB providers receive Section 5311(f) funds administered by CDOT and operate under the Bustang Outrider brand. Eligible ICB operators for Section 5311(f) funds are public/nonprofit carriers and private for profit transportation providers. The providers must operate a demand response or fixed route at least 3 days per week year-round in a rural region.

Applicants must comply with all federal and state regulations and federal drug and alcohol testing, and must submit required program documents as a condition of the award.

A2.9.3 Section 5311(f) Application

The application and award process for Section 5311(f) funds is shown in Flowchart A2-1 Section 5311(f) Planning through Award.

Section 5311(f) funds are announced through DTR's annual Call for Capital Projects and Call for Local, Administrative, Operating, and Mobility Management Projects. Carriers interested in applying for Section 5311(f) funds are encouraged to contact the DTR Bus Operations Unit. If two or more private carriers are interested in submitting an application for the same route, the Bus Operations Unit may issue a Request for Proposal (RFP) under a competitive bid. For public or non-profit carriers, the RFP process is waived.

All interested providers must submit an application through the Colorado Transit & Rail Awards Management System (COTRAMS).

CDOT expects that new applicants will have recently completed a study that demonstrates the need for transit service and that explores alternatives for expanding service under an existing transit provider. The new applicant must provide operational plans and a multiyear budget that forecasts operational, administrative, and capital expenses along with a long-term funding source. DTR staff are available to assist a new applicant in completing the required documentation.

A2.9.4 Section 5311(f) Local Match

The Section 5311(f) program requires a local match of 50% of net operating costs. The operator must identify the type and amount of the in-kind match in the project budget submitted as part of its application. The in-kind match is approved by DTR as part of the subaward agreement and submitted to the FTA as part of the documentation for the FTA Award Application.

There are two options available to operators who are not able to provide a local match on their own: Greyhound Lines unsubsidized miles and Transportation Development Credits.

Greyhound Lines donates unsubsidized miles to projects it approves to support the local match. Greyhound approves an operator's request for in-kind miles based on a review of the operator's policies that must meet these requirements:

- A 5- to 7-day per week fixed route service.
- Route provides a meaningful connection to the network.
- Operator has an interline ticket agreement and interstate operating authority.

If Greyhound does not approve the request, DTR can apply Transportation Development Credits on behalf of the operator to meet the match. This process is shown in Flowchart A2-2 FASTER Local and Regional Bus Planning through Award.

A2.9.5 Section 5311(f) Award

The Bus Operations Unit, in consultation with the TRAC subcommittee, evaluates the applications based on:

- Operating route (meaningful connection to the statewide network)
- Ridership data
- Amount of funding available
- Operating costs

Awards to public/nonprofit providers are under a 1-year subaward agreement, with an option for 4 additional years. Awards to private operators are under a 5-year subaward agreement. Subsequent renewals are based on performance. Subaward agreements specify ridership goals and that the operator must meet 20% of farebox recovery.

All Section 5311(f) contracts are subaward agreements, not operating contracts. Selected providers must have an adequate and CDOT-approved operating plan and Americans with Disabilities plan. They must also submit selected performance results monthly.

A2.9.6 Section 5311(f) Reporting Requirements

ICB providers are responsible for reporting on operation and performance measures, which DTR reports to the Transportation Commission quarterly.

For Section 5311(f), CDOT ensures it meets the connectivity objective by measuring revenue service miles, using 2014 as the base year of measurement. CDOT addresses the maintenance objective by verifying continued maintenance or improvement of existing conditions. Existing or additional mobility needs are identified by tracking Outrider demand, aligning with TRAC

work and the SWTP, and encouraging TPR input. When needs are identified, more work will be done to identify new possible routes/route expansion and to track ridership.

Additional reporting requirements outlined in the operator's subaward agreement include Milestone Progress Reports, DBE reporting, monthly reimbursement requirements, and National Transit Database (NTD) reporting.

A2.10 Annual Program of Projects Development and Approval Process.

From the final list of subawards for a given Call for Projects, DTR develops a Program of Projects (POP) for each FTA program. The POP includes a brief description of the projects; identifies each subrecipient and indicates whether they are governmental authorities or private nonprofit agencies; and lists total project costs and federal share of each project. The POP summarizes the available and applied funds for the program and the sources of funding for each parent award and project within the parent award (FTA, local match, local in-kind match). Additional detail on each project includes specific information about the agency, award status, civil rights compliance status, and contract identifiers in the CDOT accounting system.

DTR then assembles an award application in FTA's Transit Award Management System (TrAMS) based on the POP. The award application includes the following minimum information:

- Fiscal year of funding and whether program requirements are met
- Period of performance
- Statewide Transportation Improvement Program/Transportation Improvement Program/Unified Planning Work Program
- Project locations
- Activity line item and budget line information, federal and local match ratio
- Local match sources
- Vehicle useful life, fuel type and quantities
- Milestones
- National Environmental Policy Act Requirements

FTA reviews the POP and application for compliance, then approves and releases the funds to CDOT. This process is illustrated in Flowchart A2-3 FTA Award Application.

A2.11 Transfer of Funds

The transfer of Section 5311 funds to and from other programs is allowed for the following:

- The Governor of the State of Colorado or his/her designee (CDOT/DTR) may transfer funds from the Section 5307 Program for non-urbanized areas to the Section 5311 Program. Funds

from the Section 5311 Program may also be transferred to small urban Section 5307 systems. DTR staff determine the need for flexibility in utilizing both funding sources. DTR consults affected area transit providers when considering transfer decisions. When Section 5307 funds are transferred to Section 5311, any capital or operating assistance limitations applicable to the Section 5307 apportionment apply to the transferred funds.

- Surface Transportation Programs, Congestion Mitigation and Air Quality (CMAQ) funds, and other eligible flexible funds may be transferred from the Federal Highway Administration to the FTA Section 5311 program for capital needs. Procedures related to flexible funding are outlined in FTA Circular 9040.1.G, Appendix D. DTR makes decisions about transferring funds in conjunction with local area transit providers, the area MPO, and the State Highway Engineer's office; transfers must be approved by the CDOT Executive Director.

All contractual, procurement and payment procedures must follow state and federal guidelines. Notification to FTA of the intent to transfer funds will be in accordance with FTA Circular 9040.1G.

A2.12 State Administration and Technical Assistance

DTR uses its 10% allowable allocation of Section 5311 funding, in combination with its \$1 million of FASTER administrative funds, to administer its programs, manage its planning process, and provide technical assistance. DTR does not use any RTAP funds for administrative purposes. All RTAP funds are contracted to the vendor to administer the RTAP program.

A2.13 State RTAP

As required by FTA Circular 9040.1G, CDOT is responsible for providing technical assistance, support, and training to its rural providers through the RTAP. In order to achieve this goal, CDOT publishes an RFP every 5 years to identify a company or organization to assist CDOT with this program.

A2.13.1 Program Goals

The goals of the RTAP program are to:

- Promote the safe and effective delivery of public transportation in rural areas and to make more efficient use of public and private resources.
- Foster the development of state and local capacity for addressing the training and technical assistance needs of the rural transportation community.
- Improve the quality of information and technical assistance available through the development of training, technology, and technical assistance resource materials.

- Facilitate peer-to-peer self-help through the development of local networks of transit professionals
- Support the coordination of public, private, specialized, and human service transportation services.
- Build a national database on the rural segment of the public transportation industry.

To achieve these goals, CDOT provides the following:

- A statewide transit resources library, housed at the Colorado Association of Transit Agencies (CASTA).
- Training opportunities by providing regional and statewide training courses, including at the CASTA spring and fall conferences.
- Scholarship opportunities for rural providers to attend in- and out-of-state training opportunities.
- Peer-to-peer networking opportunities for sharing best practices, developing mentoring opportunities, and encourage regional sharing of resources.
- A statewide transit and transportation resource directory to encourage and facilitation networking opportunities. Access to this information is not limited to either members of CASTA or rural providers. Individuals and entities seeking to access any of these services should contact DTR for more information.

A2.13.2 Eligible Recipients and Eligible Projects

Eligible recipients of RTAP funds are states, local governments, and providers of rural transit services.

A2.13.3 Rural Transit Assistance Program Committee

To assist in ensuring that these efforts meet the needs of its rural transit providers, CDOT has established an RTAP Committee, composed of rural area members, which meets at least four times per year to provide guidance on training topics, discuss issues of importance to rural providers, and maintain input on policy decisions relevant to the Section 5311 program.

Each year, DTR works with its RTAP Committee to identify assistance needs of its rural partners. This training curriculum is then presented to the contractor and negotiations then occur to determine the specific course catalog for the year. This catalog is subject to change based on changes in demand for training, the availability of training through other resources, and the state's ability to partner with other organizations to provide this assistance.

A2.13.4 Federal/Local Matching Requirements

The ratio of the local match requirements is 100:0.

A2.14 Private Sector Participation

CDOT issues its calls for projects using a broad advertising approach to ensure applications are competitive. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

In CDOT's continued commitment to the involvement of private enterprise in the provision of mass transit services, to the maximum extent feasible, the following applies:

- Applicants must provide reasonable notice to transportation providers regarding proposed services and opportunities for their participation in such services.
- Applicants must provide, in each application, certified receipts of letters that Applicant sent to private for-profit transportation providers notifying them of all applicable Public hearings and coordinated meetings.
- To ensure that all interested persons, businesses, and agencies have been notified of an applicant's intention to provide transportation services, and that they have adequate opportunity to comment, Applicant must issue a public notice describing its proposed services. The notice should invite any interested private operator within the service area to comment, or request a public hearing, on the proposed services by written notice to the subrecipient. A minimum of a 15-day response time must be provided.
- Subrecipients may purchase service from private sector transportation providers as well as public providers. Under such arrangements, certain special conditions apply to the purchase of service agreement, depending on the funding used to provide such services.
- Subrecipients must ask permission, in writing, from CDOT/DTR to use Purchase Service Contracts. CDOT/DTR must approve the proposed purchase of service contracts prior to execution by the subrecipient.

A2.15 Civil Rights

CDOT's CRBRC's mission is to promote equal access to and participation in CDOT programs and activities. Additionally, the CRBRC collaborates with CDOT Regional Civil Rights Offices and various CDOT program staff to foster equality in CDOT's transportation contracting processes.

Within the CRBRC is the role of the Title VI Specialist/Civil Rights Liaison for DTR. This position works with DTR to implement and monitor compliance with the FTA's civil rights requirements, including Title VI, Equal Employment Opportunity, and DBEs.

CRBRC and DTR monitor subrecipient compliance with FTA civil rights regulations through the following:

- Including civil rights requirements in each Call for Projects.
- Oversight of third-party contracting procedures.
- Review of subrecipient websites.
- Review of the subrecipient's programs prior to awarding funds.
- Requiring subrecipients to submit updated programs to DTR through COTRAMS annually with certifications and assurances, or as required.
- Review of program documents during scheduled Subrecipient Information Request (SIR) and Site Review Process every 3 years.
- Technical assistance and training to subrecipients in the development of and execution of their programs, including minority applicants and those serving minority or traditionally underserved populations.
- Assistance in resolving complaints.
- Filing required reports to FTA.

A2.16 Maintenance

A2.16.1 Vehicle Maintenance

CDOT requires that a subrecipient receiving funds to purchase vehicles have a vehicle maintenance plan. This plan outlines how to maintain the rolling stock assets. FTA allows subrecipients discretion in determining the appropriate intervals for preventative maintenance inspections to accommodate manufacturer recommendations, current conditions, etc. However, whatever is outlined in the preventative maintenance plan for vehicles should be followed.

A subrecipient must submit its vehicle maintenance plan in COTRAMS. DTR reviews the plans during the SIR and Site Review Process. DTR also collects a sampling of oil change records to check for a 10% deviation or lower from the determined interval during the Site Visit.

As a best practice, a vehicle maintenance plan could include the following:

- Maintenance procedures for wheelchair lifts and other accessibility features.

- System of periodic inspections policy.
- Reference to the manufacturer's minimum maintenance requirements.
- Preventative maintenance performed at certain intervals.

A2.16.2 Facility and Equipment Maintenance

All program-funded facilities must have a written facility and equipment maintenance plan and develop and implement adequate maintenance procedures that keep the property in good condition. Facility and equipment maintenance plans are collected in COTRAMS and reviewed during the SIR and Site Review Process. The plan should describe a system of periodic inspections and preventative measures to be performed at certain defined intervals.

As a best practice, a facility and equipment maintenance plan could include the following:

- A form or checklist, a schedule and dates of periodic inspection (typical inspection areas would include roof, flooring, plumbing and electrical panels).
- A maintenance schedule for installed equipment, appliances, and furnishings, based on manufacturer recommendations for each item or system (for example, heating, ventilation, and air conditioning equipment).
- A process for managing and monitoring any facility related warranties, including installed equipment.
- A procedure for follow-up repairs arising from building inspections, as well as for unplanned equipment breakdowns of installed equipment and documentation, such as a form (example: work order) or online system for recording the repairs.

A2.17 Charter Program

Details about the FTA charter service regulations and reporting requirements (49 CFR Part 60) are available at: <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-regulations-0>.

Subrecipients are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Recipients are allowed to operate community-based charter services excepted under the regulations.

The regulations define charter service as:

- Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price.

- Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration. In addition, a premium fare is charged that is greater than the usual or customary fixed-route fare, or the service is paid for in whole or in part by a third party.

Examples of services that do not meet FTA's definition of charter service and, therefore, are not considered charter services are:

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the recipient does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the recipient, the recipient charges its customary fixed-route fare and there is no third-party involvement.
- When a university pays the recipient a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the recipient provides the service on a regular basis along a fixed route and the service is open to the public.
- When the recipient sees a need, and wants to provide service for a limited duration at the customary fixed-route fare.

The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

A2.17.1 Charter Service Exemptions

Certain charter services are not considered charter service and require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. These services, which are more fully described in the FTA Comprehensive Review Guide for Triennial and State Management Reviews. The most current Comprehensive Review Guide can be found through a link on FTA's Program Oversight web page (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>):

- Transportation of employees, contractors, and government officials
- Private charter operators
- Emergency preparedness planning and operation
- Section 5310, 5311, 5316 and 5317 recipients
- Emergency response
- Recipients in non-urbanized areas

A2.17.2 Community-Based Charter Services

Certain community-based charter services are considered exempt from the charter bus regulations. These services have administrative, record-keeping, and reporting requirements, as listed in Error! Reference source not found..

Table A2.2. Charter Service Exceptions (49 CFR Part 604)

Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
Government officials on official government business	Yes (if the recipient petitions the Administrator for additional charter service hours)	Yes	Yes	<p>If additional charter service hours are needed (beyond the 80 annual service hours allowed), the recipient must petition the Administrator. The petition must include:</p> <ul style="list-style-type: none"> – Date and description of the official government event and the number of charter service hours requested – Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances) – Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area
Qualified Human Service Organization	No	Yes	Yes	Evidence that the Human Service Organization receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request.
Leasing FTA-funded equipment and drivers	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient’s geographic service area
When no registered charter provider responds to	Yes	Yes	Yes	None

Table A2.2. Charter Service Exceptions (49 CFR Part 604)

Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
notice from a recipient				
Agreement with registered charter provider	Yes (if a newly registered charter provider joined the Urbanized Area after the initial agreement)	No	No	Properly executed agreements with all registered charter providers in recipient's geographic service area
Petitions to the Administrator	Yes	No	No	Recipient must demonstrate how it contacted registered charter providers and how the recipient will use the registered charter providers in providing service to the event. Recipient must also certify that it has exhausted available registered charter providers' vehicles in the area

A2.17.3 Reporting

All recipients that operate charter service under an authorized exception are required to maintain notices and records for at least 3 years and report to the FTA quarterly. The records must include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

- Government officials (49 CFR Part 604.6)
- Qualified human service organizations (49 CFR Part 604.7)
- Leasing (49 CFR Part 604.8)
- No response from a registered charter provider (49 CFR Part 604.9)

Recipients must post the required records on the FTA charter website within 30 days of the end of each calendar quarter. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours.

The recipient reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA recipients for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading at <https://www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-regulations-0>.

A2.18 Section 504 and Americans with Disabilities Act Reporting

DTR and CRBRC jointly oversee subrecipient compliance with Americans with Disabilities Act (ADA) requirements. They must ensure that all vehicles acquired with FTA funds are equipped, maintained, and operated in accordance with 49 CFR Parts 27, 37 and 38, unless certification of equivalent service is filed annually, and that service provided does not discriminate against individuals with disabilities. Newly constructed facilities, including joint use stops and depots for ICB transportation, must comply with ADA accessibility standards.

Agencies receiving FTA funding under Section 5310 that provide demand responsive service are required to submit a Certification of Equivalent Service to DTR prior to procuring any inaccessible vehicle, which DTR must file with FTA. The certification is valid for 1 year. A sample Certification is available as an attachment to FTA Circular 4710.1. If DTR and CRBRC determine that a subrecipient presents a risk in this category, an ADA review may be performed.

In addition, CRBRC participates in the SIR and Site Review Process every 3 years. A subrecipient's ADA Program is part of this review.

A2.19 National Transit Database Reporting

FTA's NTD records the financial, operating and asset condition of transit systems to track the industry and provide public information and statistics. FTA subrecipients receiving funding from Section 5311 are required to report directly annually to the NTD in uniform categories. Reported items include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. As the state agency responsible for administering Section 5311 funds, CDOT is responsible for ensuring that the subrecipient data is compiled and submitted to the NTD and for reviewing the reports for accuracy.

A2.20 State Program Management

Once an executed subaward agreement is in place, CDOT/DTR is responsible for oversight of the subrecipient agency and its implementation of the project. Oversight includes monitoring, training, and technical support for subrecipient agencies to support them in compliance with federal and state regulations and guidelines associated with receiving and disbursing funds.

When subrecipient agencies enter into contracts with contractors and subcontractors to perform work funded by FTA or state transit funds, the subrecipient agencies are responsible for oversight and compliance of the contractors and subcontractors with federal and state regulations and guidelines.

DTR utilizes the Comprehensive Review Guide, updated annually by the FTA, as a guide to conduct oversight. The most current Comprehensive Review Guide can be found through a link on FTA’s Program Oversight web page (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

A2.20.1 Baseline Activities

Project Coordinators and subrecipients have responsibilities related to ongoing oversight and participating in oversight activities. Subrecipients are expected to participate in baseline activities, unless deemed not required by DTR. Baseline activities are outlined in Table A2.3.

Table A2.3. Baseline Activities

	Activity	Subrecipient	DTR
Daily/Weekly	Customer Service and COTRAMS support		Assist subrecipients as requested
	Reimbursement Requests for Capital projects (COTRAMS)	Submit	Approve
Monthly	Transit Conference Calls	Participate and contribute	Prepare for and conduct
	Informal Site Reviews	Prepare for and participate	Schedule and conduct
	Reimbursement requests for Admin/Operating and Mobility Management projects (COTRAMS)	Submit	Review and approve
Quarterly	LCC and RCC meetings	Attend	Attend as needed
	RTAP and other training opportunities	Attend	Schedule and conduct
	CASTA committees	Participate and attend	Participate and attend
	Risk assessments (COTRAMS)	Complete	Complete
	Quarterly Reports (Section 5311 and Section 5311[f] recipients)*	Prepare	Review
	Program Measures Reports (Section 5310 recipients)**	Prepare	Review
Annually (spring)	Transit Open Houses	Attend	Prepare for and conduct

*Quarterly Reports are designed to assist 5311 and 5311(f) subrecipients capture the service information quarterly that they are required to report annually in the National Transit Database (NTD). Subrecipients that have active 5311 and 5311(f) projects must complete these reports in COTRAMS quarterly.

** Program Measures Reports are required from subrecipients that have active 5310 projects. These reports ask for updates on program performance: gaps in service filled and ridership. Subrecipients are encouraged to include a client story or success story, as these are important to share with the FTA. Subrecipients must complete these quarterly in COTRAMS; DTR then submits the reports to FTA using TrAMS.

A2.20.2 Subrecipient Information Request and Site Review

All subrecipients are required complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA's Comprehensive Review Guide (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>) that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

The SIR may be completed differently by agencies because some of the areas are only applicable to certain funding sources or for certain types of projects. The process is illustrated in Flowchart A2-4 Subrecipient Information Request (SIR) and Site Review Process and includes the following:

Pre-Review. Project Coordinators send notifications to the agencies scheduled to have a Site Review. The notification stating the purpose of the SIR according to the risk-based and SIR oversight policy. A site review date is agreed upon and scheduled. The subrecipient receives a SIR custom created for the agency made up of questions for the subrecipient to answer and a request for copies of the subrecipient's program documents. The notification includes a deadline to return the completed SIR and upload the requested documents to COTRAMS.

Desk Review. Project Coordinators perform a Desk Review of the subrecipient's SIR and documents, and then complete an internal SIR document that captures their comments (and comments from the CRBRC review). Based on the review, the Project Coordinator develops questions, highlights areas of concern, and identifies additional areas for discussion, such as upcoming projects and needs. A detailed agenda for the Site Visit is sent to the subrecipient prior to the scheduled Site Visit.

Site Visit. The Site Visit view is typically a one-day meeting with facility and/or bus tours, as appropriate. The reviews are an opportunity for the Project Coordinator and the subrecipient to review projects, help subrecipient reach compliance requirements, identify opportunities for improvement, answer questions, and identify future needs. Attendees include the agency executive staff, the Project Coordinator, and representatives from other CDOT/DTR programs, as needed (Transit Asset Management, Civil Rights, Audit, Business Office, Drug & Alcohol program, RTAP, CDOT Regional Planner, and others). Subrecipients are responsible for ensuring that pertinent staff members are available.

Site Visits begin with an entrance conference stating the purpose of the review and a reminder that the informal “findings” are a reflection on CDOT’s oversight. Site Visits follow the pre-arranged agenda and leave ample time for the in-person checklist, especially checking maintenance records. A typical Site Visit checklist is included as Attachment A2-1 Subrecipient Information Request (SIR) and Site Review Checklist. The Site Visit ends with an exit conference to review the notes taken during the Site Visits and clarify any next steps.

Post-Review: The Project Coordinator sends a follow-up letter declaring whether or not the subrecipient is in compliance; and documenting observations, recommendations, and conclusions. Follow-up actions required by the subrecipient are also identified, including, if needed, additional training and technical assistance or a corrective action plan with a timeline.

A2.20.2.1 Frequency and Level of Oversight

After the initial SIR and Site Review, the frequency and level of oversight are based on the results of the scores of the Risk Assessment completed by the subrecipient and DTR in COTRAMS after a project award. The Risk Assessment process is described in Chapter 3 (Section 3.5.1). DTR’s objective is to provide the appropriate level of oversight based on the risk assessment scores and the needs of the specific agency.

The combined numerical score from the Risk Assessment corresponds to High, Medium/High, Medium/Low, and Low level of oversight. DTR uses the Low to High ratings to determine how often a Subrecipient is asked to

Figure A2.2. Subrecipients Participating in SIR



complete the SIR and participate in a Site Review. The percentage of subrecipients at the different risk levels participating in the SIR and Site Review is illustrated in Figure A2.2.

A2.20.3 FTA Certifications and Assurances

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA Assistance Programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

FTA issues a list of required certifications and assurances for each fiscal year. The FY 2019 list available at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances> and is included as Attachment A2-2 FTA FY 2019 Certifications and Assurances. Some certifications and assurances apply to all applicants. Others are required from applicants requesting more than \$100,000 in federal assistance or depend on the type of applicant or project.

A2.20.3.1 Program Documents

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the SIR and Site Review Process; however, subrecipients are expected to have updated documents in COTRAMS on an ongoing basis. These documents cover all of the applicable areas of review in the FTA's Comprehensive Review Guide (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

Individual FTA programs require additional submittals. Specific program requirements are detailed in SMP Appendix A (FTA Programs) and Appendix B (Non-Federal Transit Funds).

Finally, there are Civil Rights requirements related to Civil Rights programs for both CDOT and subrecipients. These are described in Chapter 5.

A2.20.3.2 Remedies for Noncompliance

Remedies for a subrecipient's noncompliance with the statutes, regulations, or the terms and conditions of the award or the executed subaward agreement are set forth in 2 CFR 200 (<https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>). If CDOT determines that a subrecipient is not complying with the general or specific terms of an award, CDOT may impose additional conditions to the award, as described in 2 CFR 200.207, or take additional actions, as detailed in 2 CFR 200.338. Rules pertaining to noncompliance are defined in CDOT's executed subaward agreement with the subrecipient in the Breach of Agreement and Remedies sections. CDOT's standard subaward agreement is included as Attachment A2-3 CDOT Standard Subaward Agreement.

A2.20.4 Project Amendments

Subrecipients are responsible for reporting to DTR whenever one or more of the following occurs:

- Budget or schedule changes.
- Milestone or completion dates were not met.
- Identification of problem areas and how the problems will be resolved.
- Expected impacts and the efforts to recover from delays.

DTR takes proactive steps to address issues on projects that are not meeting performance standards, including identifying resources for subrecipient project managers, identifying specific issues causing the delay, and providing a date certain by which time requirements must be met.

CDOT works with a subrecipient to obtain FTA's prior approval of proposed changes, then amend the subaward agreement to extend the end date or adjust awarded amount to reflect the approved changes. The process DTR uses to amend a capital project is shown in Flowchart A2-5 Amendment for Capital Project.

A2.20.5 Subaward (Project) Performance Schedule

The subrecipient is responsible for meeting the schedule requirements included in the executed subaward agreement and reporting through COTRAMS on meeting milestones. The DTR Project Coordinator confirms on a regular basis that the project is performing on schedule. If it falls behind schedule, Project Coordinator notifies the DTR Unit Manager and DTR Director of the underperforming project, and a plan is developed to remediate or terminate the project.

The DTR Unit Managers and the DTR Director monitors schedule changes, with the goal of efficiently addressing underperforming projects and taking proactive steps to close out the projects in a timely manner.

A2.20.6 Invoicing and Reimbursement

A2.20.6.1 Governing Policies

The federal OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called Uniform Guidance) is the authoritative set of rules and requirements for federal awards and project management (<https://www.grants.gov/learn-grants/grant-policies/omb-uniform-guidance-2014.html>). In addition, specific requirements are outlined in FTA Circular 5010.1E Award Management Requirements, which is included as an Appendix to the State Management Plan (SMP) and can be found in: [DRAFT August 2019](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-</p></div><div data-bbox=)

[innovation/32136/5010-1e-circular-award-management-requirements-7-21-2017.pdf](https://www.colorado.gov/pacific/osc/alpha-index-6#F).

Requirements for invoicing and reimbursement are also covered in 2 CFR 200.

The State of Colorado “Fiscal Rules” govern the administrative procedures for reviewing and accepting all requests for reimbursement, and are stricter in some instances than required by federal law. The state fiscal rules are available from the Office of the State Controller at <https://www.colorado.gov/pacific/osc/alpha-index-6#F>

A2.20.6.2 DTR Reimbursement to Subrecipients

According to state fiscal rules, CDOT will not reimburse subrecipients for expenses incurred prior to the date of subaward agreement execution, unless the agreement contains a 60-day retroactivity clause (typically operating projects). Under an executed subaward agreement, a subrecipient must first incur costs before submitting an invoice for reimbursement.

Reimbursement Requests may be held for payment due to any breach of the executed subaward agreement, i.e., lack of reporting or other documented noncompliance with the subaward agreement terms.

A2.20.6.2.1 Eligible Expenses

According to federal and state policies, CDOT pays all reasonable and fully and accurately documented requests for reimbursement within 30-45 calendar days of submittal. If the documentation is incomplete or there are ineligible expenses in the invoice, the process may take longer.

Eligible expenses are defined in an exhibit to the executed subaward agreement titled Verification of Payment checklist and vary depending on the type of project. Information about how to submit documentation for reimbursement is outlined in the COTRAMS Manual.

Supporting documentation for the expenses and payment of expenses includes, but is not limited to, accounting records, such as cancelled checks, paid bills with receipts, or other proof-of-payment; payroll; time and attendance records; contracts; and subaward documents. Some programs have specific requirements related to documentation.

A2.20.6.2.2 Invoicing/Reimbursement Request Schedule

CDOT requires subrecipients to submit reimbursement requests in a timely fashion and regularly, according to the executed agreement.

Delay in submitting invoices may result in the subrecipient being considered a higher-risk agency and more stringent requirements may be placed on the agency. For example, the agency may be required to provide additional or more detailed documentation in its reimbursement requests. Or, the agency may be required to clear the backlog of invoices before CDOT will approve future applications from the agency.

The process for reimbursement for capital projects is illustrated in Flowchart A2-6 Capital Project Reimbursement Request.

A2.20.7 Procurement Policies and Procedures

A2.20.7.1 CDOT Direct Procurements

CDOT's Procurement and Contract Services office oversees CDOT's direct procurement of goods and services in accordance with State of Colorado Procurement Code and Fiscal Rules. This includes procurement of professional architectural and engineering services, as well as services that do not require an architectural or engineering license. Resources are available at <https://www.codot.gov/business/procurement-and-contract-services>.

The State of Colorado procurement policies and procedures are located here: <https://www.colorado.gov/pacific/osc/procurement-resources> and described further in the following documents:

- Procurement Code (Title 24, Article 101 to Article 112), modernized under Colorado House Bill 17-1051.
(<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crId=de9a576c-afd4-46c2-8253-d5e72996d564>)
https://www.colorado.gov/pacific/sites/default/files/2017A_1051_signed.pdf
- State of Colorado Procurement Code of Ethics and Guidelines
<https://www.colorado.gov/pacific/sites/default/files/State%20of%20Colorado%20Procurement%20Code%20of%20Ethics%20and%20Guidelines.pdf>
- State of Colorado Procurement & Fiscal Rules
(https://www.sos.state.co.us/CCR/NumericalCCRDclList.do?deptID=14&deptName=100_800%20Department%20of%20Personnel%20and%20Administration&agencyID=40&agencyName=101%20Division%20of%20Finance%20and%20Procurement)

A2.20.7.2 Professional Services Contracts

In Colorado, procurement of professional architectural and engineering services is governed under The Brooks Act. Professional services that are not performed by a licensed architect or engineer are considered "personal services." CDOT's Procurement Office conducts the procurement process in collaboration with DTR for these types of services according to the Procurement Code and State of Colorado Procurement & Fiscal Rules. The selection is generally made based on meeting minimum requirements and that are outlined in an Invitation for Bid (IFB) or RFP.

CDOT's process for this type of procurement is documented in Flowchart A2-7 Personal Services Procurement. A sample RFP is included as Attachment A2-4 Sample Personal Services RFP.

A2.20.7.3 Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards set forth in 2 CFR 200.319 and Title 49 U.S.C. 5325(a) (<https://www.gpo.gov/fdsys/pkg/USCODE-2009-title49/pdf/USCODE-2009-title49-subtitleIII-chap53-sec5325.pdf>). CDOT encourages full and open competition.

For its direct procurements, CDOT advertises in the Rocky Mountain Bid System and has an open prequalification process for consultants and contractors wishing to do business with CDOT.

A2.20.7.4 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

In accordance with 49 CFR Part 26, CDOT seeks to ensure non-discrimination in the award and administration of DOT-assisted contract and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

Detailed information about CDOT's DBE Program and requirements for subrecipients regarding DBE contracting are provided in Chapter 5.

A2.20.7.5 Third-Party Procurements

As recipients of federal funds used in third-party procurements, CDOT and its subrecipients must comply with the State of Colorado Procurement Code for non-federal procurements, as well as the federal procurement standards outlined in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions. Subrecipients must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (2 CFR 200.321).

CDOT and its subrecipients are also responsible for ensuring that all of its contracts or subcontracts made in connection with FTA transit funds comply with provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Subrecipients must track all prime contractors and subcontractors, including DBEs, on all awarded, in process, and closed FTA-funded contracts.

DTR's policies and procedures related to third-party procurements are outlined in Attachment A2-5 DTR Quick Procurement Guide.

A2.20.7.5.1 DTR Oversight of Third-Party Procurements

In its oversight role, DTR monitors and oversees subrecipient purchases of goods and/or services using FTA and state funds to confirm that the procurements are conducted in compliance with applicable state and federal regulations. Subrecipients must incorporate DBE nondiscrimination language into procurement documents and awarded contracts.

DTR coordinates, as needed, with the CDOT Procurement and Contract Services office throughout the procurement process. The Procurement Office reviews the statement of work/specifications; makes recommendation on type of procurement; and drafts and reviews the procurement subaward agreement, Purchase Orders, and associated documentation. The Procurement Office conducts annual training for subrecipients on CDOT procurement procedures. In addition, DBE civil rights requirements related to procurement are coordinated with the CRBRC in accordance with 49 CFR part 26.

A2.20.7.5.2 Subrecipient Written Procurement Procedures

Subrecipients are required to have written procurement procedures that conform to applicable state and local regulations, as well as the federal law and the standards set forth in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions.

Below is a list of what should be included in a subrecipient's written procedures for third-party procurements:

- DBE policy or goal
- Identified dollar thresholds, specifically for sealed bids/competitive process
- Description of management of payment to contractors
- A protest and appeal process
- Standards of conduct
- Graduated purchasing authority (what employee can authorize what type of purchase)
- Policy for the documentation of responsibility determinations (prior to the award, the bidders are checked for integrity, compliance, past performance, etc.)

A2.20.7.5.3 Subrecipient Third-Party Procurement Process

Subrecipients are required to submit required documentation in COTRAMS for Project Coordinator's review and approval at each step of the third-party procurement process. The procurement process is explained in detail in Attachment A2-5 DTR Quick Procurement Guide.

An overview of the Procurement process is illustrated in Flowchart A2-8 Third-Party Procurement. Requirements for the submittals are detailed in the following sections.

Prepare Independent Cost Estimate

Subrecipients must prepare an Independent Cost Estimate prior to conducting a procurement process. This helps to determine the appropriate procurement method and the special requirements for it, as outlined in 2 CFR 200.320.

Determine Procurement Method

A Project Coordinator is available to assist a subrecipient in determining which procurement method to use. Procurements may be conducted by an individual agency or through a joint procurement with multiple agencies with common specifications.

Requirements for the different procurement methods can be referenced in Attachment A2-5 DTR Quick Procurement Guide.

Procurement Forms

DTR follows a 4-step Procurement Approval process in COTRAMS, where the following forms are collected. These forms are more fully explained in Attachment A2-5 DTR Quick Procurement Guide.

- PCR: Procurement Concurrence Request
- PA: Purchase Authorization
- NA: Notice of Acceptance and Vehicle Checklist
- SA: Security Agreement

Post-Procurement Administrative Requirements

The subrecipient must include the following items in its procurement records and make them available for the Project Coordinator upon request.

- Record of any debriefing with proposers
- Record of any protest and subrecipient response

Retention Requirement for Procurement Documentation

A subrecipient must keep written documentation of each procurement process for three years following completion of the project/procurement or project closeout.

The FTA's Procurement Best Practices Manual recommends that agencies maintain records for three years following project completion. Some examples of documentation to maintain in a written record of procurement history could include:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Rationale for the method of procurement (i.e. RFP, IFB, Sole Source)
- Independent cost estimate
- Copy of the solicitation, all addenda and all amendments
- List of sources solicited
- Copies of published notices of proposed contract action

- An abstract of each offer or quote
- Reasons for contractor selection or rejection
- Determination that contractor is responsive and responsible
- Determination that price is fair and reasonable including an analysis of the cost and price data
- Required internal approvals for award
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Record of any protest
- Required insurance documents, if any, and
- Notice to proceed

A2.20.8 Project Close-Out

Upon completion of the project—after the purchase of the goods for capital projects or at the end of the service period for operating or mobility management agreements as provided in 2 CFR § 200.343 and within 30 days of the final invoice paid, the subrecipient must submit a project closeout form through COTRAMS and notify the Project Coordinator to close the project. The executed subaward agreement includes the required project close-out elements or other project deliverables.

DTR's process for this is shown in Flowchart A2-9 Project Closeout.

CDOT's policy is to close out projects and FTA awards as soon as practicable and deobligate and reobligate unspent funds such that "older money" from these closed awards is used first for new projects.

The Project Coordinator verifies that the subrecipient has completed all of its responsibilities related to the project. Examples include:

- Final report and Quarterly reports submitted to DTR.
- Vehicle title on file with DTR.
- Copy of completed plan, if applicable for planning projects.

When a project is closed out, terminated or partially terminated, the recipient is responsible for compliance with the requirements in 2 CFR § 200.344 Post-Close Out Adjustments and Continuing Responsibilities.

A2.20.9 Construction Projects

Construction projects each have a specific schedule and milestones as part of the subaward agreement. The subrecipient/contractor must follow the requirements set forth in the CDOT SMP and the Local Agency Manual, as it applies. The Local Agency manual can be found online

at: https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual

Project Coordinators, working with their subrecipients confirm on a regular basis that the project is performing on schedule. If the project falls behind schedule, the Project Coordinator notifies the Project Coordination Unit Manager and the DTR Director of the underperforming project. At that point, a plan will be developed to remediate or terminate the project.

A2.21 Other Provisions

DTR completes an annual Subrecipient Service Area Information report for all subrecipients of Section 5311 funds that addresses the requirements of Section 5333(b).

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA assistance programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

All subrecipients are required complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA's Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested

and reviewed by Project Coordinators during the SIR and Site Review Process; however, subrecipients are expected to have updated documents in COTRAMS on an ongoing basis.

Environmental protection requirements are reviewed during the pre-award phase of the application process, where DTR confirms that the required environmental clearances for the project have been obtained.

Buy America provisions, and pre-award and post-delivery reviews are confirmed through DTR's oversight of the subrecipient's procurement processes. Review and approval occurs with a PCR, PA, and NA—which the subrecipient is required to submit through COTRAMS for DTR's approval.

Restrictions on lobbying are included as part of the subaward agreement and are reaffirmed through annual Certifications and Assurances submittals through COTRAMS.

DTR has contracted with a drug and alcohol program consultant that works directly with subrecipients to comply with the regulations. The consultant is responsible for subrecipient training, compliance monitoring, and technical assistance.

The consultant reviews the subrecipient drug and alcohol testing program at a minimum every 3 years. Through review of the policy and records, the consultant confirms that the program meets federal requirements, that there is a compliant process for conducting random tests, that reports are adequate, secure and complete, that post-accident and pre-employment testing are conducted appropriately, and that collection sites meet federal requirements.

Training is provided to new recipients of Section 5307, 5309, 5311, 5316, or 5339 funds, as well as refresher training at the spring and fall Colorado Association of Transit Agencies (CASTA) conferences. The refresher training centers around determining reasonable suspicion for supervisors, training employees on drug and alcohol programs, and best practices for drug and alcohol programs.

The consultant monitors the subrecipient testing programs throughout the year. Subrecipients are required to report program testing results in the FTA's Drug & Alcohol Testing Management Information System (DAMIS) by March 15 for the prior year. DTR and the consultant work with subrecipients to make sure the reports are accurately submitted by the annual deadline.

ATTACHMENTS

Attachment A2-1. Subrecipient Information Request (SIR) and Site Review Checklist

COLORADO DEPARTMENT OF TRANSPORTATION: DIVISION OF TRANSIT AND RAIL

CHECKLIST IS MEANT FOR USE DURING SITE REVIEWS, DOES NOT REFLECT OFFICIAL FINDINGS

SITE REVIEW	NOTES
Use as an opportunity to show how well projects are progressing and to identify problem areas that might require technical assistance	
PROGRAM	
✓ Interview staff and review files to determine effectiveness of programs	
✓ Sample program brochures and hear updates	
FINANCIAL	
✓ Sample a few financial transactions for accuracy, completeness and review of source documentation (receipts), especially the appropriate use of funds.	
✓ Determine that accounting transactions are recorded in a timely manner.	
✓ Ask business office if they have any concerns.	
✓ Review where records are kept and how they are secured.	
PERSONNEL	
✓ Any new staff? Turnover contributed to?	
CONTRACTS	
✓ Review that contracts or subcontracts for services are conducted competitively (obtained multiple bids, use of selection procedures and monitoring techniques); maintains detailed records documenting the basis of all solicitations/procurements	
✓ Review contract and procurement records; view where they are stored and how they are secured. (PCR, PA, NA, SA)	
PROPERTY	
✓ Review whether recipient keeps adequate property records and maintains an up-to-date inventory of all property used on the grant	
✓ Are there proper controls in place to safeguard property against loss, damage, theft (ie, locked fences or garage, lighting, security system); Where are keys secured?	
✓ Check vehicle maintenance plan for preventative maintenance schedules.	

✓ Check that vehicle maintenance plan coincides with vehicle manufacturing recommendations?	
✓ Has your alternate maintenance schedule been approved by the manufacturer?	
✓ Check 2-3 vehicle records for +/- 500 mi or are within 10% variance to actuals in 80% of the audit sample.	
✓ How are warranty claims handled and tracked back to the manufacturer?	
✓ Record retention - policy & practice (3 years)	
CIVIL RIGHTS	
✓ Where is the (ADA & Title VI) discrimination complaint log kept? If any within the last 3 years, were they sent to CDOT Civil Rights Specialist?	
✓ Is the location of a discrimination complaint process posted on vehicles? At the transit center? Website?	
✓ Ensure correct Civil Rights contacts and ADA & Title VI complaint procedures are posted on the agency's website.	
✓ Ensure requests for reasonable modification are posted on the agency's website.	
SIGNAGE	
✓ Job Safety & Health Protection sign	
✓ If a Job Injury Occurs sign	
✓ Rights as a Worker sign	
✓ Equal Opportunity is the Law sign	
✓ Nondiscrimination public notice (i.e. reception desk - public location - and on the website)	
✓ ADA Policy (if applicable)	
TRANSIT FACILITIES	
<ul style="list-style-type: none"> ✓ Check that transit facilities are open to the public are ADA accessible: <ul style="list-style-type: none"> ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? ○ Is there clear access to the boarding area? ○ Is there a flat concrete pad at the boarding area? ○ Is there adequate seating present at the stop/station? ○ Are route numbers on the bus stop sign at least three inches tall? 	

<ul style="list-style-type: none"> ○ Are other signs at the stop/station easy to read? ○ Are there braille signs indicating which buses/trains use that stop/station? ○ Is visual information in terminals, bus stops, or stations variable: by size, contrast, color, layout, spacing, etc. ○ Is auditory information available and are alternatives provided, such as text or voice recognition-to-text technology, visual symbols for emphasis, sound alerts, etc. ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? 	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features in public facilities are operational i.e. automatic doorways 	
If RIDE ALONG	
<ul style="list-style-type: none"> ✓ Stop announcements made? 	
<ul style="list-style-type: none"> ✓ Ask operator to operate the lift or ramp. 	
<ul style="list-style-type: none"> ✓ Review if a pre-trip vehicle inspection checklist is used. What items are tracked on it? Lifts? 	
ADA-VEHICLE	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features on vehicles are operational (ie, lifts, ramps, kneeling) 	
<ul style="list-style-type: none"> ✓ Review complementary paratransit bus schedules to ensure that they mirror the fixed route service provided. 	

Attachment A2-2. FTA FY 2019 Certifications and Assurances

CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

This certification appears on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 C.F.R. Part 21;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 C.F.R. Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated

- against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
- (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 C.F.R. Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 C.F.R. Part 24.
- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 C.F.R. Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.

- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a sub-recipient from:
- (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget's standard form 424D "Assurances—Construction Programs" and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 C.F.R. 200.324, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards,” 2 C.F.R. Part 200, particularly 2 C.F.R. §§ 200.317–200.326 “Procurement Standards;

- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 C.F.R. Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 C.F.R. § 180.300. Additionally, each applicant must disclose any information required by 2 C.F.R. § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

CATEGORY 2. TAX LIABILITY AND FELONY CONVICTIONS.

Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. As prescribed by U.S. DOT Order 4200.6, FTA requires each applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 3. LOBBYING.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 C.F.R. § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 C.F.R. Part 20.

3.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

3.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CATEGORY 4. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 C.F.R. § 604.4.

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 C.F.R. Part 604, the terms and conditions of which are incorporated herein by reference.

4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 C.F.R. § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 C.F.R. § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
 - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 C.F.R. § 605.11, the applicant agrees as follows:
 - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
 - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
 - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 5. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it has, or will develop, a transit asset management plan in compliance with 49 C.F.R. Part 625.

CATEGORY 6. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.

6.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 C.F.R. § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 C.F.R. Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 C.F.R. Part 663.

6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 C.F.R. § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 C.F.R. Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 7. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
 - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 8. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

CATEGORY 9. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

CATEGORY 10. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant, regardless of whether it is in an urbanized or rural area, will apply for an award under subsection (c) (low or no emission vehicle grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(c)(3).

Making this certification will incorporate by reference the applicable certifications in Category 7 or Category 8.

CATEGORY 11. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 7, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 7 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 7, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 12. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, this certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4).

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 C.F.R. Part 625.

CATEGORY 13. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks ("SIB") Program (23 U.S.C. § 610), it must make the certifications in Category 7 for the Urbanized Area Formula Grants Program, Category 9 for the Fixed Guideway Capital Investment Grants program, and Category 12 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 7, 9, and 12 by reference.

CATEGORY 14. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA's Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 C.F.R. § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 C.F.R. Part 655.

CATEGORY 15. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 C.F.R. §§ 659.43, 672.31, and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 C.F.R. part 659, "Rail Fixed Guideway Systems; State Safety Oversight";
- (b) Compliant with the requirements of 49 C.F.R. part 672, "Public Transportation Safety Certification Training Program"; and
- (c) Compliant with the requirements of 49 C.F.R. part 674, "State Safety Oversight".

CATEGORY 16. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 C.F.R. Part 37, it must make the following certification. This certification is required by 49 C.F.R. § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;

- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 17. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 18. CONSTRUCTION HIRING PREFERENCES.

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. G, title I, § 191.

The applicant certifies the following:

- (a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;
- (b) That the applicant will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and

- (c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

FTA FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES

FEDERAL FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: _____

The Applicant certifies to the applicable provisions of categories 01–18. _____

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Tax Liability and Felony Convictions	_____
03 Lobbying	_____
04 Private Sector Protections	_____
05 Transit Asset Management Plan	_____
06 Rolling Stock Buy America Reviews and Bus Testing	_____
07 Urbanized Area Formula Grants Program	_____
08 Formula Grants for Rural Areas	_____
09 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
10 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____
11 Enhanced Mobility of Seniors and Individuals with Disabilities Programs	_____
12 State of Good Repair Grants	_____
13 Infrastructure Finance Programs	_____
14 Alcohol and Controlled Substances Testing	_____
15 Rail Safety Training and Oversight	_____
16 Demand Responsive Service	_____
17 Interest and Financing Costs	_____
18 Construction Hiring Preferences	_____

FEDERAL FISCAL YEAR 2019 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE

PAGE

(Required of all Applicants for federal assistance to be awarded by FTA in FY 2019)

AFFIRMATION OF APPLICANT

Name of the Applicant: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in federal fiscal year 2019, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Award for which it now seeks, or may later seek federal assistance to be awarded during federal fiscal year 2019.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____ Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature _____ Date: _____

Name _____ Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.

Attachment A2-3. CDOT Standard Subaward Agreement

STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number/PO Number XX-HTR-ZL-XXXXXX/491XXXXXX
Subrecipient XXXXXXXXXXXX	Agreement Performance Beginning Date The Effective Date
Subaward Agreement Amount	Initial Agreement Expiration Date December 31, 2021
Federal Funds Maximum Amount (80%) \$XX,XXX.XX	Fund Expenditure End Date December 31, 2021
Local Funds Local Match Amount (20%) \$XX,XXX.XX	Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.
Agreement Total \$XX,XXX.XX	
Agreement Purpose XXXXXXXXXXXX	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Required Federal Contract/Agreement Clauses. 5. Exhibit E – Verification of Payment. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit C – Federal Provisions. 2. Exhibit D – Required Federal Contract/Agreement Clauses. 3. Colorado Special Provisions in §18 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A – Statement of Work and Budget. 6. Exhibit B – Sample Option Letter 	
Principal Representatives	
For the State: To Be Determined Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 TBD	For Subrecipient: XXXXXXXX XXXXXXXX XXXXXXXX XXXXXX, XX XXXXXX-XXXX XXXXXXXX@XXXXXXXX.org

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p style="text-align: center;">SUBRECIPIENT XXXXXXX</p> <hr/> <p>By: Print Name of Authorized Individual</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: _____</p> <p>Date: _____</p>
<p>2nd State or Subrecipient Signature if needed</p> <hr/> <p>By: Print Name of Authorized Individual</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p>By: Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <hr/> <p style="text-align: center;">By: Colorado Department of Transportation</p> <p style="text-align: center;">Effective Date: _____</p>	

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1. PARTIES

This Agreement is entered into by and between Subrecipient named on the Cover Page for this Agreement (the “Subrecipient”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Subrecipient and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Subrecipient, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Subrecipient of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Subrecipient shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- H. **"End of Term Extension"** means the time period defined in §2.D.

- I. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- L. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. Federal Transit Administration (FTA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- M. **“FTA”** means Federal Transit Administration.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- O. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et. seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. **“Initial Term”** means the time period defined in §2.B.
- R. **“Master Agreement”** means the FTA Master Agreement document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.
- S. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- T. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- U. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- V. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- W. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- BB. **“Subcontractor”** means third-parties, if any, engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of grant funds.
- CC. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Contractor is a Subrecipient.
- DD. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- EE. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- FF. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK AND BUDGET

Subrecipient shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Subrecipient for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO SUBRECIPIENT

A. Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Agreement Maximum shown on Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Subrecipient shall provide Matching Funds as provided in §5.A. and Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's treasury or bank account. Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies

D. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of §5, this Agreement, and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.
- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the maximum total amount described in Exhibit A and §5 for all allowable costs described in this Subaward and shown in Exhibit A, except that Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change,

the change does not modify the total maximum amount of this Agreement or the maximum amount for any state or federal fiscal year, and the change does not modify any requirements of the Work.

- iii. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within 1 year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Agreement having a term longer than 3 months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §14.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Subrecipient shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final

expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Subrecipient or any of its Subcontractors will or may receive the following types of data, Subrecipient or its Subcontractors shall provide for the security of such data. Subrecipient shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Subrecipient shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure

environment that ensures confidentiality of all State Confidential Information wherever located. Subrecipient shall provide the State with access, subject to Subrecipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subrecipient shall return State Records provided to Subrecipient or destroy such State Records and certify to the State that it has done so, as directed by the State. If Subrecipient is prevented by law or regulation from returning or destroying State Confidential Information, Subrecipient warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that none of Subrecipient or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent subrecipients, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or self-insurance program carried by Subrecipient or the State.

F. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and Subrecipient shall forward such notice to the State in accordance with §14 within 7 days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All commercial insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each commercial insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall

deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Subrecipient is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Government and State purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Subrecipient under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Subrecipient agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Subrecipient's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in §17.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Subrecipient shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Subrecipient, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Subrecipient in violation of §8 may be cause for legal action by third parties against Subrecipient, the State, or their respective agents. Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation

to any act or omission by Subrecipient, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

U. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibit D at all times during the term of this Agreement.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Subrecipient's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Contract and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Subrecipient has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subrecipient's services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Subrecipient **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political

subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount Federal Funds Maximum Amount (%) \$0.00 Local Funds Local Match Amount (%) \$0.00 Agreement Total \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option <hr/> Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year <hr/> Current Agreement Expiration Date Month, Day, Year

1. **OPTIONS:**
 - A. Option to extend for an Extension Term.
2. **REQUIRED PROVISIONS:**
 - A. **For use with Option 1(A):** In accordance with Section(s) 2.B of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
 - B. **For use with Options 1(A):** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval
By: <u>Name & Title of Person Signing for Agency or IHE</u> Date: _____	Option Effective Date: _____

EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award *does not* include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Contract or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION.

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §0 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §0 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §0 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D - Required FEDERAL Contract/Agreement Clauses

All FTA-Assisted Third-Party Contracts and Subawards from the Current FTA Master Agreement [FTA MA(25)]

Section 3.I. – No Federal government obligations to third-parties by use of a disclaimer

No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4.e. – Program fraud and false or fraudulent statements and related acts

False or Fraudulent Statements or Claims.

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying

Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.

- (e) *Closeout*. Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

3.G – Federal Changes

Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.

12 – Civil Rights

- (c) *Nondiscrimination – Title VI of the Civil Rights Act*. The Recipient agrees to, and assures that each Third Party Participant will:

- (1) Prohibit discrimination based on race, color, or national origin,
- (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
 - (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.

- (d) *Equal Employment Opportunity*.

- (1) *Federal Requirements and Guidance*. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - (ii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
 - (iv) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.
- (2) *Specifics*. The Recipient agrees to, and assures that each Third Party Participant will:
 - (i) *Affirmative Action*. If required to do so by U.S. DOT regulations (49 C.F.R. part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) *Indian Tribe*. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities*. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and

- (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (h) *Nondiscrimination on the Basis of Disability*. The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37;
 - (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - (iv) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39;
 - (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35;
 - (vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36;
 - (vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630;
 - (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194;
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609;
 - (xi) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- (a) *Federal Laws, Regulations, Requirements, and Guidance*. The Recipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

- (i) *Energy Conservation*. The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Applicable to Awards exceeding \$10,000

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 16. Procurement

- (a) *Debarment and Suspension.* The Recipient agrees to the following:
- (1) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
 - (2) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:
 - (i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
 - (ii) U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto;
 - (iii) Executive Order No. 12549, “Debarment and Suspension of Participants in Federal Programs,” February 18, 1986, 31 U.S.C. § 6101 note, as amended by Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989 31 U.S.C. § 6101 note; and
 - (iv) Other applicable federal laws, regulations, requirements, or guidance regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - (4) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
 - (iii) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);

- (b) *Cargo Preference–Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. part 381; and
- (c) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

Section 39. Disputes, Breaches, Defaults, or Other Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics, Political Activity, and Certain Criminal Activity.

- (a) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and

- (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

Clean Air and Clean Water - From 16(e.):

- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- (a) Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) Cargo Preference—Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 C.F.R. part 381; and
- (c) Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),
 - (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
 - (c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (2) Wage and Hour Requirements of:
 - (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (3) "Anti-Kickback" Prohibitions of:
 - (a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,
 - (b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and
 - (c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 C.F.R. part 3.
 - (4) Construction Site Safety of:
 - (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

From Section 16

- (e) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708).* Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (o) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
- (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

From Section 23

- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117.

Section 12 Civil Rights d.3

- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour

protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Applicable to Transit Operations

From Section 24. Employee Protections

- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
- a. *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
 - b. *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
 - c. *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)- type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.
- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 C.F.R. part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 32. Public Transportation Safety.

- (a) *Public Transportation Agency Safety Program.* The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.
- (b) *State Safety Oversight of Rail Fixed Guideway Public Transportation Systems.* For a Recipient that is a state with a rail fixed guideway public transportation system, the Recipient agrees as follows:
 - (1) *Laws.* It will comply with State Safety Oversight requirements under 49 U.S.C. § 5329(e) and implementing regulations at 49 C.F.R. part 674, or 49 U.S.C. § 5330 and implementing regulations at 49 C.F.R. part 659.
 - (2) *State Safety Oversight Program.* A Recipient must have a State Safety Oversight Program certified under 49 C.F.R. part 674 no later than April 15, 2019.
 - (3) *Regulations.* The Recipient will comply with FTA regulations, “State Safety Oversight,” 49 C.F.R. part 659, until the Recipient has a certified State Safety Oversight Program under 49 C.F.R. part 674. A Recipient that has a certified State Safety Oversight Program will comply with the regulations at 49 C.F.R. part 674.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 C.F.R. part 605, and any other applicable federal “School Bus Operations” laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
 - (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 et seq.;
 - (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 C.F.R. part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
 - (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
 - (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or

- (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights*. The Recipient agrees that:
 - (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and 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.
- (c) *License Fees and Royalties*. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions*. The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - (1) Prohibitions. The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) Exceptions. The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights*. The Recipient agrees that:
 - (1) General. It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - (2) U.S. DOT Public Access Plan – Copyright License. The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs*. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
 - (1) *Publicly Available Report*. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports*. It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data*. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.

- (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
- (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
- (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- a. Disadvantaged Business Enterprise (and Prompt Payment and Return of Retainage).
 - (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
 - a. *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - i. Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note;
 - ii. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26; and
 - iii. Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.

- b. *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 C.F.R. part 26.
- c. *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - i. *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26; and
 - ii. *Reporting TVM Awards.* Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- d. *Assurance.* As required by 49 C.F.R. § 26.13(a):
 - i. *Recipient Assurance.* The Recipient agrees and assures that:
 - 1. It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - 3. Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - 4. Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - ii. *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - 1. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - 3. Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- e. *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- (h) *Nondiscrimination on the Basis of Disability.* The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - a. Federal laws, including:
 - i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - ii. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - A. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but

- B. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - iii. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - iv. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - v. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- b. Federal regulations and guidance, including:
- i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
 - ii. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
 - iii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - iv. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
 - v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
 - vi. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
 - vii. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
 - viii. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
 - ix. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
 - x. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
 - xi. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - xii. Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement. For Assignability

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:
- a. To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - b. To comply with the applicable U.S. DOT Common Rules; and
 - c. To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

EXHIBIT E, VERIFICATION OF PAYMENT

This checklist is to assist the Subrecipient in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change by CDOT. CDOT shall provide notice of any such changes to Subrecipient. All items may not apply to your particular entity. CDOT's goal is to reimburse Subrecipients as quickly as possible and a well organized and complete billing packet helps to expedite payment.

Verification of Payment –

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger
 - In-Kind (must be pre-approved by CDOT) and/or cash match
 - Date of the report
 - Accounting period
 - Current period transactions
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable
 - copies of checks
 - check registers
 - paycheck stub showing payment number and:
 - showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
- ✓ CDOT needs to ensure that expenditures incurred by the local agencies have been paid by Party ***before*** CDOT is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by CDOT prior to any work taking place.

- ✓ If in-kind or cash match is being used for the local match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the agreement or purchase order. FTA does not require pre-approval of in-kind or cash match, but CDOT does.
- ✓ General ledger must also show the in-kind and/or cash match.

Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by CDOT prior to applying it to the reimbursements.

- ✓ If indirect costs are being requested, an approved indirect letter from CDOT or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit or
- ✓ Submit the following fringe benefit rate proposal package to CDOT Audit Division:
 - Copy of Financial Statement
 - Personnel Cost Worksheet
 - State of Employee Benefits
 - Cost Policy Statement.

Attachment A2-4. Sample Personal Services RFP



SOLICITATION AND RESPONSE COVER SHEET
HAA (BID NUMBER), TITLE

Per the attached specifications, terms and conditions.

INSTRUCTIONS: Offeror (bidder) must complete this cover sheet, and attach it with their proposal. **Offerors are urged to read the solicitation document thoroughly before submitting a proposal.**

Submit Proposal to:	CDOT Supplier Self Service (SuSS) Portal SuSS Portal Help Desk 303-757-9848	Purchasing Agent:	Name, Phone, Email
Due Date:	mm/dd/yyyy, Xxxday	Time Due:	2:00 PM Mountain Time

OFFEROR INFORMATION

Offeror F.E.I.N.:	_____	
DUNS Number	_____	
Delivery Date:	_____	Payment Terms: (Minimum of Net 30) _____
Authorized Signature:	_____	
<small>Signature acknowledges acceptance of all terms and conditions of the solicitation.</small>		
Typed/Printed Name and Title:	_____	
Legal Company Name:	_____	
Doing Business As:	_____	
Address:	_____	
City:	State: _____	Zip: _____
Phone Number:	Fax Number: _____	
Contact for Clarifications:	_____	
Title:	_____	
Phone Number:	Fax Number: _____	
E-mail Address:	_____	

CDOT Supplier Self Service (SuSS) Portal and Registration: This solicitation is published using the SuSS Portal. Suppliers must be registered on the SuSS Portal in order to download solicitation documents and information (including any amendments or modifications) and to be considered responsive at the time of submission of the response. **Interested suppliers who have not registered in SuSS Portal must initiate registration immediately to ensure a responsive bid response.** Information may be accessed through the CDOT public web link: www.codot.gov/business/procurement-and-contract-services Registration assistance is provided by our Help Desk at 303-757-9848 or by email: dot_hq_srm_help@state.co.us

Offeror to answer and acknowledges by its signature above:

- Confirm that you are aware that the award notice will be published on [CDOT website](#): ____ Yes
- My company is registered on CDOT's SuSS Portal: ____Yes / ____No
- Proprietary Information: is in my response and as segregated pages: ____Yes / ____No
- Registered with the Colorado Secretary of State ____No / ____Yes, and # _____
- Offeror proposes using Subcontractors for this project: ____Yes / ____No
- Offeror has reviewed Modifications made to this RFP – list the Modification # last reviewed: _____
- If claiming SDVOSB (Service Disabled Veteran Owned Small Business) attach proof of certification: ____Yes / ____NA
- Offeror has reviewed Section 1.19, Protested Solicitations and Awards: ____Yes

Colorado Revised Statutes Title 24, Article 109, Entitlement to Cost, in part states: "When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but, due to defect in the solicitation, was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs. No other costs shall be permitted and reasonable costs shall not include attorney fees."

Please read this Request for Proposal (RFP) thoroughly before responding. Illegible responses may be rejected as non-responsive.

The Colorado Department of Transportation (CDOT) reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, proposer agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid and/or quote, proposer agrees as follows:

- Except as replaced, modified, or supplemented by CDOT for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of, and are incorporated by reference into this document.
- Proposer testifies that bid prices were arrived at independently and there was no collusion involved.
- The Bidder/Proposer/Vendor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Proposers shall seek clarification from CDOT of any specifications, terms and/or conditions that they determine to be unclear. The failure of a proposer to seek clarification may be deemed a waiver of any such clarification.
- If applicable, low tie bids/proposals shall be decided in accordance with the provision of C.R.S. Section 24-103-202.5, as it currently exists or is hereafter amended, which gives a preference to resident bidders. Any bidder who wishes to be considered a "resident bidder" for purposes of the tie bid procedure provided in C.R.S. Section 24-103-202.5 shall include with their bid, proof that they meet the definition of resident bidder as set forth in either C.R.S. Section 24-103-101(6)(a) or C.R.S. Section 24-103-101(6)(b).
- Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the Colorado Division of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

NOTE: Results will be posted on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> or sent via postal system but will not be discussed by phone except as noted in the RFP document.

REQUEST FOR PROPOSAL THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE AND INQUIRIES:

This request for proposal is issued for the State of Colorado, the Colorado Department of Transportation, Center for Procurement and Contract Services.

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time specified in the Schedule of Activities, Prospective proposer's inquiry deadline. All contacts regarding this RFP is to be directed to:

(name),
 Purchasing Agent & Contract Administrator
 Colorado Department of Transportation
 Center for Procurement and Contract Services
 4201 East Arkansas Avenue, Room 200
 Denver, CO 80222
 (email)

Phone: Fax:

Subject line of the e-mail shall clearly state "Questions for RFP [number]" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9669). An addendum responding to questions submitted regarding the RFP will be published on the Supplier Self Service (SuSS) portal.

1.2 PURPOSE:

The purpose of this Request for Proposal (RFP) is to obtain competitive bid proposals from qualified firms interested in providing _____.

This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by CDOT to satisfy the needs as outlined in this RFP's Statement of Work.

1.3 SCHEDULE OF ACTIVITIES:	DATE:	TIME (MST)
1. RFP published on SuSS	_____	N/A
2. Prospective proposer's inquiry deadline (No questions accepted after this date)	Date _____	5:00 P.M.
3. Response to proposer questions	Date _____	5:00 P.M.
4. Proposal submission deadline	Date _____	2:00 P.M.
5. Top consultants selected and notified of interview (<u>estimate</u>), if appropriate	Date _____	TBD
6. Oral interviews with a short list of consultants (<u>estimate</u>), if required – week of	Date _____	TBD
7. Firms selected (<u>estimate</u>)	Date _____	N/A
8. <i>Desired</i> date of executed contract	Date _____	N/A

1.4 ELECTRONIC PROPOSAL SUBMISSION THROUGH SuSS:

Suppliers must upload their proposal to SuSS. CDOT procurement will distribute your uploaded proposal and any attachments to the evaluation panel.

1.5 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the SuSS. It is the proposer's responsibility to monitor the SuSS at the Internet site www.codot.gov/business/procurement-and-contract-services , and comply with all addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted regarding this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP will become public record and open to inspection after the Notice of Intent to Award notice is issued. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from the rest of the proposal, *i.e.*, uploaded to SuSS in a separate file. Such a request must include the proposer's justification for the material to be treated as proprietary or confidential. The request will be reviewed and either approved or denied by the CDOT Purchasing Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. **NEITHER COST NOR PRICING INFORMATION NOR A TOTAL PROPOSAL WILL BE CONSIDERED PROPRIETARY.** If any of the materials submitted by the Vendor to CDOT are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, CDOT will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will CDOT be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of CDOT. CDOT will inform Vendor if a request for the information is made by a third party and will give Vendor a chance to defend against any action seeking the materials.

1.9 REJECTION OF PROPOSALS:

CDOT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format requested in this RFP may disqualify the proposal. Any exceptions to the Statement of Work must be clearly identified in the proposal. Inclusion of exceptions does not guarantee acceptance by the State of such variation, and may instead lead to rejection of the proposal as non-responsive. (See further Section 1.12 of this RFP.)

1.10 INCURRING COSTS:

Notwithstanding the statute, CDOT is not liable for any costs incurred by proposers prior to issuance of a legally executed contract. All costs to prepare and submit a response to this solicitation shall be borne solely by the proposer.

1.11 EVALUATION CRITERIA:

An evaluation will be made by a committee selected to evaluate the merits of all proposals received according to the evaluation criteria defined herein (Section 3). The recommendations of this group will be forwarded to the Purchasing Director for approval.

1.11.1 Failure of the proposer to provide in his/her proposal any information requested in this RFP may result in disqualification of the proposal. It is the sole responsibility of the proposing individual or firm to ensure all information requested in the RFP is included.

1.11.2 During the evaluation process, discussions/interviews may be scheduled with proposers who submit proposals determined to be reasonably competitive for selection for award. It will be upon the recommendation of the evaluation committee if discussions/interviews for clarification are needed.

1.11.3 The sole objective of the evaluation committee will be to recommend the proposer(s) whose proposal(s) is/are most responsive to CDOT's needs within the available resources. The specifications within this RFP represent the minimum performance necessary for response.

1.11.4 Specific evaluation criteria are outlined in Section 3 of this RFP, entitled Evaluation Criteria.

1.12 ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the autographic signature of the proposer, or an officer of the proposer, legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Any exceptions and/or variations to the terms and conditions presented in the RFP may be submitted as part of the proposal, with each such exception and/or variation identified clearly and thoroughly. Failure to identify any exceptions and/or variations in the submitted proposal shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP, and may result in cancellation of the award and such vendor may be removed from future solicitations. Submission of a proposal containing exceptions and/or variations does not guarantee of acceptance of such variations by CDOT, and may instead lead to the rejection of the proposal as non-responsive if the requested variations are determined to be extensive or unreasonable, by the evaluation committee assigned to this RFP solicitation.

1.13 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the sample contract, **Attachment B**.

1.14 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form, CDOT Form #637, with their proposal, **Attachment A** to this RFP.

1.15 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. Any firm affiliated or related to an employee of CDOT shall be ineligible to submit a proposal for the required services.

1.16 REQUEST FOR PROPOSAL:

The Request for Proposal Form - the cover page for this RFP - must be signed, by a person authorized to bind the proposer, and returned with the proposal.

1.17 AUDIT OF THE SELECTED PROPOSER:

Prior to final contract award, an audit may be conducted by the CDOT's External Audit Branch of the selected proposer. This audit will be for the purpose of ensuring that the selected firm is financially capable of performing the contract, that the cost information and prices quoted are reasonable, and that the selected proposer has adequate accounting practices to assure accurate tracking of contract costs.

Prior to final acceptance of the contract work, a closing audit of the proposer may be performed by the CDOT External Audit Branch. This final closeout audit will be performed upon completion of the contract to verify the accuracy of the billings and compliance with the contract provisions.

1.18 BUDGETED FUNDS:

The funds available for this solicitation are \$_____. OR CDOT is not disclosing the funds available for this solicitation at this time.

1.19 INTENT TO AWARD:

After a proposer is selected, an "Intent to Award" on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> . After intent to award has been issued, interested parties may review any/all the proposals by making an appointment with:

(name),

HAA (BID NUMBER), TITLE

Purchasing Agent & Contract Administrator
Colorado Department of Transportation
Center for Procurement and Contract Services
4201 East Arkansas Avenue, Room 200
Denver, CO 80222
[\(email\)](#)
Phone: Fax:

1.20 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to a Procurement Official at dot_procurement@state.co.us. The protest shall be submitted in writing within ten (10) business days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Protests received after the ten-business-day period shall not be considered.

The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement by bid, RFP, or award number;
- C. A statement of the reasons for the protest; and
- D. Any available exhibits, evidence or documents substantiating the protest.

1.21 CONTRACT:

CDOT has provided as **Attachment B a Sample Contract** that it expects to enter into with the successful proposer. **Although submittal of a proposal is agreement to the entire contract without exception, under certain circumstances CDOT may be agreeable to negotiating minor modifications to the Sample Contract. Any modifications requested must be submitted concurrently and clearly labeled as *Suggested Contract Exceptions* in the bid response. CDOT makes no guarantees that the proposed exceptions will be accepted or negotiated.** If the Bidder is awarded a contract and refuses to sign the contract as provided in this solicitation, CDOT may reject the Bidder proposal for this work. Under no circumstances shall the Bidder submit its own boilerplate of terms and conditions.

The initial term of the Contract shall be 1 year. Initial term of the Contract shall be from date of execution through the initial term of the award. If a contract, at its sole discretion, the State, upon written notice to the Contractor, may unilaterally renew the term of the Contract for **four (4)** additional terms of 1 year, including, but not limited to prices, rates and service delivery requirements. Bidder agrees to deliver under this solicitation for the full initial term and any renewals.

CDOT may elect to renew services annually contingent upon: (1) the results and recommendations generated through this contract; (2) the State's satisfaction and acceptance of the selected vendor's services and deliverables upon completion of each anticipated contract year; and (3) availability of funding to continue services.

1.22 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP evaluation. Upon review and approval of the evaluation committee's recommendation for award(s), the CDOT Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer(s). Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. A contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer(s) that receive a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer(s) shall not take any actions(s) to prepare for or start the performance of the RFP work/services until a contract is so negotiated and executed. In addition, a contract must be completed and signed by all parties concerned on or before the date indicated in the Schedule of Activities.

1.23 AWARD OF CONTRACT:

The award will be made to that proposer(s) whose proposal conforms to the RFP, and is/are judged to be the most advantageous to the State of Colorado and CDOT, price and other factors considered, subject to negotiation and execution of an acceptable contract as described above.

CDOT will award this solicitation and enter into a contract with the winning Proposer(s) through an executed State of Colorado, Department of Transportation Contract. CDOT intends to award to Offerors capable of fulfilling CDOT's current anticipated volume needs. However, should CDOT determine, at any time during the term of the resulting contract(s), that the number of awarded contractors is not adequate to properly fill CDOT's needs, CDOT reserves the right to make awards to Offerors who submitted responses to the original solicitation but were not awarded, or to re-issue the solicitation and make additional awards as necessary. If the solicitation is re-issued, current contractors in good standing will not be required to respond.

1.24 It is the intent of CDOT to select a vendor within 30 days of the deadline for receipt of proposals. However, bid proposals must be firm and valid for award for at least 120 days after the deadline for receipt of proposals.

1.25 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then will be made only with the approval of CDOT.

1.26 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.26.1. By submission of this proposal each proposer thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor; and
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.26.2 Each person signing the Invitation for Bid form of this RFP certifies that:
He/she is the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

or
He/she is not the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

1.26.3 A proposal will not be considered for award where 1.26.1 (a) and (c), and 1.26.2 above, have been deleted or modified. Where 1.26.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the CDOT's Purchasing Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.27 TAXES

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K), and from all State and Local Government Use Taxes (Ref.

Colorado Revised Statutes Chapter 39-26.114[a]). Proposer is hereby notified that when materials are purchased in certain political subdivisions the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.28 FUNDS AND COMPENSATION:

The funds payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado or CDOT.

1.29 BACKGROUND, OVERVIEW, GOALS:

Project Purpose

1.30 STATEMENT OF WORK:

See attached Statement of Work – Attachment C. **CDOT is not guaranteeing the award of any work.**

1.31 RESPONSIBILITIES

Responsibilities

1.32 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CDOT Purchasing Official, provided that the submission must be in STRICT accordance with the following procedures. The submission of information in strict accordance with such procedures shall be the SOLE RESPONSIBILITY of the proposer.

PROCEDURE FOR SUBMISSION:

- A. A written request for confidentiality shall be submitted, by the proposer with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY, AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED/PACKAGED from the rest of the proposal. Co-mingling of confidential/proprietary information and other information is NOT acceptable.
- E. The CDOT Purchasing Official will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Purchasing Official will be sent to the proposer.
- E. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Purchasing Official, and not given further consideration.

1.33 ORAL PRESENTATION/SITE VISITS:

Proposers may be asked to make oral presentations or to make their facilities available for a site inspection by the evaluation committee. Such presentations and/or site visits will be at the proposer's expense and for the total evaluation committee and the Purchasing Agent.

1.34 PROPOSAL PRICES:

Estimated proposal prices/amounts are not acceptable. Best and final offers may be considered in determining the apparent successful proposer, if requested, by the evaluation committee after oral presentations.

1.35 RFP CANCELLATION:

The State reserves the right to cancel this Request for Proposal at any time, without penalty.

1.36 PARENT COMPANY:

If a proposer is owned or controlled by a parent company, the name, main office address and parent company's tax identification number shall be provided in the proposal.

1.37 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

1.38 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract. Further, Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement the statutes govern this procurement.

1.39 COOPERATIVE PURCHASING AGREEMENT:

In accordance with 24-110-201 CRS, this solicitation may be issued to establish a cooperative purchasing agreement. The prices and rates from the awarded vendor's bid/proposal resulting from the solicitation may be used by the issuing entity, other state agencies, institutions of higher education, political subdivisions (i.e., cities, counties, schools) and eligible non-profit agencies. Each entity will be responsible for costs incurred by their entity and may use a commercial card or issue a purchase order/contract as appropriate by the ordering agency or entity.

1.40 COLORADO PROCUREMENT MODERNIZATION ACT:

As of August 9, 2017 the Colorado Procurement Modernization Act is in effect. As a result the following terms for all existing and future contracts will be void as a matter of law under Colorado Revised Statute 24-106-109:

- A. Any term that requires the State to indemnify or hold harmless the vendor or a 3rd party.
- B. Any term that requires the State to agree to binding arbitration or any other binding extra-judicial dispute resolution process.
- C. Any limitation of liability that includes bodily injury, death or damage to tangible property.
- D. Any term that requires legal disputes to be handled by any laws other than those of the state of Colorado. All contracts shall be governed by Colorado law.

All contracts containing terms 1.40 A-D above shall otherwise be enforceable as if they did not contain such terms.

1.41 EQUAL OPPORTUNITY AND NON-DISCRIMINATION:

CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.42 SUBCONTRACTING :

CDOT may award a single contract or multiple contracts. Subcontracting will be allowed under the Resulting award(s). Awarded vendors will be the Prime Contractor and will be fully accountable to CDOT for assuring that its subcontractors comply with all terms of the contract between CDOT and the Prime Contractor. All Subcontractors will be subject to the same State and Federal Laws,

Assurances and Certifications as the Prime Consultant.

1.43 COMPLIANCE WITH FEDERAL REQUIREMENTS

When a procurement involves the expenditure of federal assistance or federal contract funds, the Procurement Official shall comply with the appropriate federal law and the rules and regulations promulgated pursuant to such laws which are mandatorily applicable.

FEDERAL CLAUSES AND CERTIFICATIONS

1.44 Awarded Vendor(s) will be required to complete Federal Clauses and Certifications attached as Exhibit D prior to final award and execution of the contract.

1.45 RESPONSIBILITY OF VENDORS AND CONTRACTORS :

A determination of responsibility or non-responsibility shall be governed by these rules (R-24-103-401).

Standards of Responsibility

- (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor:
 - (i) has or can obtain the appropriate financial, material, equipment, facility, personnel resources and expertise to indicate the capability to meet all contractual requirements;
 - (ii) has a satisfactory record of performance;
 - (iii) has a satisfactory record of integrity;
 - (iv) does not appear on any debarred lists;
 - (v) is qualified legally to contract with the state; and
 - (vi) has supplied all necessary information in connection with the inquiry concerning responsibility.
- (b) The prospective contractor or vendor shall supply information requested by the procurement official concerning the responsibility of such contractor. If such contractor or vendor fails to supply the requested information, the chief procurement officer or procurement official shall base the determination of responsibility upon any available information.

Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) Evidence that such contractor possesses such necessary items;
- (b) Acceptable plans to subcontract for such necessary items; or
- (c) A documented commitment from, or explicit arrangement with a satisfactory source to provide the necessary items.

Written Determination of Non-Responsibility Required

If a prospective contractor or vendor who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the procurement official. A copy of the determination shall be sent promptly to the non-responsible prospective contractor or vendor. The determination shall be made part of the procurement record.

SECTION 2.0
INFORMATION REQUIRED FROM PROPOSERS
General Proposer Response Format

2.1 BACKGROUND:

This section of the proposal, should demonstrate the proposer's understanding of, and approach to, the described services, specifically addressing how *each element* of the Statement of Work will be accomplished using the _____ as an example. The proposal should include details of the following:

2.2 CONFLICT IDENTIFICATION:

Proposals must identify all current and former contract activity with any existing State agency or transportation authority, reasonably related to the work described in this RFP. Indicate when involvement occurred and length such involvement, the specific type of activity with identified agency and/or transportation authority, and indicate the extent of involvement with such entities.

2.3 WORK EXPERIENCE:

Using the _____ as an example of how expertise will be applied, the proposal should list and describe all relevant work experience and qualifications, including but not limited to:

- a. Describe why your firm is well qualified to provide the services that have been described in this RFP.
- b. Describe your firms experience and capabilities in _____
- c. Other

2.4 FORMAT FOR PROPOSALS – Submissions must be electronic and submitted through the CDOT SUSS vendor portal in one file. If file size does not permit one file, then clearly mark the sections of your submittal. Firms responding to this RFP should address the following items in no more than 16 pages, double sided (excluding appendices: resumes, sample reports, charts, graphs, or other supporting documentation), 11 pt. font, 8.5 x 11 letter size paper, 1.5 inch margins per submission. Do not leave pages blank. All pages must be clearly numbered and sections labeled. 11x17 formatting can be used if it's necessary to properly display charts, maps, or similar information and will be counted as a single page. Text should not be presented in 11x17 format. The Cover Letter will be included towards the page count.

COVER LETTER

A cover letter (separate from the RFP signature form) must be included that generally introduces the Project Team and the approach to completing various work items outlined in the statement of work under sections 1.30 & 1.31. It must be signed by a person with full authority to enter into a contract between the Contractor and CDOT.

2.5 FEES AND EXPENSES

Cost Proposal

Contractor shall complete the work identified in this **Exhibit C – Scope of Work** based on the following Cost Proposal:

A. Labor Costs

Employee Classification	Labor Rate	Total Hours	Total Cost
1.			
2.			
3.			

Total Labor Costs: \$ _____

B. Materials, Equipment, and Other Costs

Item Description	Quantity	Total Cost
1.		
2.		
3.		

Total Materials/Equip/Other Costs: \$ _____

C. Total Project Cost

The total project cost and Task Order Maximum Amount Payable is \$ _____.

The above project budget includes all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses.

OR

PRICES AND RATES

The total price of a Project shall be determined based on the following prices and rates:

A. Labor Rates

Employee Classification	Rate/Hour
1.	
2.	
3.	

B. Materials, Equipment, and Other Costs

Item Description	Unit Cost
1.	
2.	
3.	

The above rates shall include all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses. The State is not required to execute any minimum number of Task Orders under the Contract. Only one price/rate increase will be considered during any Renewal Term following the Initial Term.

2.6 VETERANS PREFERENCE:

A. Pursuant to C.R.S. 24-50-511, the State shall give consideration to proposers utilizing a preference for hiring veterans of military service *only* in the following manner:

- To break a tie between proposals following review, scoring and ranking by the evaluation committee. Such tie shall be broken by awarding the resulting contract to the proposer utilizing the greatest quantitative (numerical) preference for veterans in the hiring of its employees.

Veterans' preference will not be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

B. Proposers should be aware of the provisions of the recently enacted House Bill 14-1224 which sets Service Disabled Veteran Owned Small Business(SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the **Center for Veteran Enterprise within the U.S. Department of Veteran Affairs**.(www.vip.vetbiz.gov)

Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-211; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

SDVOSB preference will be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

2.7 MBE/WBE PARTICIPATION:

The State encourages its agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposer's are reminded of the illegality of discrimination, and the provisions of Procurement Code Section 24-111-102.

In accordance with 49 CFR Parts 23 and 26 and 14 CFR Part 152, the Colorado Department of Transportation and the contractors, subcontractors, cities, counties and other local entities with whom it does business will take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and participate in contracts and subcontracts financed with state and federal funds. This policy specifically upholds the Transportation Commission's commitment to fair and equitable business practices and is supported by CDOT's DBE program.

SECTION 3 EVALUATION CRITERIA

3.1 AWARD OF BID:

This section will outline the evaluation criteria to be used by the evaluation committee in the review, rating, and selection of submitted proposals. After evaluation of the written proposals, CDOT *may* request oral presentations from top-ranked proposers. The highest ranked proposals will be given fair and equal treatment during the second (optional) phase of the evaluation. Oral presentations will not be scored separately as part of this solicitation. Oral presentations will only be used to adjust the proposal scores accordingly (per the same evaluation criteria), based upon the information discussed at the presentation. The top-ranked proposal(s) (following conclusion of all phases of the evaluation) shall be recommended, by the evaluation committee, to enter into contract negotiations. The contract(s) will be awarded to those proposer(s) whose proposal (conforming to the RFP) is/are deemed to be the most advantageous to the State of Colorado, price and other factors considered.

3.2 EVALUATION PROCESS:

- 3.2.1 Each member of the evaluation committee will first independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP, followed by panel discussion and final scores ranking. The recommendations of this committee will then be forwarded by the purchasing agent, to the CDOT Procurement Director for review and final approval.
- 3.2.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as nonresponsive. It is the responsibility of the proposer to provide all information required by this RFP.
- 3.2.3 The sole objective of the evaluation committee will be to recommend the proposal most responsive to the State of Colorado's needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.
- 3.2.4 The top ranked proposal(s) (highest score(s)), following independent review and panel discussion, will be recommended either for award or, if the evaluators deem in appropriate, to make an oral presentation.
- 3.2.5 Proposal Scoring: The sole objective of the evaluation committee will be to score the responses and recommend the proposer(s) whose proposal is/are most advantageous to the State of Colorado, taking into consideration all evaluation factors set forth herein. Following independent review and panel discussion, the successful proposer(s) will be the one(s) accumulating the highest number of points (of a maximum 100) at the conclusion of the final stage of the selection process and whose proposal(s) is/are deemed most advantageous to the State, and who successfully negotiates the ensuing contract.

3.3 EVALUATION CRITERIA:

The complete proposal package will include, *but not be limited to*, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items presented in Section 1.30 and Section 2 of this RFP.

As stated in Section 2.1, proposals should not simply repeat what is written in Section 1.30 of this RFP – the Statement of Work, but rather evidence the proposer's understanding of the State's requirements and its ability to provide the services needed within a clearly defined and cost-effective budget. (Refer to Section 2 of this RFP).

1. **Understanding and Project Approach - describes clear understanding of CDOT goals and proposal and contains all required information including certifications and specific information about task in Scope of Work: (40%)**

- a.
- b.

c. .

2. **Overall Experience & Capabilities - describes relevant experience of the firm, proposed staff and team experience and clearly demonstrate expertise for this contract: (30%)**
 - a. .
 - b. .
 - c. .
3. **Qualifications and Ability to Provide Services - Sufficient staff/availability to perform in a timely manner, clear description of ability to respond and complete projects in a timely manner: (15%)**
 - a. Qualification and commitment of personnel.
4. **Budget and Narrative - describes cost effective and efficient staffing/procedures that demonstrate quality value of final product: (10%) (can be more, but not less)**
 - a. Information is provided as requested in Section 2.5 and no unacceptable modifications to the terms and conditions outlined in this RFP are proposed.
5. **Feasibility and Completeness: (5%)**
 - a. The proposal is both adequate and complete, as defined through the RFP.
 - b. The proposal inspires confidence in production of a quality-required product, solicited under the RFP.
6. **Service Disabled Veteran Owned Small Business (SDVOSB) Certification: (5% preference if applicable)**
 - a. Proposers should be aware that there is a Service Disabled Veteran Owned Small Business (SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the *Center for Veteran Enterprise within the U.S. Department of Veteran Affairs*. (www.vip.vetbiz.gov)
 - b. Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-905; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

Attachment A2-5. DTR Quick Procurement Guide



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL QUICK PROCUREMENT GUIDE 2019





This guide includes tools and guidelines for a subrecipient conducting a third-party procurement.

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BASIC REQUIREMENT

Organizations use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR Part 200 (specifically Sections 200.317-200.326), and FTA Circular 4220.1F, "Third Party Contracting Guidance."

LIST OF ABBREVIATIONS

A&E	Architectural and Engineering
ADA	Americans with Disabilities Act
CASTA	Colorado Association of Transit Agencies
CDOT	Colorado Department of Transportation
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FMVSS	Federal Motor Vehicle Safety Standards
FTA	Federal Transit Administration
ICE	Independent Cost Estimate
IFB	Invitation for Bid
ITS	Information Technology Solutions
NA	Notice of Acceptance
PA	Purchase Authorization
PCR	Procurement Concurrence Request
RFP	Request for Proposals
RFQ	Request for Quotation
SA	Security Agreement
TVM	Transit Vehicle Manufacturer

PROCUREMENT THRESHOLDS



STATE

\$0 to \$4,999	Micro- Purchase
\$5,000 to \$24,999	Documented Quote
\$25,000 to \$150,000	Quick Bid
≥ \$150,000	IFB/RFP/QBS



FEDERAL

\$0 to \$10,000	Micro-Purchase
\$10,001 to \$250,000	Small Purchase (Documented Quotes)
> \$250,000	Above Small Purchase (RFP)

METHOD OF PROCUREMENT DECISION MATRIX

To determine which method of procurement is best suited, classify the situation by checking off the applicable boxes in each of the procurement methods below. All elements must apply to justify use of the method.

I. Micro-purchase

- Amount is under the Micro-purchase threshold
- Three or more vendor quotes available

II. Small Purchase (Documented Quote)

- Amount is within the Documented Quote Threshold
- Two or more vendor quotes available (Competitive Procurement)

III. Competitive Procurement

- Amount is above the Documented Quote Threshold
- Multiple sources available
- Not an Emergency Procurement



IV. Sole Source (not all elements need to apply for this category)

- Emergency Procurement (Subset of Sole Source)
- Original Equipment Manufacturer, Custom Item
- Only one source available
- Approved by CDOT - Sole Source
- Public exigency issue/emergency
- Competition is inadequate after public solicitation
(If all elements apply, continue to Emergency Procurement below)
- This is a health and safety issue that prohibits delay

V. Sealed Bid—Invitation For Bid (IFB)

- Complete & adequate specifications or purchase description
- Two or more responsible bidders willing to compete
- Selection can be made on basis of price
- Procurement suitable for firm, fixed price

VI. Informal Competitive Bidding—Request for Quotation (RFQ)

- Complete & adequate specifications or purchase description
- Does not require complicated solicitation evaluation

VII. Competitive Proposals—Request for Proposal (RFP)

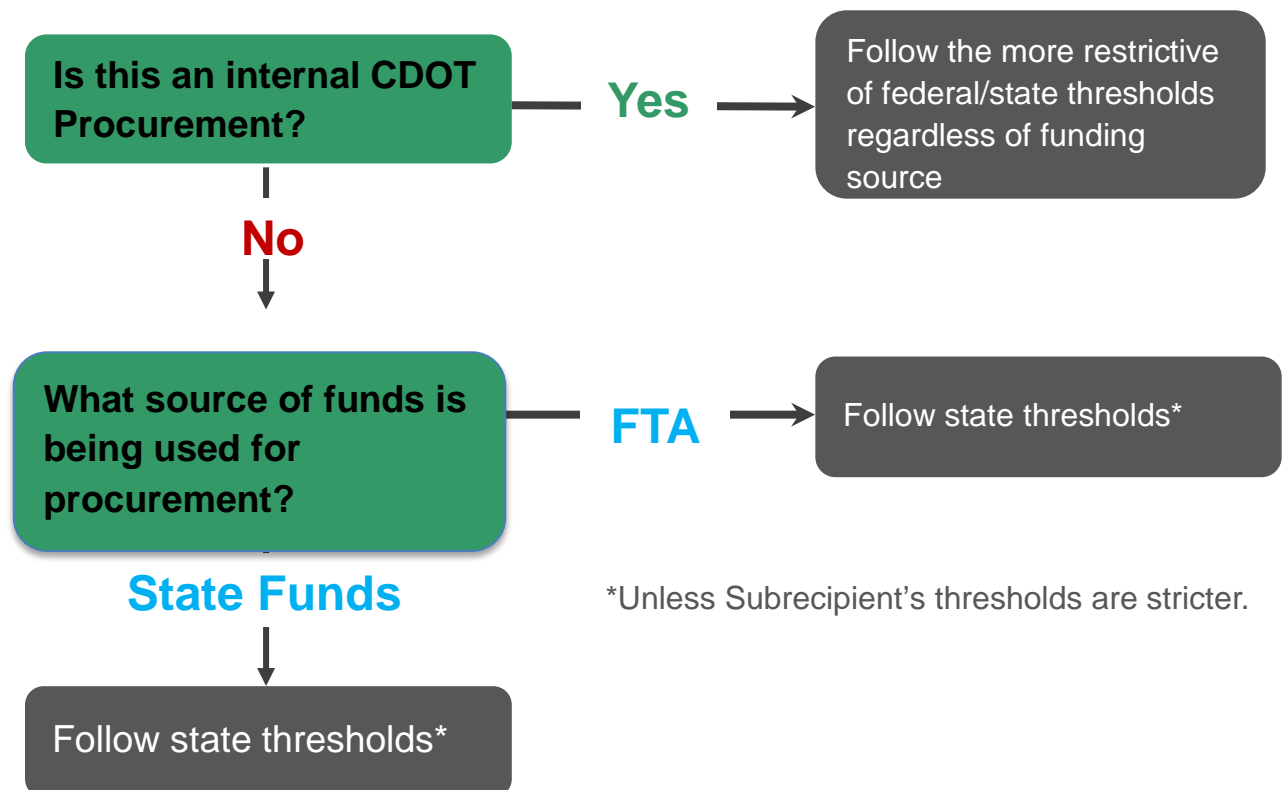
- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

VIII. Procurement for Architectural/Engineering Professional Services - Qualification Based Solicitation (QBS)

- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

Note: You cannot divide or reduce the size of the procurement to avoid the additional procurement requirements. Avoid unreasonable qualifications, specifying brand names, or exhibiting geographic preference. The successful bidder can be selected on the basis of price only.

DETERMINATION OF STATE OR FEDERAL FUNDING





DEFINITIONS USED IN DTR's PROCUREMENT PROCESSES

1

PCR Procurement Concurrence Request

The PCR is made for the purpose of reviewing the request to ensure that it avoids duplicative or unnecessary purchases and considers opportunities for intergovernmental or inter-entity sharing of goods/services. The Project Coordinator reviews the rationale for the request and procurement method, and then approves or rejects the PCR in COTRAMS.

2

PA Purchase Authorization

Subrecipients must prepare this form and submit it for approval prior to finalizing its agreement with the vendor for goods or services purchased with federal/state funding. The Project Coordinator reviews the required documentation (as seen in Procurement Documentation Requirement chart) and approves or rejects the PA in COTRAMS.

3

NA Notice of Acceptance

Subrecipients submit the NA after they have accepted any equipment or rolling stock. The NA also includes a Vehicle Inspection Checklist and allows for the Post Delivery Audit to be reported to the Project Coordinator. Post Delivery Audit includes: Buy America Certification (as applicable), Purchaser's Requirements Certification, Federal Motor Vehicle Safety Standards Certification, and Altoona Testing as applicable.

4

SA Security Agreement

The SA is made for the purpose of securing the State or Federal interest in transit vehicles purchased with State or Federal funds awarded by CDOT to the subrecipient. This form is taken to the agency's county DMV to register and title the vehicle. In order to ensure proper use of vehicles throughout the useful life, CDOT holds a first lien on all vehicles in the amount of the Federal or State share of the vehicle cost.

FTA AND FASTER CERTIFICATIONS AND ASSURANCES

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air				Construction contracts over \$2,000	
Buy America			All	All	All			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, manufactured products)					
Charter Bus Service Operations		All					All							Construction contracts over \$2,000	
School Bus Operations		All					All							Construction contracts over \$2,000	
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel				Involving property that may be transported by ocean vessel	
Seismic Safety	A&E for new buildings and additions			New buildings and additions		A&E for new buildings and additions			New buildings and additions					Construction contracts over \$2,000	
Energy Conservation	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Clean Water	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Bus Testing (not minivans)			All					All							
Pre-Award and Post Delivery Audit Requirements			All					All							
Lobbying	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Access to Records and Reports	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Federal Changes	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Bonding (not required of states)				All (including ferry vessels)											
Clean Air	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Recycled Products		All		All	All		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year					
Davis-Bacon and Copeland Anti-Kickback Act				All (including ferry vessels)					All (including ferry vessels)					Section 1: All Section 2: >\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		All	All	All (including ferry vessels)			>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Termination Provisions	All	All	All	All	All	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000					
Gov't-wide Debarment and Suspension	All	All	All	All	All	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000					
Privacy Act	All	All	All	All	All	All	All	All	All	All					
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution	All	All	All	All	All	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000					
Patent Rights and Rights in Data (& Copyrights Requirements)	Research & development					Research & development					Research & development			Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311, 5316 funds					Transit operations funded with Section 5307, 5309, 5311, 5316 funds							Construction contracts over \$2,000	
Disadvantaged Business Enterprises (DBE)	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met				All if threshold for DBE program met	
Incorporation of FTA Terms	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds		Construction contracts over \$2,000	

FASTER CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	IFB/RFP/QBS (>\$100,000)		Quick Bid (\$25,000 - \$99,999)		Documented Quote (\$5,000 - \$24,999)		Micro-Purchase (\$0 - \$4,999)	
	FASTER		FASTER		FASTER		FASTER	
	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity								
Fly America								
Buy America								
Charter Bus Service Operations								
School Bus Operations								
Cargo Preference								
Seismic Safety								
Energy Conservation								
Clean Water								
Bus Testing (not minivans)	All		All		All		All	
Pre-Award and Post Delivery Audit Requirements								
Lobbying	>\$150,000	>\$150,000						
Access to Records and Reports	All	All	All	All	All	All	All	All
Federal Changes								
Bonding (not required of states)								
Clean Air								
Recycled Products								
Davis-Bacon and Copeland Anti-Kickback Act								
Contract Work Hours and Safety Standards Act		>\$150,000 (Construction)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts								
Termination Provisions	All	All	All	All	>\$10,000	>\$10,000		
Gov't-wide Debarment and Suspension (#22)	All	All	All	All				
Privacy Act (#23)								
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution								
Patent and Rights in Data								
Transit Employee Protective Arrangements								
Prompt Payment								
Incorporation of FTA Terms								
Drug and Alcohol Testing								



PROCUREMENT DOCUMENTATION REQUIREMENTS

Subrecipients must maintain sufficient records that detail the significant history of a procurement. At a minimum, such records must include:



Rationale for the method of procurement (i.e., Request for Proposals, Invitation for Bids, sole source)



Selection of contract type (i.e., fixed price, cost reimbursement)



Reason for contractor selection or rejection



Basis for the contract price (i.e., cost/price analysis)



The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
CDOT Price Agreements	Procurement using CDOT/DTR's negotiated price agreements for commonly purchased buses and transit vehicles.	X	X	X	X	<ul style="list-style-type: none"> Independent Cost Estimate (ICE) 	<ul style="list-style-type: none"> Cost and Price Analysis* Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed Transit Vehicle Manufacturer (TVM) Certification* Bus Testing Certification* Federal Motor Vehicle Safety Standards (FMVSS) Certification* Purchasers Requirement Certification* More than \$100k Lobby Certification* More than \$150k Buy America Certification* Price Agreement Vendor Quotes* *Obtained from CDOT Price Agreement Contractor for vehicle procurement Additional: TVM Survey Monkey - CDOT Staff	<ul style="list-style-type: none"> Independent Cost Estimate Procurement Concurrence Request Purchase Authorization Notice of Acceptance Security Agreement Application for Title or Title Invoice Proof of Payment Post Delivery Certifications
State Price Agreements (State funds only)	Procurements using State of Colorado State Commodity & Service Agreements. Agreements generally run for a year, with the option for renewal. The State's current contracts can be found at https://www.colorado.gov/pacific/osc/price-agreements .	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Price Agreement Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Piggybacking (Non-federal funds)	A post award practice that allows a party that was not included in the original procurement to purchase supplies or equipment through the contract. Piggybacking is only allowed under certain circumstances.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> All official correspondence related to the procurement Written approval from original agency Supporting documentation for Piggybacking Worksheet Self-certifications for Buy America and Purchaser's Requirements Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
Micro-Purchases	Purchases under \$10,000. Do not require competitive quotes.	--	--	--	--	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Documentation that the price is reasonable 	
Documented Quotes	Purchases between \$10,000 and \$250,000. Require a minimum two quotes.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Invitation for Bid (IFB)/ Request for Proposal (RFP)	Purchases over \$250,000. Competitive procurement with defined rules and procedures.	X	X	X	X	<ul style="list-style-type: none"> ICE RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Qualification-based (Brooks Act)	Used for procuring architectural/engineering professional services.	X	X	--	X	<ul style="list-style-type: none"> ICE RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* More than \$100k Lobby Certification More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
Sole Source	Procurements soliciting proposal from one source. Also used for a contract change not within scope of the original contract.	X	X	X	X	<ul style="list-style-type: none"> • ICE 	<ul style="list-style-type: none"> • Cost and Price Analysis • Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* • Signed TVM Certification (vehicles only) • Bus Testing Certification (vehicles only) • FMVSS Certification (vehicles only) • Purchasers Requirement Certification (vehicles only) • More than \$100k Lobby Certification • More than \$150k Buy America Certification • Sole Source Justification • Proposed contract with applicable clauses <p>Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff</p>	



LINKS & TIPS

FTA Procurement Website

<https://www.transit.dot.gov/funding/procurement/procurement>

FTA Circular C 4220.1F: Third Party Contracting Guidance provides contracting guidance for recipients of federal assistance awarded by the FTA when using that federal assistance to finance its procurements (third-party contracts)

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

FTA Best Practices Procurement Manual includes procedures, methods, and examples of procurement practices covering the entire procurement cycle

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

Federal Title 49 – Part 18 Subpart C, Section 18.36 Procurement

<https://www.gpo.gov/fdsys/pkg/CFR-1999-title49-vol1/pdf/CFR-1999-title49-vol1-sec18-36.pdf>

National RTAP ProcurementPRO website—especially helpful for managing RFP's









<http://www.nationalrtap.org/Web-Apps/ProcurementPRO-20>

RTAP Procurement Assistance is available to rural agencies by contacting Colorado Association of Transit Agencies (CASTA)

<https://coloradotransit.com/>

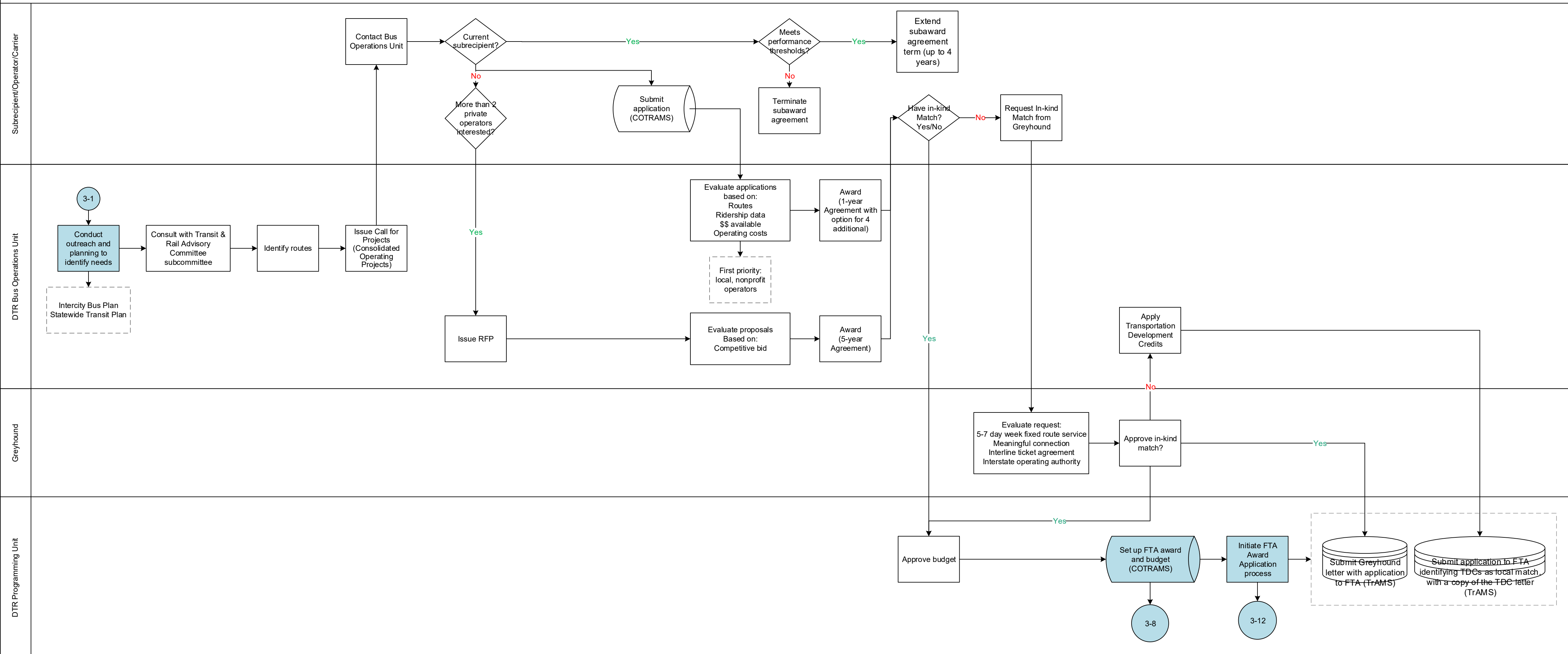
FLOWCHARTS

Flowchart Shapes/Key

 Process	 Decision
 Subprocess	 Document
 Connecting Flowchart	 COTRAMS
 TraMS	 SAP Database

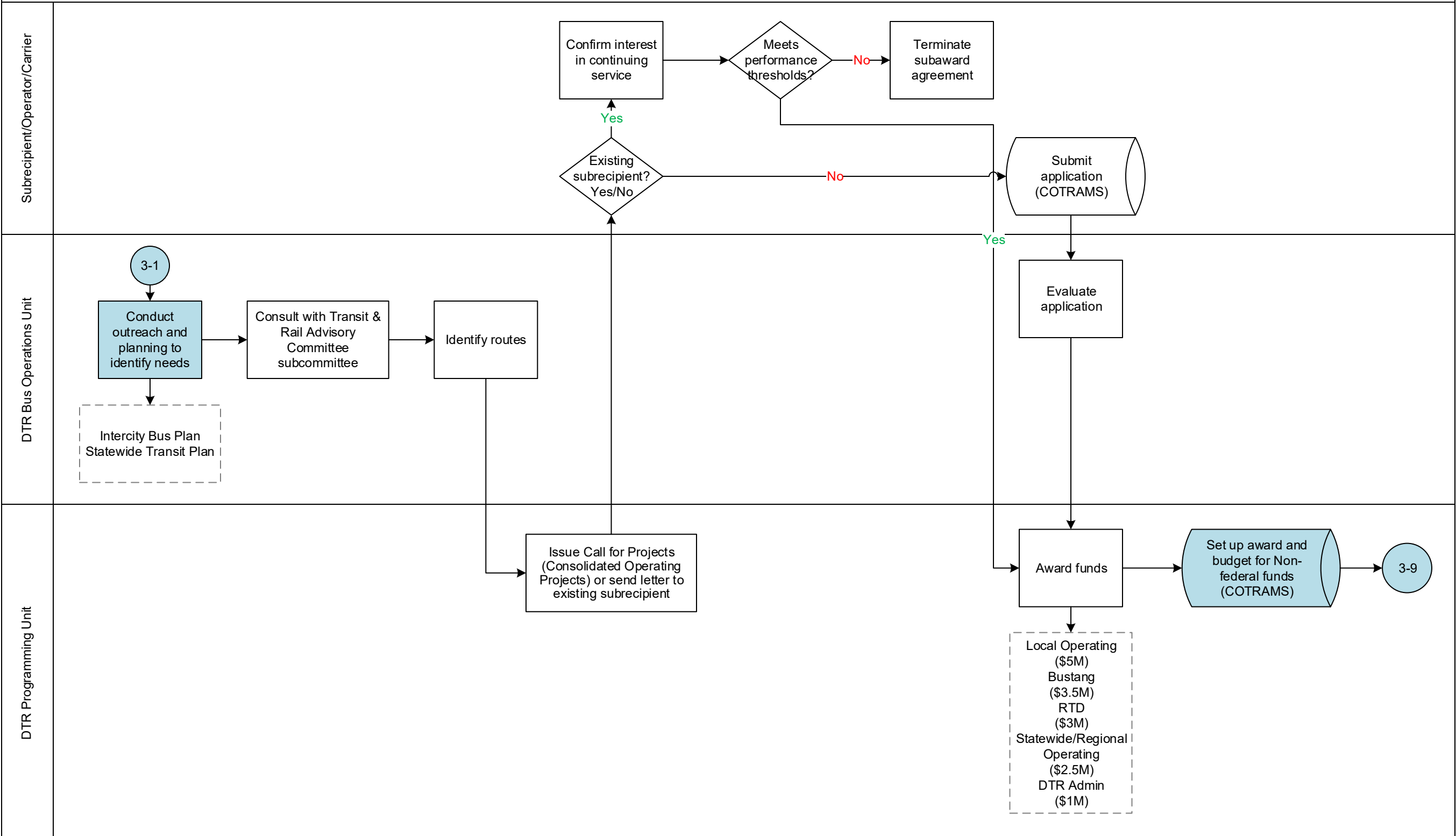
Flowchart A2-1. Section 5311(f) Planning through Award

A2-1 Section 5311(f) Planning through Award



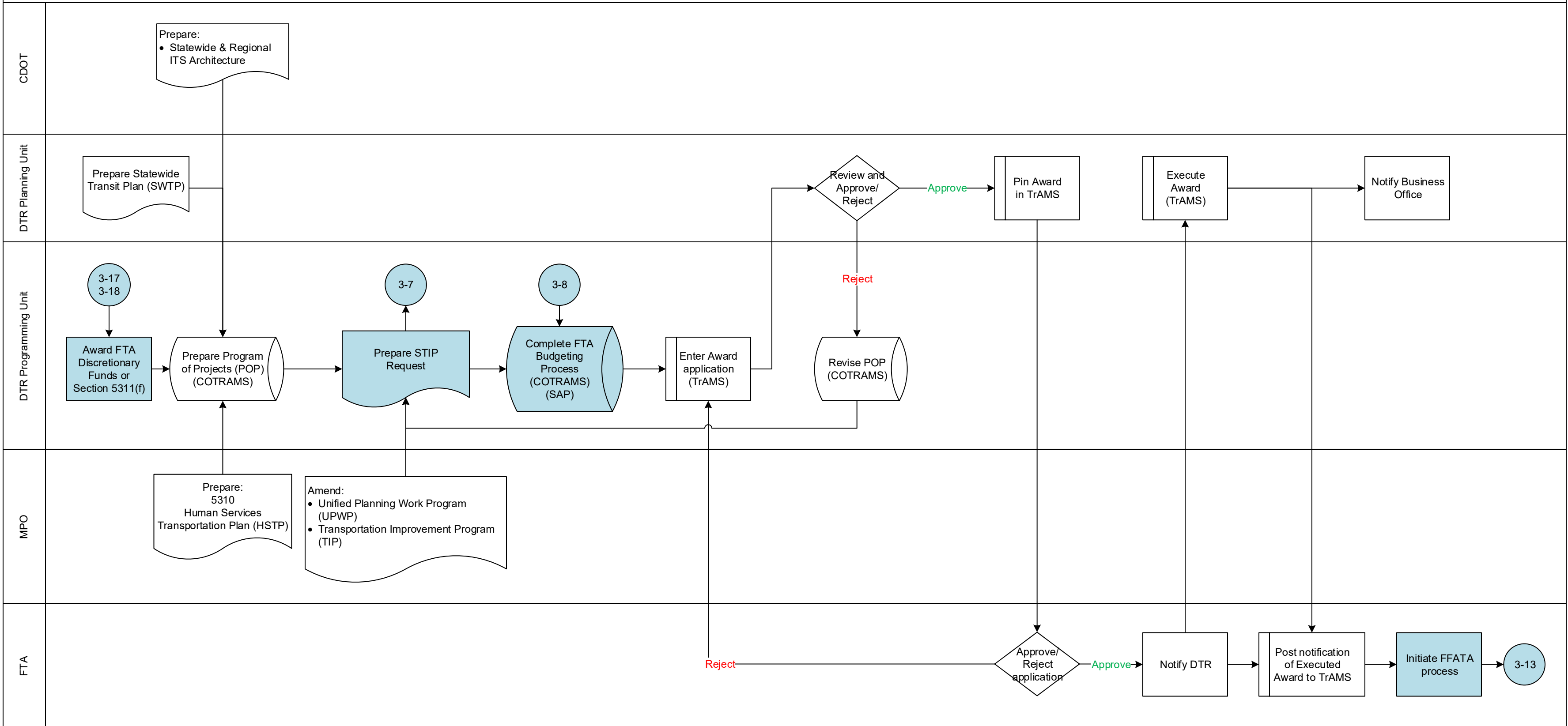
Flowchart A2-2. FASTER Local and Regional Bus Planning through Award

A2-2 FASTER Local and Regional Bus Planning through Award



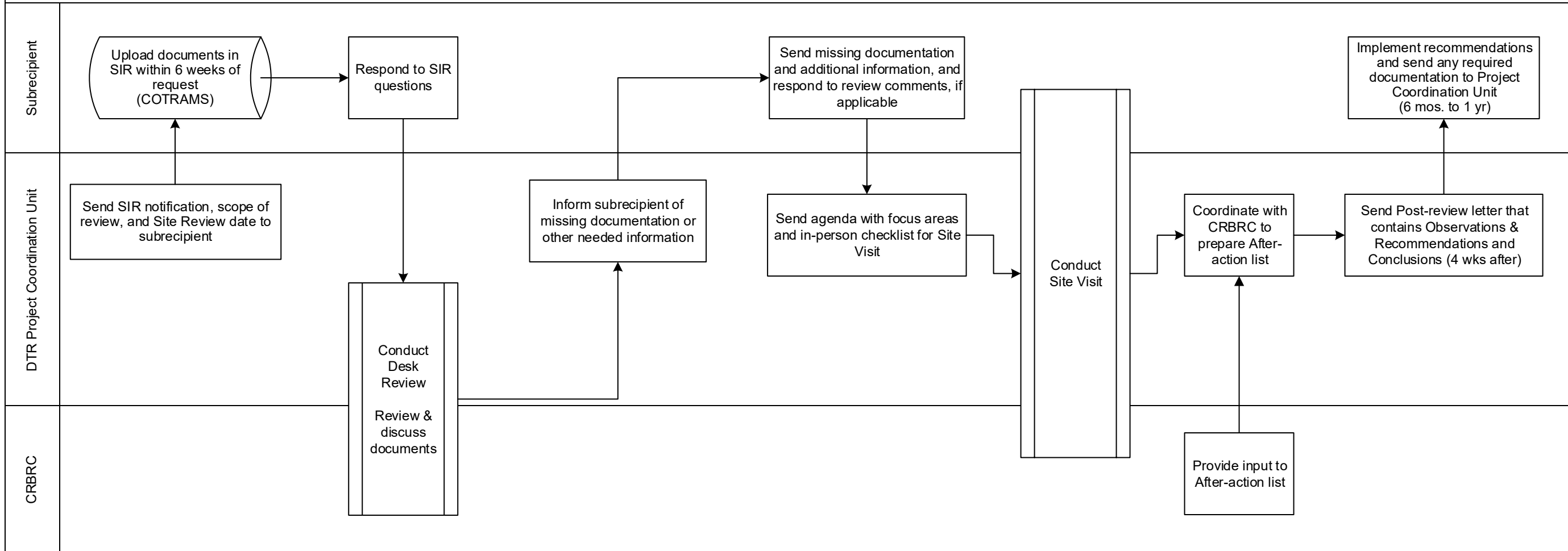
Flowchart A2-3. FTA Award Application

A2-3 FTA Award Application



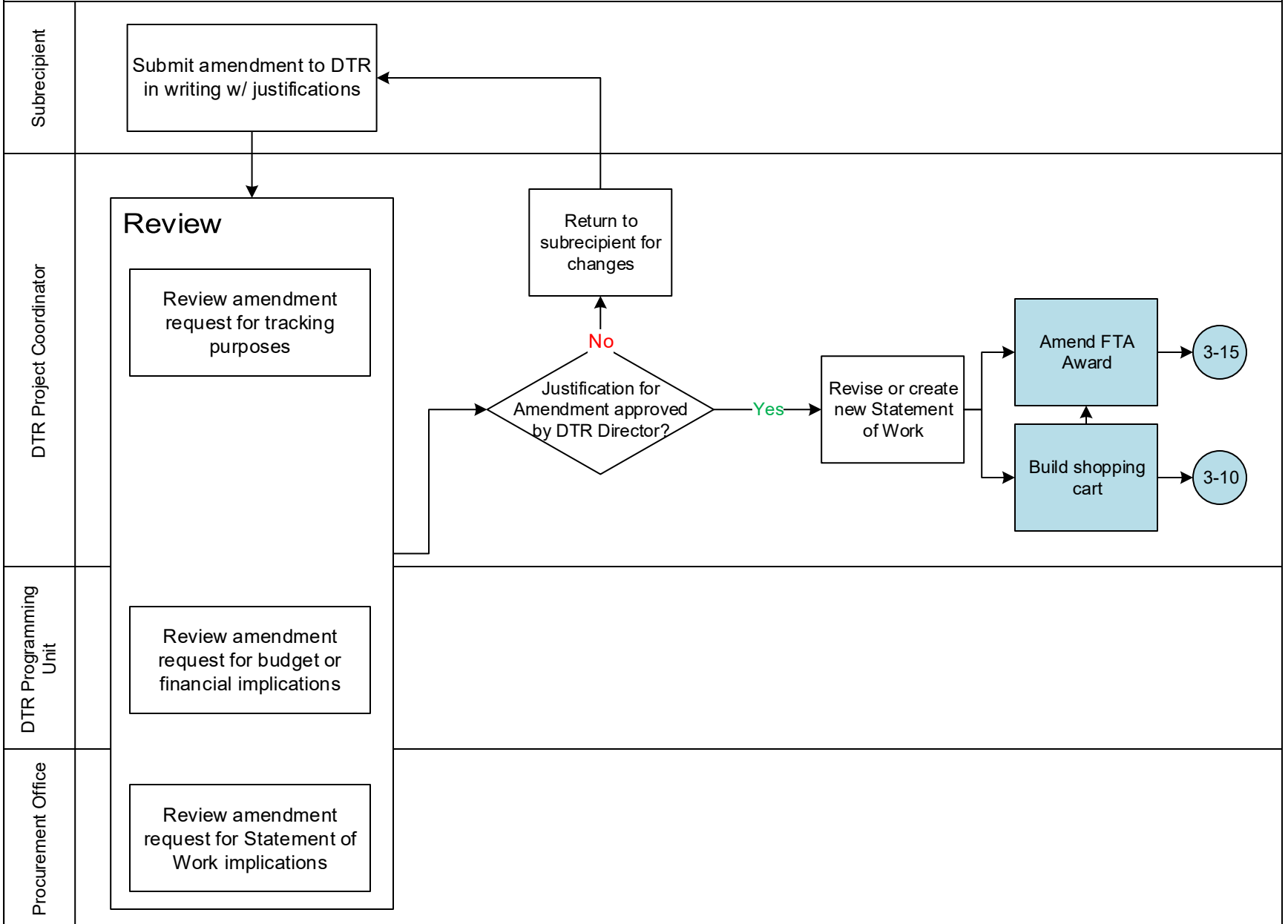
Flowchart A2-4. Subrecipient Information Request (SIR) and Site Review Process

A2-4 Subrecipient Information Request (SIR) and Site Review Process



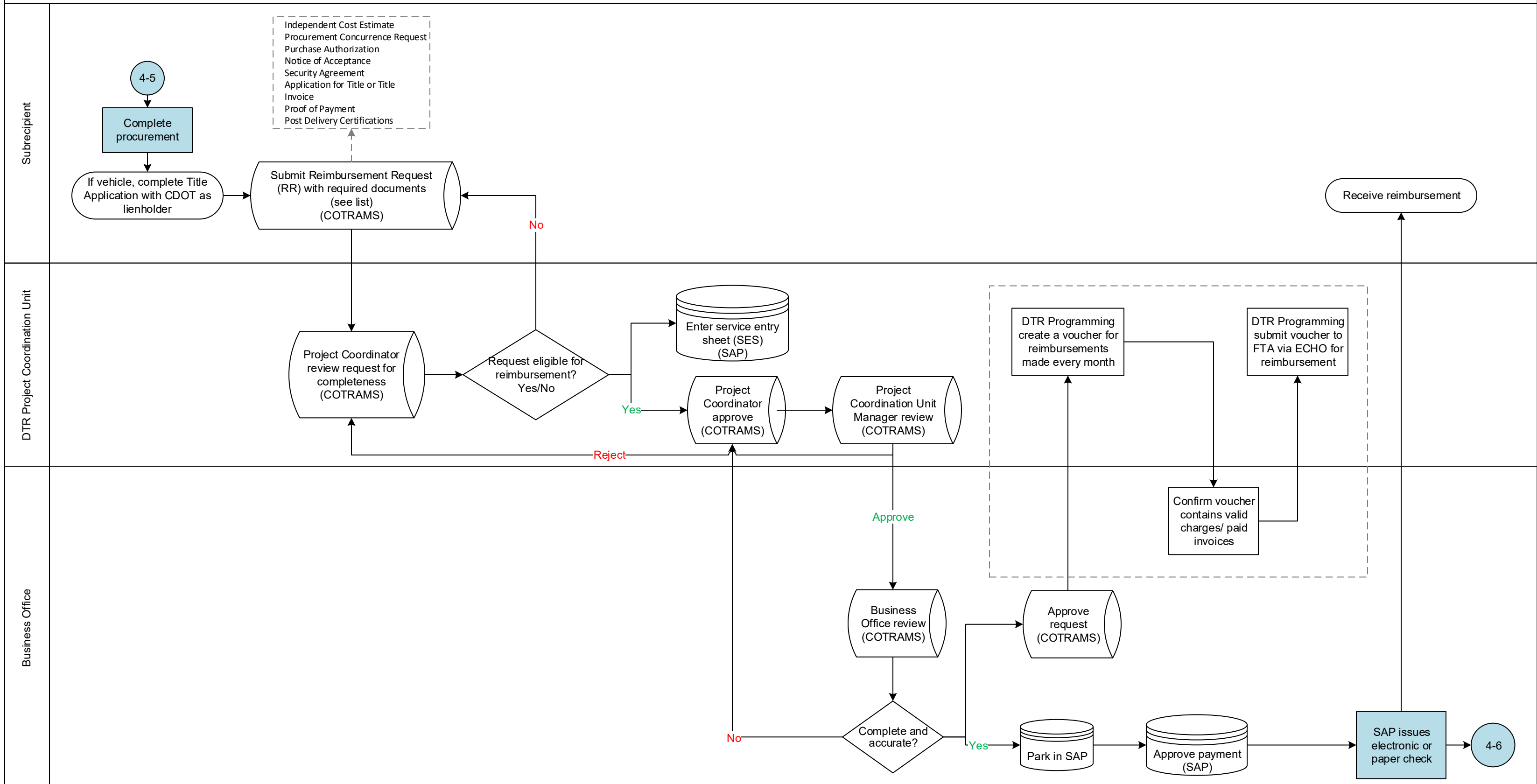
Flowchart A2-5. Amendment for Capital Project

A2-5 Amendment for Capital Project



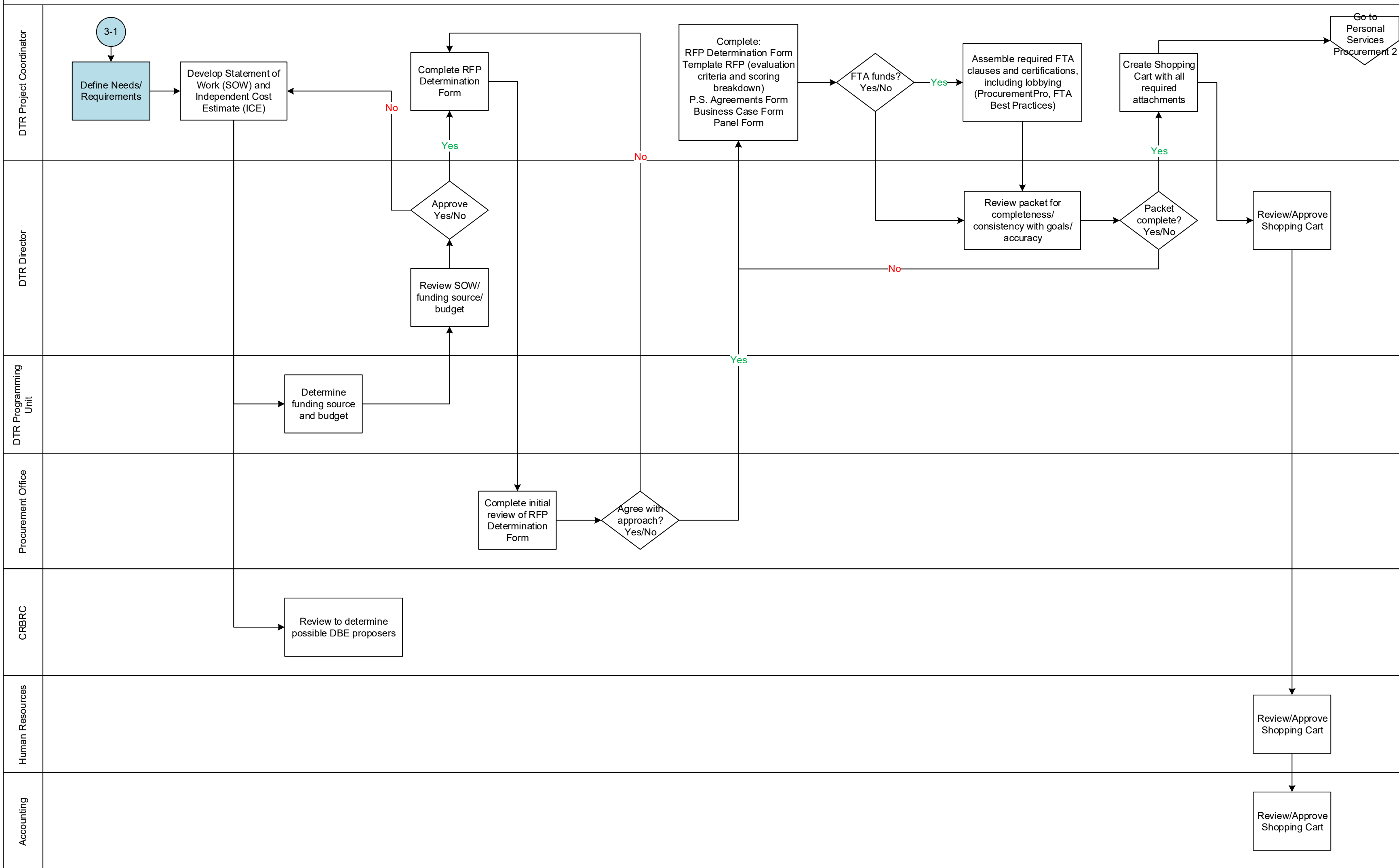
Flowchart A2-6. Capital Project Reimbursement Request

A2-6 Capital Project Reimbursement Request

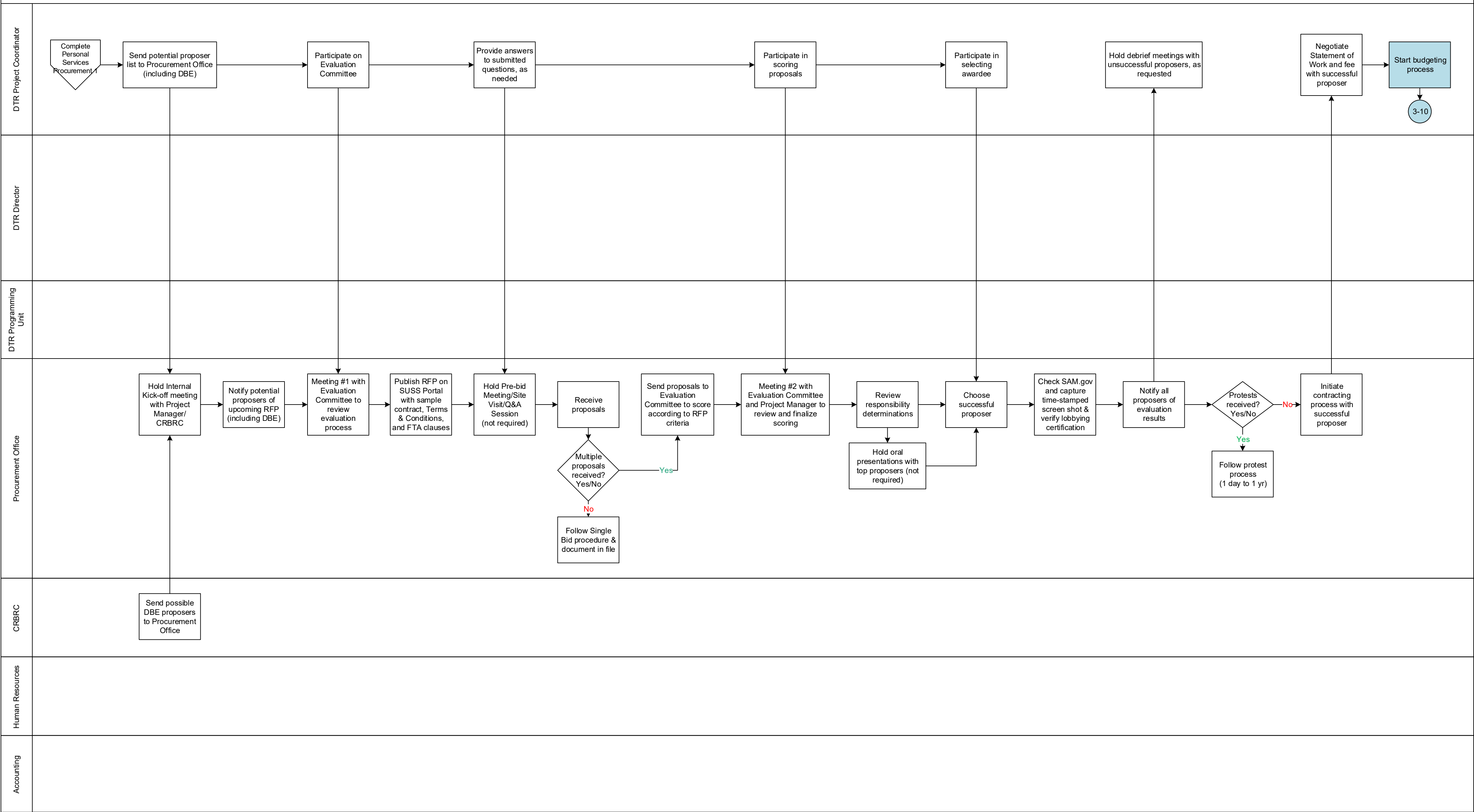


Flowchart A2-7. Personal Services Procurement

A2-7 DTR Personal Services Procurement - 1

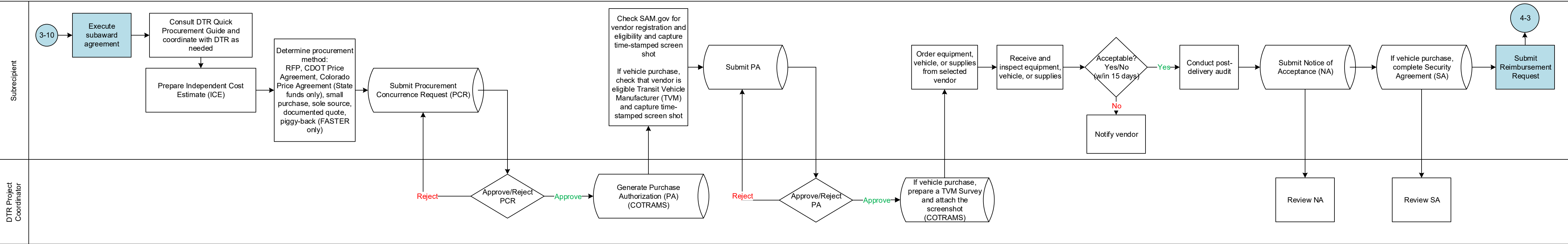


A2-7 DTR Personal Services Procurement - 2



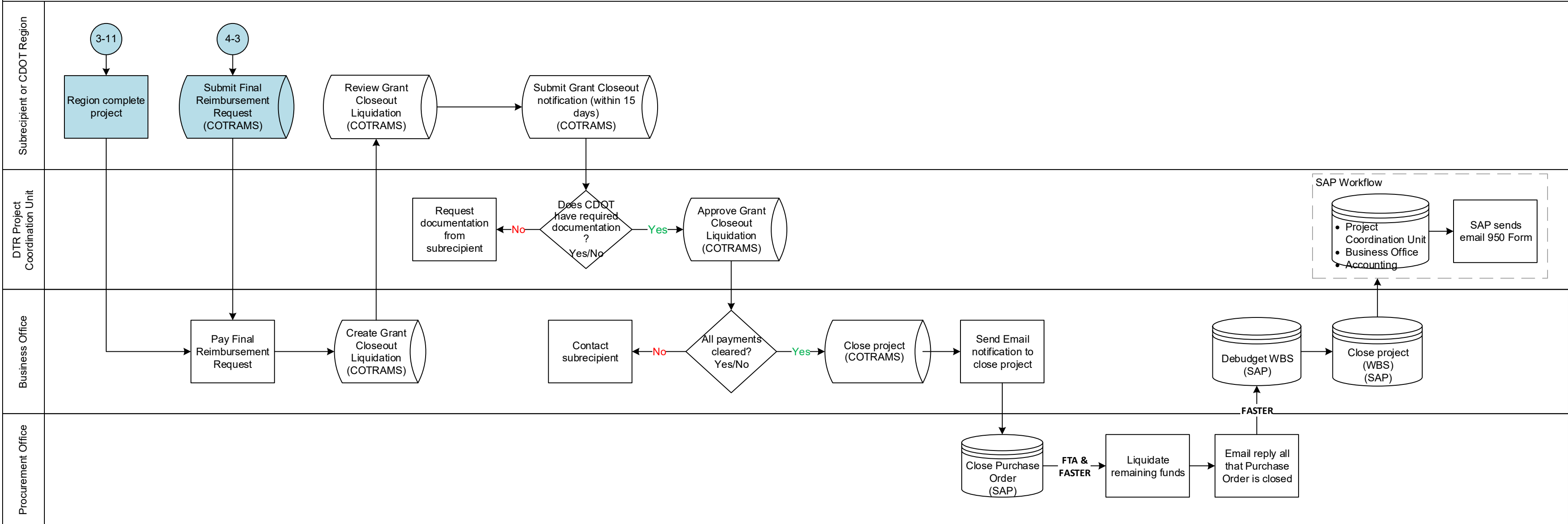
Flowchart A2-8. Third-Party Procurement

A2-8 Third-Party Procurement



Flowchart A2-9. Project Closeout

A2-9 Project Closeout



ADDITIONAL ATTACHMENTS

FTA Circular: FTA C 9040.1G: Formula Grants for Rural Areas: Program Guidance and Application Instructions



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 9040.1G

November 24, 2014

Subject: FORMULA GRANTS FOR RURAL AREAS: PROGRAM GUIDANCE AND APPLICATION INSTRUCTIONS

1. PURPOSE. This circular is a reissuance of guidance on the administration and preparation of grant applications for the Formula Grants for Rural Areas Program under 49 U.S.C. 5311. This revision incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141 (2012)), and includes the most current available guidance as of the date of publication.
2. CANCELLATION. When final, this circular will cancel FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated April 1, 2007.
3. AUTHORITY.
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, FTA published a notice in the Federal Register on October 24, 2014, addressing comments received during development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to amend this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment without further notice and comment on this circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "Connect with FTA" for more information.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original Signed By
Therese W. McMillan
Acting Administrator

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SECTION 5311 PROGRAM CIRCULAR

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I. INTRODUCTION AND BACKGROUND

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA)**. The Federal Transit Administration (FTA) is one of ten modal administrations within the U.S. Department of Transportation (DOT), and is headed by an administrator appointed by the president of the United States. The FTA functions through a headquarters office in Washington, DC, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes.

Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes, but is not limited to, transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intraterminal or intrafacility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. **AUTHORIZING LEGISLATION**. Most federal transit laws are codified at Title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law as well as changes required by other laws that have become effective since the circular was last published in April 2007.
3. **HOW TO CONTACT FTA**. FTA's regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA's headquarters offices. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which the recipient is located. See Appendix G, "FTA Regional and Metropolitan Contact Information," of this circular for more information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
East Building
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. DEFINITIONS. All definitions in 49 U.S.C. 5302 and 5311 apply to this circular, as well as the following.
- a. Appalachian Region. The term “Appalachian region” has the same meaning as in Title 40 U.S.C. 14102. Appalachian region means an area of the eastern United States consisting of several counties from the following states: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.
 - b. Applicant. An entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA.
 - c. Capital Asset. Facilities or equipment with a useful life of at least one year.
 - d. Capital Project. A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter III of this circular.
 - e. Consultation. One party confers with another identified party in accordance with an established process and, before taking action(s), considers that party’s views and periodically informs that party about action(s) taken.
 - f. Coordinated Plan. See “Locally Developed, Coordinated Public Transit-Human Services Transportation Plan.”
 - g. Electronic Clearing House Operation (ECHO) System. ECHO is a FTA Web-based application system that processes drawdown payment requests from FTA recipients.
 - h. Electronic Award Management System. A system that recipients and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by recipients to submit financial status reports and milestone progress reports and to submit grant modification requests; this term includes FTA’s Transportation Electronic Award Management (TEAM) system and its successor.
 - i. Equipment. An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.

- j. Federally Recognized Indian Tribal Government. The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) certified by the secretary of the Interior as eligible for the special programs and service provided through the Bureau of Indian Affairs.
- k. Force Account. The use of a recipient's own labor force to accomplish a capital project.
- l. Governor. The governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- m. Grant. An award of financial assistance, including a Cooperative Agreement, in the form of money, or property in lieu of money, by the federal government to an eligible recipient or recipient. Used interchangeably with "grant agreement."
- n. Grant Application. A complete application for an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the federal government to an eligible recipient.
- o. Intercity Bus Service. Regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.
- p. Job Access and Reverse Commute (JARC) Project. A transportation project to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.
- q. Joint Development. A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-use, or other non-transit development. Joint development may include partnerships for public or private development -associated with any mode of transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities, transit malls, or historic transportation facilities.
- r. Local Governmental Authority. A political subdivision of a state; an authority of at least one state or political subdivision of a state; an Indian tribe; and a public corporation, board, or commission established under the laws of a state.

- s. Locally Developed, Coordinated Public Transit-Human Services Transportation Plan. A plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.
- t. Low-Income Individual. An individual whose family income is at or below 150 percent of the poverty line (as that term is defined in Section 673(2) of the Community Service Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.
- u. Master Agreement. The FTA official document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its project(s). The Master Agreement is incorporated by reference and made part of each FTA grant, Cooperative Agreement, and amendment thereto.
- v. Metropolitan Planning Organization (MPO). The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and transportation improvement programs for metropolitan planning areas of a state.
- w. Mobility Management. Consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. Chapter 53 (other than Section 5309). Mobility management does not include operating public transportation services.
- x. National Transit Database (NTD). The NTD is FTA's primary source for information and statistics collected from transit systems that receive FTA formula funding under the Urbanized Area Formula Program (Sec. 5307) or Rural Area Formula Program (Sec. 5311). Public transportation systems receiving funds from these programs are required by statute to report to the NTD.
- y. Preventive Maintenance. Maintenance costs related to vehicles and nonvehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- z. Preaward Authority. The authority given under specific and limited circumstances to incur costs for eligible projects before a grant is made without prejudice to possible federal participation in the cost of the projects(s). Applicants must comply with all federal requirements. Failure to do so will render a project or costs ineligible for FTA financial assistance.
- aa. Program of Projects (POP). A list of projects to be funded in a grant application submitted to FTA by a state. The program of projects lists the subrecipients and indicates

whether they are private nonprofit agencies, public bodies, or private providers of transportation service; designates the areas served (including congressional districts); and identifies any tribal entities. The program of projects also identifies intercity bus and RTAP projects. In addition, the program of projects includes a brief description of the projects, total project cost and federal share for each project, and the amount of funds used for program administration from the 10 percent allowed.

- bb. Public Transportation. The term “public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age (older adults), disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter 243 (Amtrak) (or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.
- cc. Rebuild. Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock’s useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- dd. Recipient. An entity that receives a grant of formula program funds directly from FTA.
- ee. Regional Transportation Planning Organization (RTPO). Designated organization to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with emphasis on addressing the needs of nonmetropolitan areas of the state.
- ff. Rural Area. An area encompassing a population of less than fifty thousand people that has not been designated in the most recent decennial census as an “urbanized area” by the secretary of Commerce.
- gg. Senior. An individual who is sixty-five years of age or older.
- hh. Shared Use. Those instances in which a project partner, separate from the transit agency or recipient, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are determined at the time of grant award.
- ii. Small Urbanized Areas. As used in the context of FTA formula grant programs, small urbanized areas are urbanized areas with a population of at least fifty thousand but less than two hundred thousand.
- jj. State. A state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- kk. Statewide Transportation Improvement Program (STIP). A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan

transportation plans (MTPs), and transportation improvement program (TIP), and required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- ll. Subrecipient. A state or local governmental authority, a nonprofit organization, or operator of public transportation or intercity bus service that receives federal transit program grant funds indirectly through a recipient.
 - mm. Takedown. An amount or percentage subtracted from the total dollar amount appropriated for a federal program before other apportionment or allocation of the funds. For example: The Tribal Transit Program and Rural Transportation Assistance Program (RTAP) is a takedown from the total amount appropriated by Congress under the Formula Grants for Rural Areas Program (Section 5311).
 - nn. Transportation Improvement Program (TIP). A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
 - oo. Transit. The term “transit” means public transportation.
 - pp. Transit-oriented development (TOD). Compact, mixed-use development near transit facilities and high-quality walking environments. TOD leverages transit infrastructure and can promote ridership, local economic development, affordable housing, and private sector investment
 - qq. Urbanized Area (UZA). An area encompassing a population of not less than fifty thousand people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of Commerce.
 - rr. Welfare Recipient. An individual who has received assistance under a state or tribal program funded under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) at any time during the three-year period before the date on which the applicant applies for a grant under Section 5307 or 5311.
5. PROGRAM HISTORY. Before 1978, most federal transit assistance went to urban areas. In that year, in response to a DOT proposal, Congress created a new program through Section 313(a) of the Federal Public Transportation Act of 1978 (Pub L. 95-599). The new program, which created Section 18 of the Urban Mass Transportation Act (49 U.S.C. App. 1601 et seq.), provided public transportation funds for services in areas with populations of less than fifty thousand.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240) continued funding the program and introduced support for intercity bus service as a requirement under the rural program and formally authorized the Rural Transportation Assistance Program (RTAP). In 1994, legislation codified the federal transit program, changing the citation for the rural transit program from 49 U.S.C. app. 18, to 49 U.S.C. 5311.

The Transportation Equity Act for the 21st Century (TEA-21) (Pub L. 105-178) increased funding for all transit, including Section 5311. Furthermore, TEA-21 established guaranteed funding levels for Section 5311 programs. By 2003, the end of TEA-21's authorization period, annual federal rural transit funding reached \$240 million, an 80 percent increase from 1998 and a 266 percent increase from 1991. The flex fund transfer provision allowed states the ability to transfer additional funds to rural transit from their flexible funds available for either highway or transit projects and the formula transit funds for the small urbanized areas (between fifty thousand and two hundred thousand population). This provision significantly increased the funding available for rural transit.

The Safe, Affordable, Flexible, Efficient, Transportation Act a Legacy for Users (SAFETEA-LU) greatly increased funding for rural transit, proportionally more than the increase for other FTA programs. SAFETEA-LU also supplemented Section 5311 funding for growing states under the Section 5340 formula. SAFETEA-LU also established a new Tribal Transit Program as a takedown from Section 5311, and linked funding for RTAP to Section 5311 funding levels.

In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) increased funding for the rural program and modified the program's formula for the apportionment of funds. Under MAP-21, the majority of rural formula funds (83.15 percent) are apportioned based on land area and population factors. In this first tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area. The remaining rural formula funds (16.85 percent) are apportioned based on land area, vehicle revenue miles, and low-income individuals factors. Vehicle revenue miles are a new service factor and the low-income individuals factor reflects that job access and reverse commute projects are now eligible under the program. In this second tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area, or more than 5 percent of the amounts apportioned for vehicle revenue miles. In addition to funds made available under Section 5311, FTA adds amounts apportioned based on rural population according to the growing states formula factors of 49 U.S.C. 5340 to the amounts apportioned to the states under the Section 5311 formula.

In addition to the changes MAP-21 made to the Formula Grants for Rural Areas Formula Program, MAP-21 directed FTA to establish and implement broad public transportation safety and asset management regulations, which will apply to all recipients of FTA funding once finalized.

II. PROGRAM OVERVIEW

1. **SECTION 5311 STATUTORY AUTHORITY** The Formula Grants for Rural Areas Program, codified at 49 U.S.C. 5311 (Section 5311), is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. Under this program, the secretary may make grants to assist states and local governmental authorities in financing capital, operating, planning, and job access and reverse commute projects, associated with providing public transportation in rural areas. The Catalogue of Federal Domestic Assistance (CFDA) number for the Formula Grants for Rural Areas Program is 20.509.

The state may use up to 10 percent of its Section 5311 program funds to administer the program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities, and research the state considers appropriate to promote effective delivery of public transportation in rural area. Planning activities are an eligible expense under Section 5311, and shall be in addition to funding awarded to a state under Section 5305 for planning activities that are directed specifically at the needs of rural areas in the state. There is no limitation on use of Section 5311 funds for operating assistance; however, the state must use at least 15 percent of its annual apportionment to support intercity bus service, unless the governor certifies, after consultation with affected intercity bus providers, that the intercity bus needs of the state are adequately being met.

Annually, each state prepares and submits to FTA a program of projects. A state's program of projects must provide for fair and equitable distribution of funds within the state, including Indian reservations, and provide for maximum feasible coordination with transportation services assisted by other federal sources.

A state may pass through its Section 5311 program funds to subrecipients that are state or local governmental authorities, nonprofit organizations, operators of public transportation services, or intercity bus operators.

The Section 5311 program includes: the Rural Transit Assistance Program (RTAP); the Appalachian Development Public Transportation Assistance Program (ADTAP); and the Tribal Transit Program. The Tribal Transit Program has both a discretionary and a formula program.

- a. **RTAP**. Section 5311(b)(3) provides funding for the Rural Transportation Assistance Program (RTAP) as a 2 percent takedown from the amount authorized and appropriated for Section 5311. From the amounts made available for RTAP, the secretary may use up to 15 percent to carry out competitively selected projects of a national scope with the remaining balance allocated to the states. States can use RTAP funds for technical assistance, training, research, and related support activities.
- b. **ADTAP**. Section 5311(c)(2) authorizes and provides funding for a new Appalachian Development Public Transportation Assistance Program (ADTAP). This program is

funded with a takedown under the Section 5311 program to provide additional funding to states in the Appalachian region of the United States.

The formula is established based on Section 9.5(b) of the Appalachian Regional Commission Code (subtitle 40). Funds may be used for public transportation activities consistent with the formula grants for rural areas program. The funds are apportioned to the following states: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

States that are eligible for ADTAP may use amounts that cannot be used for operating expenses for a highway project if the governor approves the use in writing after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers; and the governor has determined that the local transit needs are being addressed. In order for FTA to consider the transfer, a state must provide documentation to the FTA regional office that includes: a description of the consultation efforts used to establish stakeholder involvement (i.e., state, local transit operators, and local MPO) and a certification that the funds cannot be used for operating. Upon receipt, FTA will review the request and, if approved, will transfer the funds consistent with FTA's transfer process. (Please see Chapter III of this circular regarding transfer provisions.)

- c. Tribal Transit. The Tribal Transit Program is authorized at Section 5311(c)(1) and includes a discretionary and a formula program; \$25 million in formula funds and \$5 million in discretionary funds are authorized for this program. There is a three-tier structure for formula funds distribution. Tribal Transit funds should not replace or reduce funds that Indian tribes receive from states through the Section 5311 program. Please see Chapter IX for more information on this program.

2. PROGRAM GOALS.

Pursuant to 49 U.S.C. 5311, FTA apportions or awards funds to states, Indian tribes, or other eligible recipients located in rural areas for planning, public transportation capital projects, operating costs, job access reverse commute projects, and the acquisition of public transportation service. The Section 5311 program supports both the maintenance of existing public transportation services and the expansion of those services through the following program goals:

- a. enhancing access in rural areas to health care, shopping, education, employment, public services, and recreation;
- b. assisting in the maintenance, development, improvement, and use of public transportation systems in rural areas;
- c. encouraging and facilitating the most efficient use of all transportation funds used to provide passenger transportation in rural areas through the coordination of programs and services;

- d. providing financial assistance to help carry out national goals related to mobility for all, including seniors, individuals with disabilities, and low-income individuals;
 - e. increasing availability of transportation options through investments in intercity bus services;
 - f. assisting in the development and support of intercity bus transportation;
 - g. encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development; and
 - h. providing for the participation of private transportation providers in rural public transportation.
3. STATE ROLE IN PROGRAM ADMINISTRATION. To the extent permitted by law, FTA gives the states maximum discretion in designing and managing the Section 5311 program to meet its rural public transportation needs. Where possible, FTA defers to a state's development of program standards, criteria, procedures, and policies to provide the state with the flexibility it needs to standardize its management of FTA assistance and related state programs.

In addition, under the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Grant Rule) at 49 CFR part 18, DOT permits a state to rely on its own laws and procedures instead of federal procedures in the areas of financial management systems, equipment, and procurement. As noted in 49 CFR part 18, a state may pass its procedures down to its subrecipients that are public authorities. Similarly, when a private provider of public transportation services enters into a third party contract with a state or public subrecipient of a state, as opposed to a subagreement, the state's procedures will apply to the third party contract. However, private, nonprofit subrecipients must comply with the "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" at 49 CFR part 19. FTA delegates authority to the state whenever allowed.

- a. Role of the State Agency. The governor designates a state agency that will have the principal authority and responsibility for administering the Section 5311 program. Specifically, the role of the state agency is to:
 - (1) document the state's procedures in a state management plan (SMP);
 - (2) notify eligible local entities of the availability of the program;
 - (3) plan for future transportation needs, and ensure integration and coordination among diverse transportation modes and providers;
 - (4) solicit applications;
 - (5) develop project selection criteria;

- (6) review and select projects for approval;
 - (7) forward an annual program of projects and grant application to FTA;
 - (8) certify eligibility of applicants and project activities;
 - (9) ensure compliance with federal requirements by all subrecipients;
 - (10) monitor local project activity;
 - (11) oversee project audit and closeout; and
 - (12) file an NTD report each year for itself and each subrecipient.
- b. State Administration of Projects. A state agency may carry out a project directly. The state must exercise adequate oversight to ensure that only eligible activities receive federal assistance and that subrecipients meet federal requirements. In administering the project, the state must:
- (1) provide for appropriate technical assistance for rural areas;
 - (2) ensure that there is a fair and equitable distribution of program funds within the state, including funds to Indian tribes;
 - (3) ensure a process whereby private transit operators are provided an opportunity to participate, including private providers of public transportation services, through service agreements with operators of public transportation services or as subrecipients;
 - (4) expend funds for the support of intercity bus transportation to the extent required by law; and
 - (5) provide for maximum feasible coordination of public transportation services assisted by FTA with transportation services assisted by other federal programs.

4. FTA ROLE IN PROGRAM ADMINISTRATION.

- a. FTA headquarters serves a broad, program level role in the administration of the program. FTA headquarters:
 - (1) provides overall policy and program guidance for the Section 5311 program;
 - (2) apportions funds annually to the states;
 - (3) develops and implements financial management procedures;
 - (4) initiates and manages program support activities; and
 - (5) conducts national program reviews and evaluations.

- b. FTA regional offices have the day-to-day responsibility for administration of the program. The regional office:

- (1) reviews and approves state grant applications;
- (2) obligates funds; manages grants; oversees the state's implementation of the annual program, including revisions to the program of projects;
- (3) receives state certifications;
- (4) reviews and approves state management plans (SMPs);
- (5) provides technical assistance, advice, and guidance to the state as needed; and
- (6) performs state management reviews every three years, or as circumstances warrant.

FTA conducts state management reviews. The reviews examine the state's management procedures, based on the approved SMP. In each area reviewed, a finding is made of compliance or deficiency with corrective action to be taken within a scheduled time frame. FTA places emphasis on providing the information needed to help the state come into compliance with federal requirements in all areas. FTA periodically conducts state management review seminars to assist the states in understanding the requirements. If a particular problem area is observed, a more detailed oversight review may be scheduled in such areas as procurement, financial management, drug and alcohol testing, Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964, or any other area.

5. RELATIONSHIP TO OTHER FTA PROGRAMS. Other public transportation-related federal programs may provide support for Section 5311 projects that enhance the effectiveness of these programs. The following is a brief discussion of existing programs, including programs that were repealed, but for which funding remains available, and those newly authorized under MAP-21.

- a. Repealed Programs. MAP-21 repealed a number of public transportation programs that existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of each of these repealed programs to the Rural Area Formula Program is described below.

- (1) Clean Fuels Grant Program (Section 5308).

The Clean Fuels Grant Program was a discretionary grant program that assisted in financing the acquisition of clean fuel rolling stock and clean fuel-related facilities for agencies providing public transportation and operating in an urbanized area (UZA) designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), or a maintenance area for ozone or carbon monoxide.

Funds allocated under this program in fiscal year 2012 and prior years will remain available for obligation until they lapse or are expended. Funds apportioned for this program are subject to the program rules and requirements at the time they were apportioned. Grants under this program are subject to the applicable requirements of 49 U.S.C. 5307.

(2) Bus and Bus Facilities Program (Section 5309).

The Bus and Bus Facilities Program (Section 5309) was a discretionary grant program for bus transit projects. This program was repealed under MAP-21 and replaced with the Section 5339 Bus and Bus Facilities Formula Program.

From 2010 through 2012, FTA allocated discretionary funding under this program to proposals solicited through several notices of funding availability (NOFAs), including the State of Good Repair Initiative, the Bus Livability Initiative, and Veterans Transportation and Community Living Initiative.

Funds awarded in response to these NOFAs are available for obligation until they lapse, and are subject to the program terms and requirements at the time of allocation.

(3) Job Access and Reverse Commute Program (JARC) (Section 5316).

The Job Access and Reverse Commute Program (JARC Program) (Section 5316) was a formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and rural areas to suburban employment opportunities. This program was repealed by MAP-21. Funds that were apportioned to urbanized and rural areas for fiscal year 2012 and prior years will remain available for obligation until they lapse or are expended, and remain subject to the program requirements at the time they were apportioned. Guidance for funds apportioned under the Section 5316 JARC Program is contained in FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions."

While the Section 5316 JARC Program was repealed under MAP-21, job access and reverse commute projects are now an eligible project type under the Rural Area Formula Program. Please see Chapter III, Eligibility, for a list of project types and requirements under Section 5311.

(4) New Freedom Program (Section 5317).

The New Freedom Program (Section 5317) was a formula grant program that provided funding for capital and operating expenses to support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation services. The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing Americans with disabilities seeking integration into

the workforce and full participation in society. Guidance for funds apportioned under the Section 5317 New Freedom Program is contained in FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions."

The New Freedom Program was repealed by MAP-21. Unexpended funds apportioned for fiscal year 2012 and prior years will remain available for obligation until they lapse or are expended, and are subject to the rules under which they were apportioned.

While the Section 5317 New Freedom Program was repealed under MAP-21, similar projects are eligible under the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program. Program information is available in FTA Circular 9070.1G.

(5) Paul S. Sarbanes Transit in Parks Program (Section 5320).

The Paul S. Sarbanes Transit in Parks Program (Section 5320) was a discretionary grant program that provided funding for "alternative transportation" projects within or in the vicinity of federal lands. The goals of the program were to enhance the protection of America's national parks, refuges, forests, and other federal lands and to increase the enjoyment of visitors. This program was established under SAFETEA-LU and repealed by MAP-21.

FTA announced the final allocation of discretionary Transit in Parks funds in February 2013. Funds under this program remain available until they are expended, and are subject to the program requirements at the time they were made available. Projects undertaken outside of federal lands must comply with all metropolitan and nonmetropolitan and statewide planning requirements.

b. New and Revised Programs Under MAP-21.

(1) Urbanized Area Formula Assistance Program (Section 5307). Title 49 U.S.C. 5307 provides funding for capital assistance, planning, and operating assistance for public transportation in UZAs. For small UZAs with populations less than two hundred thousand, FTA apportions funds to the governor or the governor's designee(s) for use in small urbanized areas. Section 5307(g) deems the Virgin Islands a small UZA for the purposes of Section 5307. Hence, FTA apportions Section 5307 funds to the Virgin Islands in lieu of Section 5311 funds.

In large UZAs with populations over two hundred thousand, FTA makes funds available to the designated recipient(s) for capital and planning assistance.

A number of urbanized area recipients of Section 5307 funds also receive Section 5311 funds to carry out projects in outlying rural areas. The governor has the authority to transfer Section 5307 funds apportioned to the state for small UZAs to supplement the state's Section 5311 apportionment. Transferred funds retain their local share requirements under Section 5307 (i.e., sliding scale does not apply). The governor may also transfer Section 5311 funds to supplement the state's

apportionment of Section 5307 funds for small UZAs. These transfer provisions give governors greater flexibility to allocate formula transit funds in both urbanized and rural areas to enable states to fully utilize available funds.

Guidance for the Section 5307 Urbanized Area Formula Program is available in the most recent version of FTA Circular 9030.

(2) Public Transportation Emergency Relief Program (Section 5324).

The Section 5324 Public Transportation Emergency Relief Program (ER Program) was newly authorized by MAP-21. The ER Program allows FTA to make grants to public transportation agencies that undergo serious damage as the result of an emergency, such as a flood, hurricane, tornado, tsunami, or other external cause that affects a wide area, and for which the governor of a state or the president has declared an emergency or major disaster.

FTA may make grants under the ER Program for capital projects to protect, repair, reconstruct, or replace equipment and facilities that are in danger of suffering serious damage or have suffered serious damage as a result of a declared emergency. In addition, FTA may reimburse operating expenses associated with storm preparation, immediate response, and recovery efforts, including evacuations, rescue operations, temporary public transportation service, and the cost of reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency.

FTA has implemented this program in coordination and cooperation with the Federal Emergency Management Agency (FEMA), and will work with FEMA in the aftermath of any disaster to provide support and assistance for any affected agency's recovery efforts. Grants under this program, or those made under Sections 5307 or 5311 to address a declared emergency, are subject to the terms and conditions that FTA determines are necessary. FTA will not provide funding for any expenses that are reimbursed by FEMA. This program is implemented by regulation under 49 CFR part 602.

(3) State of Good Repair Formula Program (Section 5337).

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to urbanized areas with fixed guideway systems and high intensity motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and rehabilitation projects for existing fixed guideway systems and high intensity motorbus systems that have been operating for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization formula grant program.

The state of good repair formula funds must be used for capital projects to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and

substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions state of good repair formula funds to designated recipients in the UZAs according to a statutory formula. The fixed guideway formula is applicable to fixed guideway projects using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a bus rapid transit (BRT) system and comprises: (1) a modified version of the formula used under the now repealed fixed guideway rail modernization program, and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High intensity motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles. Additional information on the Section 5337 State of Good Repair Formula Program will be available in a separate FTA circular.

(4) Bus and Bus Facilities Formula Program (Section 5339).

The Section 5339 Bus and Bus Facilities Program is a formula grant program that provides funding to states and UZAs for bus-related capital projects. This program was established under MAP-21, which concurrently repealed the Section 5309 Bus and Bus Facilities discretionary grant program.

Under the Section 5339 Bus and Bus Facilities formula program, a portion of the funds are allocated through an initial national distribution to states. The remaining funds are apportioned consistent with the formula under 5336 (other than subsection (b)) to states and UZAs on the basis of population, vehicle revenue miles, and passenger miles. Section 5307 requirements apply to Section 5339 grants. The governor of a state or the governor's designee may transfer funds apportioned under the nation distribution to supplement amounts apportioned under the Rural Area (Section 5311(c)) or Urbanized Areas Formula (5307) programs. However, the law does not allow Section 5339 funds apportioned pursuant to the Section 5336 formula to be transferred to the Section 5307 or 5311 programs.

States are responsible for administering the funds apportioned to small UZAs, which includes applying directly to FTA for the funds.

Additional information on the Section 5339 Bus and Bus Facilities Formula Program, including transfer provisions to Section 5307, can be found in the successor to FTA Circular 9100, which FTA expects to publish as FTA Circular 5100.

(5) Transit-Oriented Development Planning Pilot Program (TOD).

The Transit-Oriented Development Planning Pilot Program is a new FTA program established by Section 20005(b) of MAP-21. This program provides funding to advance planning efforts that support transit-oriented developments (TOD) associated

with new fixed guideway and core capacity improvement projects. TOD focuses growth around transit stations to promote ridership, affordable housing near transit, and revitalized downtown centers and neighborhoods and to encourage local economic development. In addition, funds from Section 5307 and Section 5311 may be used to support planning projects that receive funding under this program, or may be used for joint development capital projects relating to transit-oriented developments.

(6) Transportation Alternatives Program (FHWA – 23 U.S.C. 213(b)).

The Transportation Alternatives Program (TAP) is administered by the Federal Highway Administration (FHWA). TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving nondriver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; and projects for the planning, design, or construction of boulevards and other roadways largely in the right-of-way of former interstate system routes or other divided highways.

TAP funds are allocated to states based on each state's proportional share of fiscal year 2009 Transportation Enhancements funding. States are responsible for administering the program within the state and for allocating funds to urbanized and rural areas according to a statutory formula based on population. In UZAs with a population of two hundred thousand or more, projects are selected by the MPO. In rural and small UZAs, projects are selected by the state through a competitive process.

(7) Federal Lands Access Program (FHWA – 23 U.S.C. 204).

The Federal Lands Access Program is a grant program administered by the FHWA. This program provides funding to states and local governments for projects to improve transportation facilities that provide access to, are adjacent to, or are located within federal lands, and for which ownership or maintenance responsibility is vested in the state or local government.

The Access Program provides funding to supplement state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators. The program is designed to provide flexibility for a wide range of transportation projects in the fifty states, the District of Columbia, and Puerto Rico. Funds are allocated according to a statutory formula, which is based in part on the proportion of federal lands that exist within each state. A Programming Decisions Committee (PDC) within each state makes programming decisions and is responsible for developing a multiyear program of projects.

The PDC in each state is comprised of a representative from FHWA, the state, and of affected local governments. The PDC is required to consult with public transit agencies that operate in the vicinity of federal lands in developing its list of projects. Eligible transit projects include all planning, capital, and operating assistance projects eligible under FTA's grant programs.

The Access Program complements the FHWA Federal Lands Transportation Program (FLTP), which provides funding for transportation facilities owned or maintained by federal land management agencies.

(8) Federal Highway Administration "Flexible" Programs.

Certain FHWA transportation programs allow recipients to transfer funds to FTA for public transportation projects that are eligible under the FHWA program and under Section 5311. When such "flexible" fund transfers are made for eligible transit projects, FTA will administer these funds in a separate Section 5311 grant. Guidance on the eligibility of these funds for transfer and associated requirements is provided in Chapter V of this Circular, "Availability of FHWA 'Flexible' Funds for Transit Projects."

III. GENERAL PROGRAM INFORMATION

1. APPORTIONMENTS.

- a. Designated State Agency. The governor of each state or an official designee must designate a state agency with the requisite legal, financial, and staffing capabilities to receive and administer federal funds under the Section 5311 program. Existing designations remain in effect until changed by official notice of redesignation to the FTA regional administrator. The designated state agency is the recipient for all Section 5311 funds within the state that the designated state agency applies for on its own behalf or on behalf of subrecipients. The state agency may be the recipient on behalf of Indian tribes that are subrecipients, or a federally recognized tribe may elect to apply to FTA as a recipient of 5311 funds, after a state allocates the funds to that tribe.
- b. Apportionment of Section 5311 Funds. FTA apportions Section 5311 funds to the states by a statutory formula using the latest available U.S. decennial census data. The majority of rural formula funds (83.15 percent) are apportioned based on land area and population factors. In this first tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area. The remaining rural formula funds (16.85 percent) are apportioned based on land area, vehicle revenue miles, and low-income individuals factors. Vehicle revenue miles are a new service factor and the low-income individuals factor reflects that job access and reverse commute projects are now eligible under the program. In this second tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area, or more than 5 percent of the amounts apportioned for vehicle revenue miles. In addition to funds made available under Section 5311, FTA adds amounts apportioned based on rural population according to the growing states formula factors of 49 U.S.C. 5340 to the amounts apportioned to the states under the Section 5311 formula. Before FTA apportions Section 5311 funds to the states, FTA subtracts funding from the total available amounts for the Appalachian Development Transportation Assistance Program, the Tribal Transit Program, the Rural Transportation Assistance Program (RTAP), and FTA oversight activities.
- c. Funds Availability. Section 5311 funds remain available to the states for obligation for three federal fiscal years, beginning with the year of apportionment plus two additional years. For example, funds apportioned to a state in fiscal year 2014 are available until September 30, 2016. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all states.

Funds that a state deobligates from an approved program of projects during the period of availability remain available to the state for reobligation during the period that the funds were originally available to the state. Funds deobligated after the period of availability lapse to the state and return to FTA. FTA then reapportions these funds among all the states.

If a state carries funds over from one fiscal year to the next, it should obligate the oldest funds first. If a grant contains funds from more than one fiscal year, FTA will disburse the oldest funds first. However, if a grant included funds restricted to nonoperating projects (e.g., transfer of flex funds), restricted funds would be disbursed for a capital drawdown, even if older nonrestricted funds remained available in the grant.

States can make revisions without changing the scope of the program of projects and can also make revisions that do change the scope but only if there are sufficient undisbursed funds remaining that are within their period of availability. Chapter IV provides more information on procedures for revising an approved program of projects.

- d. Transfer of Apportionments. Funds may be transferred to certain other programs to balance state transit and highway needs or to streamline grant administration. The transfer of funds from other programs to Section 5311 does not increase the amount of funds required to be expended for intercity bus. The transfer of funds must be reflected in the STIP before they can be transferred.
 - (1) Notification of Transfer. The state initiates the transfer of FTA funds by notifying FTA's regional administrator of its intent to transfer funds. Notices to transfer funds to the state's Section 5311 apportionment should include the following: (1) Information on the entity that the funds were originally allocated to; (2) the amount of funds to be transferred, the fiscal year in which they were apportioned, and the program section(s) (e.g., Section 5307); and (3) contact information if questions arise that the state must address before FTA can process the transfer. A notice of transfer of funds must also include the specific rural projects to which the state will apply the transferred funds.
 - (2) Transfer of Section 5307 Funds to Section 5311. The governor may transfer any amount of the state's apportionment for small UZAs under two hundred thousand in population to supplement the state's Section 5311 program. The governor may make such transfers only after consultation with responsible local officials and publicly owned operators of public transportation services in each area to which the funding was originally apportioned. The governor may transfer funds without consultation within the last ninety days in which the funds are available for obligation, for use anywhere in the state.

If Section 5307 funds are transferred to supplement a state's Section 5311 apportionment, any capital or operating assistance limitations applicable to the Section 5307 apportionment apply to amounts transferred to Section 5311. For example, the sliding scale for Federal share available under Section 5311 does not apply to funds transferred from Section 5307.

In addition, the period of availability of the transferred funds remains that of the Section 5307 apportionment (six-year period of availability), which is three years longer than the same year's Section 5311 apportionment (three-year period of availability). The transfer of Section 5307 funds to Section 5311 does not increase the

- amount of Section 5311 funds that the state may use for administration, planning, and technical assistance with no local share.
- (3) Transfer of Section 5311 Funds to 5307. The governor may also transfer Section 5311 funds to supplement Section 5307 funds that FTA apportioned to the state for UZAs with populations less than two hundred thousand. The governor may transfer funds without consultation within the last ninety days in which the funds are available for obligation, for use anywhere in the state. The period of availability of the transferred funds is that of the Section 5311 apportionment (three years).
 - (4) Transfer of Section 5310/5316/5317 Funds to Section 5311. Funds apportioned in fiscal year 2013 or later for Section 5310 (Enhanced Mobility for Seniors and Individuals with Disabilities Formula Program) may not be transferred to Section 5311. Funds apportioned in fiscal year 2012 and earlier for the Section 5310 (Elderly Individuals and Individuals with Disabilities), 5316 (Job Access and Reverse Commute (JARC)), and 5317 (New Freedom) may be transferred to the Section 5311 program. The purpose of the transfer provision is not to supplement the resources available under the state's Section 5311 apportionment, but to allow the state to apply in one grant for projects selected under those programs that will be implemented by Section 5311 subrecipients. If the state does choose to consolidate fiscal year 2012 and earlier funds in a Section 5311 grant application, FTA has established new scope codes: (641) for Section 5310 projects, (646) for Section 5316 projects, and (647) for Section 5317 projects included within a Section 5311 or 5307 grant. The state must track, manage, and report on each program's funds separately within the consolidated grant.
 - (5) Limitations. Transferred funds are subject to any limitations applicable to the original apportionment of the funds, not of the receiving program. For example, transfer of part of a state's Section 5311 apportionment to small UZAs does not reduce the amount of the Section 5311 apportionment subject to the intercity bus requirement. Transfer of part of a state's Section 5311 apportionment to small UZAs does not reduce the amount of Section 5311 funds the state may use to administer its Section 5311 program (i.e., 10 percent of the Section 5311 apportionment). The state may not use the sliding scale match for transferred Section 5311 funds obligated in a Section 5307 grant. The period of availability of the transferred funds is that of the Section 5311 apportionment (three years).
 - (6) Transfer of FHWA Flexible Funds. A state may transfer Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, and certain other flexible funds, from FHWA to FTA to use for transit projects. States, in cooperation with affected local officials, select projects in rural areas with populations less than fifty thousand (excluding projects on the National Highway System [NHS] and projects funded with bridge and interstate maintenance funds).

With limited exceptions, FTA treats STP, CMAQ, or other flexible funds transferred to Section 5311 under the program requirements applicable to Section 5311. Capital and project administration are eligible with an 80 percent federal share or applicable

sliding scale share for eligible states. States may use up to, but no more than, 10 percent of the transferred funds for state administration, planning, and technical assistance. No local share is required for state administration. Flex transfers to Section 5311 do not increase the amount the state must spend for intercity bus service under Section 5311(f). The period of availability of flexible funds transferred to Section 5311 is three years.

(7) Transfer of Appalachian Development Public Transportation Program Funds. The funds apportioned under Appalachian Development Public Transportation Assistance program under Section 5311(c)(2) permits transfers to FHWA for highway projects if the funds cannot be used for operating expenses. In order for FTA to consider the transfer, a state must provide documentation to the FTA regional office that includes: a description of the notice and comment process and appeal provided to affected public transportation providers rural transit operators, and local Appalachian Regional Commission offices, a statement that the funds cannot be used for operating expenses, and a certification by the governor that the rural transit needs are being addressed. Upon receipt, FTA will review the request and if approved transfer the funds consistent with FTA's transfer process. Appeals may be submitted in writing to the FTA administrator.

e. Consolidation of Grants to Insular Areas. FTA grants to insular areas may be consolidated under the provisions of 48 U.S.C. 1469a. This provision permits federal agencies to streamline and consolidate certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These insular areas receive Section 5311 apportionments and RTAP allocations annually as well as Section 5310 funds and, in some cases, Section 5307 funds. If there are carry over funds available for prior year funding for programs that were repealed under MAP-21, those funds are eligible for consolidation (i.e., Section 5316 and 5317). Specifically, 48 U.S.C. 1469a permits:

- (1) Federal agencies to consolidate any or all grants to each of the insular areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants; and
- (2) Each insular area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

FTA implements this consolidation of Section 5310, 5311, 5316, 5317, and 5339 funding into a single grant by transferring funds from one section to another, similar to the transfer of funds between Section 5311 and Section 5307 for small UZAs described above. The insular areas may transfer all or a portion of the funds apportioned for Section 5310, 5316, 5317, or 5339 to Section 5311 for use under any of these sections. This should improve the efficiency of grant making and grant management for these areas which have limited staff resources and receive small amounts of funds under each of these programs. Those insular areas interested in submitting applications for consolidated grants should notify the appropriate FTA regional office for application procedures and consolidation requirements. Among

other things, the area should identify the intended use of consolidated funds and should document that the transportation of seniors and people with disabilities will not be adversely affected.

In addition, 48 U.S.C. 1469a(d) allows a federal agency to waive any local matching share requirements for grants to insular areas. FTA has no authority under 48 U.S.C. 1469a to waive any cross-cutting requirements, such as Buy America or drug and alcohol testing.

2. ELIGIBILITY.

- a. Eligible Recipients and Subrecipients. Eligible recipients include states and Indian tribes that receive an FTA grant directly from the federal government. Eligible subrecipients include states and local governmental authorities, nonprofit organizations, and operators of public transportation or intercity bus service that receive FTA grant funds indirectly through a recipient. Eligible nonprofit organizations may also serve tribal transportation needs. In the case of intercity bus projects, private for-profit operators of transit services or intercity bus services may participate in the program as third party contractors for recipients, or as subrecipients. State agencies may limit subrecipient eligibility requirements in order to comply with state laws or to further program goals.

The purpose of the Section 5311 program is to support public transportation for people living in any area outside of a UZA as designated by the Bureau of the Census. A UZA consists of a core area and the surrounding densely populated area with a total population of fifty thousand or more, with boundaries fixed by the Bureau of the Census. Areas not within a UZA as of the 2010 Census are eligible for Section 5311 funding even if they are included within the metropolitan area planning boundary, which includes the surrounding area expected to be urbanized within twenty years and/or the air quality nonattainment boundary.

Since the goal of Section 5311 is to enhance the overall mobility of people living in rural areas, Section 5311 projects may include transportation to or from rural areas. The service area may include destinations across a state line. Operators of interstate service are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations.

- b. Tribes as Direct Recipients. Under 49 U.S.C. 5311, a federally recognized Indian tribe is an eligible direct recipient. Once the state has notified a federally recognized Indian tribe of the selection of its project(s) under the state administered Section 5311 program and the amount of funds that it will allocate to the tribe from its Section 5311 apportionment, the Indian tribe will then need to decide whether to receive funds as a subrecipient of the state or apply directly to FTA for Section 5311 funds. If the tribe notifies the state of its intent to become a direct recipient, the state will notify FTA by letter of the project(s) and amount of funds that it allocated to the Indian tribe.

As a direct recipient of Section 5311 funds not derived from the Section 5311(c) Tribal Transit Program, the Indian tribe must comply with all management requirements of the

Section 5311 program, and with all terms and conditions of FTA's standard grant agreements. The special terms and conditions that FTA developed for tribes receiving funding under the Tribal Transit Program are applicable only to that program.

- c. Eligible Service and Service Areas. States can use Section 5311 funds for public transportation projects, including job access and reverse commute projects, and intercity bus transportation projects in rural areas.

A state must spend at least 15 percent of its Section 5311 apportionment to develop and support intercity bus transportation, unless after consultation with affected intercity bus service providers it is determined that the intercity bus service needs of the state are met adequately. Chapter VIII of this circular provides more guidance on funding for intercity bus transportation.

- d. Incidental Use. The purpose of Section 5311 assistance is the provision of public transportation services and FTA encourages maximum feasible coordination with other rural transportation services. FTA policy and the Federal Interagency Coordinating Council on Access and Mobility (CCAM) policy on vehicle resource sharing allow vehicles to be used for purposes other than that specified in the original award on an incidental basis.

A rural transit provider may use a Section 5311 vehicle for nonpassenger transportation on an occasional or regular basis, such as package delivery, if this incidental use does not result in a reduction of service quality or availability of public transportation service. The incidental use policy does not preclude the recipient's use of Section 5311 assistance to support the transportation of passengers by a private provider that is not primarily engaged in passenger transportation. For example, a recipient may use Section 5311 funds to support a contract mail carrier that incidentally provides intercity passenger transportation, if the carrier has appropriate regulatory authority to carry passengers. Section 5311 funds may only be used to subsidize the passenger transportation services of the mail carrier.

A rural transit provider may design its Section 5311 funded services to maximize use by members of the general public who are transportation-disadvantaged. Transportation disadvantaged people include seniors, people with disabilities, and low-income individuals. Transit service providers receiving assistance under Section 5310 or Section 5311 may coordinate and assist in providing meal delivery service for homebound people on a regular basis, if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. FTA expects that the nutrition program will pay the operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase vehicles used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

- e. Joint Urbanized and Rural Projects. In some localities, a subrecipient receives both Section 5307 and 5311 funding to provide public transportation to urbanized and

surrounding rural areas. These subrecipients should use Section 5311 funds only to assist the rural portion of those localities.

Because of the wide range of circumstances under which an operator may provide services in both urbanized and rural areas, FTA expects the subrecipient to develop a reasonable basis related to the service provided, for allocating operating costs between the two FTA funding sources. The subrecipient should also apply this procedure to “joint” capital projects. Similarly, a subrecipient that purchases vehicles under either the Section 5307 or 5311 program for use in any part of a combined urbanized and rural service area should ensure that it has capital replacement policies in place to ensure that it is using program funds according to federal eligibility requirements. When there is a question as to the reasonableness of the subrecipient’s cost allocation methodology, FTA looks to the state to make a determination.

FTA Circular 9030 provides further guidance on the Section 5307 program.

3. ELIGIBLE ACTIVITIES

- a. State Administration, Planning, and Technical Assistance. The state may use not more than 10 percent of its apportioned Section 5311 funds, including funds apportioned under Section 5340 but not the RTAP allocation, to administer the Section 5311 program, related planning, and to provide technical assistance to subrecipients.

Allowable administrative costs include salaries, overhead expenses, supplies, and office equipment used to administer the program. Allowable technical assistance costs may include program planning, program development, development of vehicle and equipment specifications, management development, coordination of public transportation programs (public and private for-profit and nonprofit), and such research as the state may deem appropriate to promote effective means of delivering public transportation service in rural areas. No local share is required for these expenses. The state may pass any portion of these funds on to subrecipients for the same purposes and, at its discretion, may impose a local share requirement.

In addition, in accordance with 49 U.S.C. 5329(e)(6)(C)(iv), a recipient may use up to 0.5 percent of the Section 5311 apportionment to pay for safety certification training for employees directly responsible for safety oversight at an 80 percent federal share.

While the state may also use RTAP funds for many administrative and technical assistance activities, it is more appropriate to use state administrative funds for technical assistance activities directly related to the administration of the Section 5311 program, (e.g., conducting procurements and monitoring subrecipients). The state should use RTAP to deliver training and technical assistance needed by all rural providers of public transportation, and not only to subrecipients of the Section 5311 program.

FTA applies the state administration cap of 10 percent to the Section 5311 funds it apportions to the state each year. FTA encourages the state to include all the available state administration funds they intend to use in each annual grant application.

A state may choose to accumulate its state administration funds within the funds' period of availability to augment the administrative funds available for a special administrative need in a subsequent year (e.g., a major planning study for which current year administrative funds would be insufficient). For example, a state may program all of its first year apportionment for capital and operating projects, and then use an amount equal to 10 percent of the first year's apportionment in addition to the 10 percent of the second year's apportionment to fund a large planning study.

The period over which the state accumulates administrative funds may not exceed three years. If a state includes planning or state administration expenses in excess of the 10 percent administrative funds in its grant application, the state should document the unused state administration funds from prior years available to augment the funds in the current apportionment.

- b. Capital Expenses. Eligible capital expenses include the acquisition, construction, and improvement of public transit facilities and equipment needed for a safe, efficient, and coordinated public transportation system as well as certain other expenses classified as capital in Section 5302(3). Examples of eligible capital expenses include, but are not limited to:
- (1) buses;
 - (2) vans or other paratransit vehicles;
 - (3) radios and communications equipment;
 - (4) passenger shelters, bus stop signs, park and ride lots, and similar passenger amenities;
 - (5) wheelchair lifts and restraints;
 - (6) vehicle rehabilitation, remanufacture, or overhaul;
 - (7) preventive maintenance;
 - (8) extended warranties which do not exceed industry standards;
 - (9) the public transportation portion of ferryboats and terminals;
 - (10) operational support such as computer hardware or software;
 - (11) installation costs, vehicle procurement, testing, inspection, and acceptance costs;
 - (12) construction or rehabilitation of transit facilities including design, engineering, and land acquisition;
 - (13) facilities to provide access for bicycles to transit facilities or equipment for transporting bicycles on transit vehicles;

- (14) lease of equipment or facilities when a lease is more cost effective than purchase. Note that when lease of equipment or facilities is treated as a capital expense, the state must establish criteria for determining cost effectiveness, in accordance with FTA regulations, "Capital Leases," 49 CFR part 639;
- (15) the capital portion of costs for service provided under contract. The capital cost of contracting includes depreciation and interest on facilities and equipment, as well as allowable capital costs such as preventive maintenance.

Under the capital cost of contracting, only privately owned assets are eligible. The recipient may not capitalize under the contract any capital assets (e.g., vehicle, equipment, or facility) that have any remaining federal interest in them, or items purchased with state or local government assistance. Similarly, recipients may not capitalize under the contract any costs incurred delivering services ineligible for FTA assistance (e.g., charter or school bus service). Recipients may compute capital costs as a fixed percentage of the contract without further justification. Appendix G provides additional information on the capital cost of contracting;

- (16) a joint development improvement that:
 - (a) enhances economic development or incorporates private investment, such as commercial and residential development;
 - (b) enhances the effectiveness of public transportation and is related physically or functionally to public transportation, or establishes new or enhanced coordination between public transportation and other transportation;
 - (c) provides a fair share of revenue that will be used for public transportation;
 - (d) provides that a person making an agreement to occupy space in a facility shall pay a fair share of the costs of the facility through rental payments and other means; and
 - (e) does not include outfitting of commercial space (other than an intercity bus or rail station or terminal) or a part of a public facility not related to public transportation.
 - (f) a joint development improvement may include:
 - 1. property acquisition;
 - 2. demolition of existing structures;
 - 3. site preparation;
 - 4. utilities;
 - 5. building foundations;

6. walkways;
 7. pedestrian and bicycle access to a public transportation facility;
 8. construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;
 9. renovation and improvement of historic transportation facilities;
 10. open space;
 11. safety and security equipment and facilities (including surveillance, and related intelligent transportation system applications);
 12. facilities that incorporate community services such as daycare or health care;
 13. capital projects for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; and
 14. construction of space for commercial uses;
- (17) the introduction of new technology, through innovative and improved products, into public transportation;
- (18) nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable requirements of the Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of a recipient's annual formula apportionment under Section 5311;
- (19) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under Chapter 53 of Title 49, United States Code;
- (20) mobility management, consisting of short-range planning, management activities, and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental authority, but excludes operating expenses; or
- (21) associated capital maintenance, including equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair

market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

- c. Operating Expenses. Operating expenses are those costs directly related to system operations. At a minimum, states must consider the following items as operating expenses: fuel, oil, drivers' salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses.

Only net operating expenses are eligible for assistance. Net operating expenses are those expenses that remain after the provider subtracts operating revenues from eligible operating expenses. States may further define what constitute operating revenues, but, at a minimum, operating revenues must include farebox revenues. Farebox revenues are fares paid by riders, including those who are later reimbursed by a human service agency or other user-side subsidy arrangement.

Farebox revenues do not include payments made directly to the transportation provider by human service agencies to purchase service. However, purchase of transit passes or other fare media for clients would be considered farebox revenue. A voluntary or mandatory fee that a university or similar institution imposes on all its students for free or discounted transit service is not farebox revenue. Payments made directly to the transportation provider by human service agencies and university fees passed on to the transit provider would be considered "program income" and may be used to reduce the net operating cost of the service or may be used as local match on the existing grant. The state may include operating assistance projects of up to two years' duration in its annual program of projects. FTA extends preaward authority for operating costs incurred as of the beginning of the local fiscal year but before grant award.

States may, in their discretion, treat maintenance as either operating or capital expenses for Section 5311 funding purposes. Similarly, for the Section 5311 program only, FTA gives states the option of classifying certain other expenses as either operating or nonoperating expenses (i.e., project administration). Even if these expenses are eligible for funding under Section 5311 at the capital match, the provider may classify these funds as operating expenses in its internal accounting system, under generally accepted accounting principles. However, for funding purposes, the state may not count the same cost twice.

- d. Project Administrative Expenses. Under the Section 5311 program, the state may treat project administrative expenses incurred by a local provider as a separate cost category from capital, planning, or operating expenses. This allows states to consider administrative expenses as "nonoperating" expenses. FTA may fund nonoperating expenses up to the 80 percent federal share or more if the state is eligible for the sliding scale of federal share (see below).

Eligible project administrative costs may include, but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of

administering drug and alcohol testing. Interest on short-term loans for operating assistance is eligible as project administration if it is approved by the state. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.

- e. Planning. Planning is an eligible expense, providing that a grant under Section 5311 for planning activities shall be in addition to funding awarded to a state under Section 5305 for planning activities that are directed specifically at the needs of rural areas in the state. Planning projects must be included in the planning work program and can support efforts to:
- (1) develop transportation plans and programs;
 - (2) plan, engineer, design, and evaluate a public transportation project; and
 - (3) conduct technical studies relating to public transportation.

Eligible activities include the following:

- (a) Studies related to management, planning, operations, capital requirements, and economic feasibility.
 - (b) Evaluating previously financed projects.
 - (c) Peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners.
 - (d) Other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.
- f. Job Access and Reverse Commute Projects. MAP-21 created a new eligible project category for “job access and reverse commute projects” under Section 5311. This category includes all types of projects that were formerly eligible under the Section 5316 Job Access and Reverse Commute Program. Examples of eligible projects are listed in paragraph (5) below. There is no requirement or limit to the amount of Section 5311 funds that can be used for these projects.

A job access and reverse commute project is defined in 49 U.S.C. 5302(9) as:

“a transportation project to finance the planning, capital and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.”

In order for a job access and reverse commute project to receive funding under Section 5311, it must meet the following requirements:

- (1) New and Existing Services. Eligible job access and reverse commute projects must provide for the development or maintenance of eligible job access and reverse commute services. In order to be eligible as a job access and reverse commute project, a proposed project must qualify as either a “development project” or “maintenance project” as follows:
 - (a) Development Projects. “Development of transportation services” means new projects that meet the statutory definition and were not in service as of the date MAP-21 became effective, October 1, 2012. This includes projects that expand the service area or hours of operation for an existing service. Projects for the development of new qualifying job access and reverse commute projects must be identified as such in the recipient’s program of projects (POP).
 - (b) Maintenance Projects. “Maintenance of transportation services” means projects that continue and maintain job access and reverse commute projects and services that received funding under the former Section 5316 program or were previously funded as JARC projects under Section 5311 program.
- (2) Reverse Commute Projects. Reverse commute projects are a category of job access and reverse commute projects that provide transportation services from urbanized and rural areas to suburban employment locations. Generally, these services increase the capacity of public transportation services operating in the reverse direction of existing peak services. Reverse commute projects may only qualify as job access and reverse commute projects under Section 5311 if they meet all other requirements, including having been designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities.
- (3) Welfare Recipients and Eligible Low-Income Individuals. Projects funded as “job access and reverse commute projects” must be designed to provide transportation for welfare recipients and eligible low-income individuals. The term “low-income individual” is defined as an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved. Projects that serve the general public without specific route or design characteristics intended to respond to the needs of these populations may not be eligible as job access and reverse commute project. However, job access and reverse commute projects do not need to be designed exclusively for these populations.
- (4) Planning and Program Development. In order for an entity to receive Section 5311 funding for a job access and reverse commute project, the project must be identified by the recipient as a job access and reverse commute project in the recipient’s program of projects (POP), which must be made available for public review and comment.

In addition, FTA encourages recipients to ensure that projects meet the employment-related transportation needs of welfare recipients and low-income individuals, either by deriving such projects from a locally coordinated public transportation/human services planning process that involves low-income communities and their stakeholders, or by an alternative process that engages low-income community stakeholders in the identification and development of the project.

- (5) Eligible Projects. Projects that comply with the requirements above may include, but are not limited to:
- (a) Late-Night and weekend service;
 - (b) Guaranteed ride home service;
 - (c) Shuttle service;
 - (d) Expanding fixed route public transit routes, including hours of service or coverage;
 - (e) Demand-responsive van service;
 - (f) Ridesharing and carpooling activities;
 - (g) Transit-related aspects of bicycling (such as adding bicycle racks to vehicles to support individuals that bicycle a portion of their commute, providing secure bicycle parking at transit stations, or infrastructure and operating expenses for bicycle sharing programs in the vicinity of transit stations, but does not include the acquisition of bicycles);
 - (h) Promotion, through marketing efforts, of the: (1) use of transit by low-income individuals and welfare recipients with nontraditional work schedules; (2) use of transit voucher program by appropriate agencies for welfare recipients and other low-income individuals; (3) development of employer-provided transportation such as shuttles, ridesharing, carpooling; or (4) use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986;
 - (i) Supporting the administration and expenses related to voucher programs. This activity is intended to supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment to providers of alternative transportation services. Job access and reverse commute projects can provide vouchers to low-income individuals to purchase rides, including (1) mileage reimbursement as part of a volunteer driver program, (2) a taxi trip, or (3) trips provided by a human service agency. Providers of transportation can then submit the voucher to the FTA recipient or subrecipient administering the project for payment based on predetermined rates or contractual arrangements. Transit passes for use on fixed route or Americans with Disabilities Act of 1990 (ADA) complementary paratransit service are not

eligible. Vouchers are an operational expense which requires a 50 percent local match;

- (j) Supporting local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides, including the provision of capital loan guarantees for such car loan programs, provided the federal interest in the loan guarantee fund is maintained and the funds continue to be used for subsequent loan guarantees or are returned to the government upon the release of funds from each guarantee;
- (k) Implementing intelligent transportation systems (ITS), including customer trip information technology, vehicle position monitoring systems, or geographic information systems (GIS) software;
- (l) Integrating automated regional public transit and human service transportation information, scheduling, and dispatch functions;
- (m) Subsidizing the costs associated with adding reverse commute bus, train, carpool van routes, or service from urbanized area and nonurbanized areas to suburban work place;
- (n) Subsidizing the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;
- (o) Otherwise facilitating the provision of public transportation service to suburban employment opportunities; and
- (p) Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management techniques may enhance transportation access for populations beyond those serviced by one agency or organization within a community. For example, under mobility management, a nonprofit agency could receive job access and reverse commute funding to support the administrative costs of sharing services it provides to its own clientele with other low-income individuals and coordinate usage of vehicles with other nonprofits, but not the operating costs of the service. As described under "Capital Projects," mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service.

4. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. Planning and Capital Projects. The federal share for planning and capital projects that receive funding under the Section 5311 program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the recipient's revenues.

b. Exceptions. The federal share may exceed 80 percent for certain projects related to the ADA, CAA, and certain bicycle projects as follows:

- (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*). A revenue vehicle that complies with 49 CFR part 38 may be funded at 85 percent federal share.
- (2) Vehicle-Related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or required by the ADA, is 90 percent.

FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.

The grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with ADA or CAA. The federal share is 90 percent of the cost for these itemized elements.

- (3) Bicycle Facilities. As provided by 49 U.S.C. 5319, the federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:
 - (a) provide access for bicycles to public transportation facilities,
 - (b) provide shelters and parking facilities for bicycles in or around public transportation facilities, or
 - (c) install equipment for transporting bicycles on public transportation vehicles.
- (4) Sliding Scale. Higher federal share rates for capital costs are available to fourteen states described in 23 U.S.C. 120(b). The higher federal shares under 23 U.S.C. 120(b)(1), shown in Table 1, are based on the ratio of designated public lands area to the total area of these fourteen states. For FTA capital grants, the federal share increases from 80 percent in proportion to the share of public lands in the state. For FTA operating grants in these same states, the federal share increases from 50 percent to 62.5 percent (5/8) of the rate for capital grants.

**Table 1: Sliding Scale Rates for FTA Section 5311 Grants (23 U.S.C. 120 (b)(1))
(Numbers represent the maximum federal share, as a percentage of net project cost.)**

State	Sliding Scale Rate for Transit Capital Grants	Sliding Scale Rate for Transit Operating Grants	State	Sliding Scale Rate for Transit Capital Grants	Sliding Scale Rate for Transit Operating Grants
Alaska	90.97	56.86	Nevada	94.89	59.31
Arizona	90.49	56.55	New Mexico	85.44	53.40
California	83.57	52.23	Oregon	84.63	52.90
Colorado	82.79	51.75	South Dakota	81.95	51.22
Hawaii	81.30	50.81	Utah	89.52	55.95
Idaho	84.97	53.11	Washington	81.42	50.89
Montana	82.75	51.72	Wyoming	86.77	54.23
<i>Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)</i>					

Additional higher federal share rates are shown in Table 2 and are based on the ratio of the area of nontaxable Indian land, public domain lands (reserved and unreserved), national forest, and national parks and monuments to the total area of each state. These rates are available only for states that have already in place signed agreements with FHWA under 23 U.S.C. 120(b)(2). For FTA Section 5311 projects, any state having such an agreement with FHWA is eligible for the higher federal match permitted in Section 120(b)(2). States may not enter into new Section 120(b)(2) agreements with FHWA for Section 5311 grants. In the absence of a Section 120(b)(2) agreement with FHWA, Section 120(b)(1) sets the sliding scale rates for Section 5311 grants.

Table 2: Sliding Scale Rates for FTA Section 5311 Grants
(Numbers represent the maximum federal share, as a percentage of net project cost.) *

State	Federal Share of 5311 Capital Grants	Federal Share of 5311 Operating Grants	State	Federal Share of 5311 Capital Grants	Federal Share of 5311 Operating Grants
Alabama	80.4	50.25	Nebraska	80.18	50.11
Alaska	94.95	59.34	Nevada	95	59.38
Arizona	94.3	58.94	New Hampshire	82.45	51.53
Arkansas	81.55	50.97	New Jersey	80.14	50.09
California	88.53	55.33	New Mexico	87.92	54.95
Colorado	87.31	54.57	New York	80.1	50.06
Connecticut	80.04	50.03	North Carolina	80.98	50.61
Delaware	—	—	North Dakota	80.93	50.58
Florida	81.93	51.21	Ohio	80.16	50.10
Georgia	80.48	50.30	Oklahoma	80.58	50.36
Hawaii	82.48	51.55	Oregon	89.73	56.08
Idaho	92.66	57.91	Pennsylvania	80.38	50.24
Illinois	80.15	50.09	Rhode Island	80.05	50.03
Indiana	80.17	50.11	South Carolina	80.63	50.39
Iowa	80	50.00	South Dakota	82.82	51.76
Kansas	80.05	50.03	Tennessee	80.66	50.41
Kentucky	80.58	50.36	Texas	80.22	50.14
Louisiana	80.41	50.26	Utah	93.23	58.27
Maine	80.28	50.18	Vermont	81.08	50.68
Maryland	80.11	50.07	Virginia	81.5	50.94
Massachusetts	80.12	50.08	Washington	86.5	54.06
Michigan	81.83	51.14	West Virginia	81.36	50.85
Minnesota	81.42	50.89	Wisconsin	81.11	50.69
Mississippi	80.83	50.52	Wyoming	90.49	56.56
Missouri	80.69	50.43	District of Columbia	83.15	51.97
Montana	86.58	54.11	Puerto Rico	80.25	50.16

*Including National Forests, national parks, and monuments.

Source: FHWA Notice N 4540.12, Attachment 1 (3/17/1992)

<http://www.fhwa.dot.gov/legregs/directives/notices/n4540-12.htm>

- c. Operating Expenses. With respect to operating expenses, 49 U.S.C. 5311(g)(2) provides that the federal share shall not exceed 50 percent of the net operating cost of the project. For states eligible for the sliding scale match under 23 U.S.C. 120(b), the federal match for operating assistance is set at 62.5 percent of the match for capital projects in those states (see Tables 1 and 2).

Under Subsection 5311(g)(3)(A), funds received pursuant to a service agreement with a state or local social service agency or a private social service organization may be used as local match.

Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance (treated as program income). In either case, the cost of providing the contract service is included in the total project cost. Unlike other forms of program income, income from contracts to provide human service transportation may be used as the local match for the grant in which the income is generated.

The manner in which a subrecipient applies income from human service agencies to a project affects the calculation of net operating expenses and, therefore, the amount of Section 5311 operating assistance the project is eligible to receive. A state's method of suballocating its apportionment among its subrecipients is a discretionary action, subject only to the statutory requirements described in this circular. While a state may not prohibit a subrecipient from using income from human service agency contracts as a source of local match, the state may elect to regard the degree to which a subrecipient demonstrates local financial commitment to the project from other sources of local funds as a rating factor in its discretionary allocation decisions.

- d. State Administration and RTAP. No local share is required for state administration and RTAP.
- e. Sources of Local Match. Under Subsection 5311(g)(3), a local match for the remainder of net project costs:
 - (1) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a state or local social service agency or a private social service organization, or new capital;
 - (2) may be derived from amounts appropriated or otherwise made available to a department or agency of the government (other than DOT) that are eligible to be expended for transportation; or
 - (3) notwithstanding subparagraph (2), may be derived from amounts made available to carry out the Federal Lands Highway Program established by Section 202 of Title 23.
- f. Intercity Bus. In the case of intercity bus projects that will utilize the in-kind match provision codified in 49 U.S.C. 5311(g)(3)(D), details are discussed in Chapter VIII.
- g. Cost Incurred by Providers of Public Transportation by Vanpool. MAP-21 amends section 5323(i) "Government Share of Costs for Certain Project" to include a paragraph that permits FTA to allow a recipient to count, as part of their local match for a capital project, funds used to purchase vanpool vehicles by private providers of public vanpool (including funds from fare revenues above operating expenses but not including any funding from federal, state, or local government sources). For the costs to be eligible for a recipient's local share, the recipient and the provider must have entered into a legally

binding agreement requiring the provider to use the rolling stock in the recipient's service area.

h. Examples of nonfederal sources that may be used for any or all of the local share include:

- (1) state or local appropriations;
- (2) dedicated tax revenues;
- (3) private donations;
- (4) net income generated from advertising and concessions; and
- (5) in-kind match.

Recipients may count noncash shares such as donations, volunteered services, or in-kind contributions toward the local match only if the recipient formally documents the value of each noncash share, and if this value represents a cost that would otherwise be eligible under the project. The net project cost must include the value of any in-kind contributions included in net project cost to the extent it is used as local match. States should reference Federal Administrative Rules for Grants and Cooperative Agreements, 49 CFR parts 18 and 19, for more information.

Recipients may use funds from other federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the recipient for the purposes of the project. The only DOT funds that states can use as local match for Section 5311 projects are from the Federal Lands Highway Program authorized at 23 U.S.C. 204.

A state cannot use Section 5310 or other FTA funds as match for Section 5311 program funds. Even though funds are made available to the rural transit provider through a service agreement with a state or local social service agency or private social service organization, FTA funds may not be used as match because they are derived from a DOT program.

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IV. PROGRAM DEVELOPMENT

1. FAIR AND EQUITABLE DISTRIBUTION. The program of projects the state submits to FTA for approval must provide for fair and equitable distribution of the apportionment in the state, including Indian reservations, as well as maximum feasible coordination with other public transportation services assisted by other federal sources. The state should document its process for selecting applicants consistent with the state management plan as outlined in Chapter VI. The Tribal Transit Program funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from states through the Section 5311 program but should be used to enhance public transportation on Indian reservations and other tribal transit services. FTA encourages states to use the increase in funding for rural transit under MAP-21 to support expansion of transit service to areas without service and to improve the level of service or coverage in areas that have minimal service.
2. PLANNING REQUIREMENTS. A state requesting Section 5311 assistance must comply with the planning requirements of 49 U.S.C. 5303 through 5305. Projects proposed for Section 5311 funding must be a product of the statewide and nonmetropolitan transportation planning process and/or the metropolitan planning process specified in the joint Federal Highway Administration (FHWA)/FTA planning regulations at 23 CFR part 450 and 49 CFR part 613. With limited exceptions, states must include all federal funds to be used for highway or transit projects in a statewide transportation improvement program (STIP) consistent with 23 U.S.C. 135 and 49 U.S.C. 5304. States must include Section 5311 funds in the STIP. Unlike the annual program of projects that the state submits with its grant application, the STIP must cover four program years. For purposes of the STIP, the state may group its planned expenditures of Section 5311 and Rural Transportation Assistance Program (RTAP) funds into broad statewide projects, such as vehicle acquisition for rural transportation services, operating assistance, intercity bus projects, facility construction, state administration, and training and technical assistance. The state also may show the Section 5311 apportionment as one aggregate project.
3. PERFORMANCE-BASED PLANNING. MAP-21 establishes a broad performance management program that brings significant changes to both the metropolitan transportation planning and statewide and nonmetropolitan transportation planning processes. The performance management framework attempts to improve project decision making through performance-based planning and programming and to foster a transparent and accountable decision-making process for MPOs, states, and providers of public transportation.
 - a. Establishment of a Performance Based Approach. The statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in 23 U.S.C. 150(b), the program goals for 49 U.S.C. 5311 in Chapter II Section 2 of this Circular, and the general purposes described in 49 U.S.C. 5301. In the development of the long-range statewide transportation plan, States must include performance targets that address the transit safety and transit state of good repair performance measures established by U.S. DOT under 23 U.S.C. 150(c) and 49 U.S.C. 5329.

- (1) The State DOT's long-range transportation plans should also include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.
- (2) The STIP must demonstrate the linkage between investment priorities and the performance targets by including a discussion of the anticipated effect of the STIP toward achieving the performance targets established in the transportation plan.

The Performance Based Planning and Program Guidebook can be accessed at http://www.fta.dot.gov/documents/Performance_Based_Planning_and_Programming_Guidebook.pdf.

- b. State Designation of Regional Transportation Planning Organizations (RTPOs). To carry out the statewide transportation planning process, a State may establish and designate regional transportation planning organizations.
 - (1) A State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the state.
 - (2) If a State chooses not to establish or designate a regional transportation planning organization, the state should consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

For further guidance on planning, programming, and project selection see the joint FHWA/FTA planning regulations at 23 CFR part 450 and 49 CFR part 613.

4. INTERCITY BUS CONSULTATION REQUIREMENT. Section 5311(f) requires each state to expend at least 15 percent of its annual Section 5311 apportionment "to carry out a program to develop and support intercity bus transportation," unless the governor certifies that "the intercity bus service needs of the state are being met adequately." Additionally, Section 5311(f) requires a state to consult with intercity bus providers before the governor makes this certification. The requirement to spend at least 15 percent applies only to the amount of FTA's annual apportionment of Section 5311 funds to the state; it does not apply to any funds the state subsequently transfers to its Section 5311 program from another program. Chapter VIII provides additional information about the intercity bus provisions of Section 5311(f).
5. PROGRAM OF PROJECTS (POP). The program of projects (POP) identifies the subrecipients and projects for which the state is applying for financial assistance. The Section 5311 annual program of projects the state submit(s) to FTA for approval must indicate the total number of subrecipients; identify each subrecipient and indicate whether they are governmental authorities, private nonprofit agencies, or private providers of transportation services; and identify any that are Indian tribal governments or tribal transit agencies (including both federally recognized and other tribal governments). The program of projects must show, for each project, a brief description of counties, or tribal needs served, total project cost, and the federal share.

So that FTA can comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006 (Pub. L. 109-282), enacted September 26, 2006, the state must provide FTA with the following information for each subrecipient: the name of the entity receiving the award, the amount of the award, and the location of the entity receiving the award and the primary location of performance under the award, including the city, state, and congressional district. The state will submit this information as a separate attachment in the FTA electronic award management system or include the information in the POP.

Separate from the listing of rural transit projects and subrecipients in Category A and B, the program of projects should list together and subtotal the projects and subrecipients that support intercity bus transportation as required by Section 5311(f). It should also describe specific RTAP projects within the broad areas of eligibility (Chapter IX provides more information on developing an RTAP program of projects). The program of projects also includes any funds the state will use for planning, technical assistance, and administration, within the 10 percent limitation, and any other projects the state will carry out directly.

The total federal funding level for the program of projects cannot exceed the total amount of Section 5311 funds available, including funds from the current fiscal year apportionment, unobligated carryover funds from previous years and funds transferred from other FTA programs, or flexible funds for highway or transit. After the state submits the annual program of projects and other application requirements, FTA will review, approve, and obligate funds for the total amount of funds available.

- a. Categories of Approval. FTA's approval of a program of projects does not reflect unconditional approval of all projects within the program, nor does FTA's approval of a program of projects reflect unconditional approval of all prospective subrecipients identified in the program. FTA recognizes that not all projects in a state program of projects may be at the same stage of development, and therefore, not all applications to the state may be complete at the time the state forwards its annual program of projects to FTA. FTA also recognizes that all subrecipients identified in the program of projects may not yet be in compliance with all applicable federal requirements. Therefore, to expedite grant award, FTA allows states to separate projects and funds included in its program of projects into two different categories, depending on how completely the subrecipients have met federal requirements.
 - (1) Category A. Projects in Category A include those projects that the state has certified as having met all the federal statutory and administrative requirements for approval applicable to both the project activities, and subrecipient that will carry out those activities. FTA's approval of Category A projects is unconditional upon grant award. When the state executes the grant, the state may start drawing down funds to implement projects in Category A. FTA expects most, if not all, of the projects included in the state's program of projects to be in this category. If there are funds that have not been advanced to Category A within the period of availability, FTA will deobligate and reallocate lapsed funds to the overall 5311 program in a subsequent year apportionment.

- (2) Category B. Projects in Category B include those projects that the state anticipates approving during the current year, but that have not yet met all federal statutory and/or administrative requirements. For example, a project in Category B may be a project that lacks certification by the state to the Department of Labor (DOL) that the subrecipient has signed the special labor protection warranty. Similarly, a major capital project other than vehicle purchase(s) in Category B may be a project that has not yet completed the National Environmental Policy Act (NEPA) process or other federal environmental requirements. Projects may also be in Category B when a subrecipient has not yet met all applicable Federal requirements.

When the state determines that necessary federal requirements have been satisfied for a project, FTA's approval of that project becomes unconditional, and the state may advance the project to Category A. Cash drawdowns for that project may commence after the state advances the project to Category A. In addition, any Category B project requires issuance of a NEPA record of decision (ROD), a finding of no significant impact (FONSI), or determination that the project meets the conditions of a categorical exclusion (CE) from FTA before being advanced to Category A. Chapter XI provides additional information on NEPA and other federal environmental laws, regulations, and executive orders. A state should not list any projects in Category B, if it can list all of its projects in Category A.

- b. Revisions to Program of Projects. The state may revise an approved program of projects without constituting a change in scope, which would require the deobligation and reobligation of funds. The scope of the grant is the approved program of projects in its entirety. The addition of federal funds to the approved program of projects is a change in the scope of the approved program of projects and requires an amendment of the grant agreement.

For changes that affect the budget line items in the grant budget, the recipient will notify FTA by setting up a budget revision in the FTA electronic award management system. For those changes that only affect the program of projects (POP), the recipient should attach a new program of projects to the "project management milestones" section and then notify FTA, via e-mail, that it has attached the new program of projects. In addition, recipients should also notify FTA of changes to the program of projects when they submit their annual program status report.

Below are examples of project and funding revisions that do not change the scope of the approved program of projects. Unless FTA notifies the state otherwise, the following levels of notification and FTA approval apply to revisions:

- (1) Revisions Not Requiring Prior Notification or FTA Approval. The state may make the following revisions without any prior notification to or approval by FTA:
- (a) Delete a project from the POP, if the project cost is less than 20 percent of the total of the affected POP;

- (b) Advance projects from Category B to A, provided the prospective subrecipient is in compliance with all applicable federal requirements;
 - (c) Reallocate funds within an approved POP among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in vehicle or equipment requirements;
 - (d) Add equipment or property transferred from one subrecipient to another subrecipient listed in the POP, regardless of whether the items were originally funded from a different grant;
 - (e) Transfer funds designated for intercity bus projects within the program of projects for use in other intercity bus projects, or to other projects if more than the required percentage has been allocated for intercity bus projects and the transfer of funds to another project would not reduce the intercity funding below the required percentage; and
 - (f) Transfer funds designated for RTAP projects within the program of projects for use in other RTAP projects.
- (2) Revisions Requiring Notification to FTA, But Not FTA Approval. The state may make the following revisions after notifying FTA:
- (a) Create new projects that are less than 20 percent of the total of the POP, so long as the state has confirmed eligibility;
 - (b) Delete or reduce a project by more than 20 percent of the total POP.
- (3) Revisions Requiring FTA Approval. The state may make the following revisions to an approved program of projects only after obtaining approval from FTA:
- (a) Prior FTA approval is required when the federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions since the last one specifically approved by FTA) exceeds 20 percent;
 - (b) Prior FTA approval is required when the revision would transfer funds between operating and capital categories, or between activity line items with different federal matching ratios;
 - (c) Prior FTA approval is required if the budget revision would:
 - i. Change the size or physical characteristics of the activities specified in the grant. Example: A grantee's maintenance facility project increased the number of bus bays from five to eight and requires more land, resulting in a change in size and physical characteristics; or

- ii. Increase or reduce the number of revenue rolling stock vehicles to be purchased by more than two units.
- (d) Prior FTA approval is required to advance to Category A any prospective subrecipient with serious questions of compliance with federal requirements remaining unresolved; or
- (e) Prior FTA approval is required to advance to Category A any project for the acquisition of property with a value in excess of 20 percent of the total value of the POP.

Note: Budget revisions are entered by representatives of grant recipients and are reviewed and approved by FTA staff. Contact your FTA regional office for assistance.

- (4) Update to Program of Projects. The most recently updated program of projects submitted by the state to FTA in its annual program status report or in the course of making revisions will be considered the approved program of projects, incorporated by reference in the grant agreement. Only the addition of federal funds or a change in the scope of the approved program of projects requires amendment of the grant agreement.
 - (5) FTA's Right to Defer Section 5311 Assistance. FTA reserves the right to require the state to defer providing Section 5311 funds to a subrecipient or project that raises serious questions about the compliance with civil rights or other requirements, until FTA finds the subrecipient or project in compliance or expressly approves the expenditure of Section 5311 funds involving that subrecipient or project.
6. CERTIFICATIONS AND ASSURANCES. To receive a grant under Section 5311, the designated state agency must annually assure FTA that the state and subrecipients meet certain requirements. The state should maintain adequate files documenting the basis for all assurances it makes to FTA.

Each fiscal year, FTA publishes the required certifications and assurances in the *Federal Register* and updates the certifications and assurances in the FTA electronic award management system. This notice indicates which certifications and assurances apply to all recipients or to certain kinds of awards, and which are required for grants under specific sections.

The state electronically submits the appropriate certifications and assurances each fiscal year for all active grants and new grants that it expects FTA to make during that fiscal year. Recipients should use the most recent version of current year notice for a list of required certifications and assurances FTA has issued. Recipients can find the current list in FTA electronic award management system. Certifications and assurances can also be accessed at http://www.fta.dot.gov/grants/12825_93.html.

7. PREAWARD AUTHORITY. FTA allows recipients to incur costs before grant award in the formula programs. In order for the preaward costs to be eligible for subsequent

reimbursement, the project must be approved in the STIP. The project also must have met all FTA statutory, environmental, procedural, and contractual requirements, thus must qualify as a "Category A" project in the program of projects. Reimbursement is subject to the availability of funds and grant award. Specific information is included in FTA's annual apportionment notice, and in Chapter XI, part 13, of this circular.

8. GRANT AWARD AND PROJECT APPROVAL. FTA awards grants and obligates funds for the total amount for both categories and the Rural Transportation Assistance Program (RTAP) program of projects. FTA grant award constitutes approval of the state's annual program of projects and those projects listed in Category A. However, a Section 5311 program of projects does not constitute unqualified approval of each project in the program. Grant award does constitute FTA approval of those projects in Category A. Thus the state may drawdown federal funds to reimburse expenses incurred for Category A projects immediately upon execution of the grant agreement.

The grant award also constitutes FTA's unconditional approval of those projects in Category B, if the subrecipient meets all applicable federal requirements. The state must ensure that the subrecipient meets federal requirements, and advance the projects to Category A before it can drawdown funds to support Category B projects.

V. PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. **GENERAL.** The basic grant management requirements for state and local governments are contained in the U.S. Department of Transportation (DOT) regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to state and Local Governments,” 49 CFR part 18. The comparable DOT rule for private nonprofit organizations is “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” 49 CFR part 19. Parts 18 and 19 are collectively known as the “common grant rule” or “common rule.” The provisions of the common grant rule apply except where inconsistent with federal statutes, including authorizing legislation.
2. **PROGRAM ADMINISTRATIVE REQUIREMENTS.** The common grant rule identifies three areas in which the administrative requirements for state recipients and their subrecipients which are governmental authorities may differ from federal requirements: equipment management, procurement, and financial management systems. The basic intent of allowing state-specific requirements in these areas is to shift the emphasis from national uniformity to uniformity of procedures and requirements within a state, in order to provide greater flexibility to the states in standardizing the management of related state and federal programs. Part 18 permits states to pass down state procedures in these three areas to subrecipients that are governmental authorities. States are not allowed to pass down state procedures that are less restrictive than part 19 to subrecipients that are nonprofit organizations. However, as long as the state procedures are not inconsistent with part 19, the state may apply the same procedures for all its subrecipients. The state may use procedures that are more restrictive than part 19, but state procedures may not be more permissive than part 19. The basic intent of part 19 is to establish nationally uniform procedures and requirements for private nonprofit organizations that receive funds from multiple federal agencies.

The state must ensure that subrecipients that are units of state or local governments, including Indian tribal governments, follow the requirements of part 18, and that subrecipients that are private nonprofit organizations follow the requirements of part 19.

Unless an issue is specifically addressed in this circular or in other FTA guidance specific to the Section 5311 program, the most recent version of FTA Circular 5010 “Grant Management Guidelines,” which provides guidance for other FTA programs, should be used as guidance for project management issues not unique to Section 5311.

The state must enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

3. **EQUIPMENT MANAGEMENT.**
 - a. **General.** Under the common grant rule, states may use, manage, and dispose of equipment acquired under a Section 5311 grant and that has reached the end of its useful life according to state law and procedures. States are free to adopt the procedures

established in part 18 for other public entity recipients or use them as a guide in developing state procedures for equipment use, management, and disposition, but they are not required to do so. States may use the same procedures for private and nonprofit subrecipients as for public entity subrecipients, so long as those procedures are consistent with 49 CFR part 19.

In accordance with FTA C 5010.1D, FTA retains a federal interest in the fair market value of equipment that is withdrawn from public transportation use prior to the end of its useful life, whether by planned withdrawal, misuse, or casualty loss. Any disposition of project property before the end of its useful life requires prior FTA approval. Recipients are required to notify FTA immediately when equipment is withdrawn from public transportation use.

In addition, 49 U.S.C. 5334(h)(1) through (3) allows facilities and equipment and other assets (including land) that are no longer needed for the purposes for which they were acquired to be transferred to a local governmental authority to be used for a public purpose other than transportation with no further obligation to the federal government, when approved by FTA. FTA may authorize such a transfer only if FTA determines: the asset will remain in public use for at least five years after the date the asset is transferred; there is no public transportation purpose for which the asset should be used; the overall benefit of allowing the transfer is greater than the interest of the federal government in liquidation and return of the financial interest of the federal government in the asset, after considering fair market value and other factors; and there is no interest in acquiring the asset for federal use if the asset is a facility or land.

Common grant rule procedures and requirements for recipients that are not states, and their public entity and nonprofit subrecipients are more explicit and can be found in 49 CFR part 18.32 and 49 CFR part 19.34.

- b. Transfer of Property. Section 5311(h) permits a state to transfer facilities and equipment acquired with assistance under Section 5311 to any entity eligible to receive assistance under 49 U.S.C. Chapter 53 with the consent of the entity currently in possession of such facilities or equipment, if the facility or equipment will continue to be used in accordance with the requirements of Section 5311. This provision complements the state's flexibility under the common grant rule to manage equipment and extends the state's flexibility in the management of facilities, including real property.

The entity receiving equipment or facilities under this provision to provide Section 5311 service must comply with all the state and federal requirements for Section 5311 recipients, including acceptance of the special Section 5333(b) labor warranty for Section 5311 protection (see Chapter XI Section 3(a) of this circular). The names of the entities involved in the transfer of equipment or real property, along with a description of the equipment or real property transferred should be included in a new or revised program of projects. The transfer may be shown in the program of projects for any active grant. It does not have to be in the grant under which the equipment or property was originally funded.

- c. Vehicle Useful Life and Replacement Standards. The common grant rule gives states greater flexibility in managing and disposing of equipment. In keeping with the intent of the rule FTA holds states responsible for establishing and implementing their own rolling stock requirements for all categories of vehicles acquired under the Section 5311, 5310, 5316, 5317, 5339 programs. For these programs only, FTA permits state recipients to do the following:
- (1) establish their own minimum useful life standards for vehicles;
 - (2) use their own procedures for determining fair market value, and FTA retains its interest if the fair market value of the project property is over \$5,000; and
 - (3) develop their own policies and procedures for maintenance and replacement of vehicles. Maintenance requirements and insurance coverage must be adequate to protect the federal interest in the vehicle within the useful life determined by the state.

The state's process for maintenance and replacement of vehicles should be captured in the state management plan (SMP).

- d. Disposition. States and their subrecipients should follow state laws and procedures for disposing of equipment. States are required to use the net income from disposition of equipment to reduce the gross project cost of other capital projects (carried out under 49 U.S.C. Chapter 53) or return to FTA the proceeds from the disposition of equipment, unless permitted to do otherwise under FTA C 5010.1D (i.e., fair market value less than \$5,000, transfers). This applies to all equipment currently in use and purchased with Section 5311 funds. This blanket disposition instruction satisfies the provision of 49 CFR part 19 requiring private nonprofit organizations to seek disposition instructions from the federal awarding agency.

4. SATISFACTORY CONTINUING CONTROL AND RESPONSIBILITY. When capital equipment or facilities are acquired, built, or improved for use by any entity in rural area public transportation or intercity transportation, provisions must be made to ensure satisfactory continuing control of that capital equipment and facilities. While the state agency serving as the FTA recipient may delegate these responsibilities to another entity, the state is ultimately responsible for compliance with this requirement.

When vehicles or other equipment acquired with Section 5311 funds are operated by an entity other than the subrecipient, control and responsibility for the operation of the vehicles or other equipment must remain with the subrecipient unless transfer of the control and responsibility is made to another subrecipient authorized by the designated state agency to accept control and responsibility for those vehicles or equipment.

5. PROCUREMENT.

- a. General. When procuring property, supplies, equipment, or services under an FTA grant, the state will follow the same policies and procedures it uses for procurements from its nonfederal funds, to the extent permitted by federal statutes and regulations. While the Federal threshold for small purchases is currently \$100,000, the State may set a lower

threshold for itself and its subrecipients. All governmental subrecipients follow state procurement procedures. However, because of differences between 49 CFR part 18 and 49 CFR part 19, FTA third party contracting requirements are fewer for states and subrecipients that are local or tribal governments than for subrecipients that are private nonprofit organizations. For consistency, the state may choose to use the more detailed FTA requirements included in the current version of FTA Circular 4220 for all subrecipients as part of its state procurement procedures.

In some cases, a state may choose to grant Section 5311 assistance to a subrecipient through an intermediary subrecipient. For example, for public policy reasons, the state might pass funds to a nonprofit organization through a local governmental authority. The arrangement between the first tier and second tier subrecipient is not a third party contract if the ultimate subrecipient would otherwise be eligible under Section 5311 to receive funds directly from the state and the ultimate subrecipient intends to use those funds to pursue its own rural area transit project.

Each recipient of FTA seeking federal assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party procurement provisions of federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of federal assistance if FTA determines the applicant's procurement practices and procurement system are incapable of compliance with federal laws, regulations, and directives governing procurements financed with FTA assistance.

Procurement procedures used by states and their subrecipients must comply with the following specific federal procurement requirements:

- (1) States. State procurement practices must, at a minimum, comply with the following:
 - (a) A recipient procuring rolling stock with FTA assistance may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than five years after the original contract date for bus procurements, and for not more than seven years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock;
 - (b) a requirement for full and open competition;
 - (c) a prohibition against geographic preferences;
 - (d) follow Brooks Act procedures for procurement of architectural and engineering services if the state has not adopted a statute governing procurement of such services;
 - (e) comply with the Davis-Bacon Act on all construction contracts over \$2,000; and

- (f) inclusion in contracts of all federal clauses required by federal statutes and executive orders and their implementing regulations. These clauses are identified in specific federal regulations cited in FTA's master agreement and incorporated by reference into the grant agreement. Additional technical assistance for third party contracting is available in FTA's "Best Practices Procurement Manual," which can be found online at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html.
- (2) Subrecipients that are Governmental Authorities. Subrecipients that are governmental authorities such as local or Indian tribal governments must comply with the same federal requirements governing state procurements. States are responsible for ensuring that subrecipients are aware of and comply with federal requirements.
- (3) Subrecipients that are Private Nonprofit Organizations. Subrecipients that are private nonprofit organizations must comply with FTA procurement requirements contained in the most current FTA Circular 4220. States are responsible for ensuring that private nonprofit subrecipients are aware of and comply with these additional requirements.
- (4) Subrecipients that are Private, For-profit Organizations. Subrecipients that are private for-profit organizations must comply with FTA procurement requirements contained in the most current FTA Circular 4220 for procurements conducted with federal funds. States are responsible for ensuring that private for-profit subrecipients are aware of and comply with these additional requirements.
- b. Preaward and Post-Delivery Reviews. FTA requires grant recipients purchasing a certain number of revenue passenger rolling stock to undertake reviews of the rolling stock both before the award of the contract and following delivery of the vehicles. The intention is to improve compliance with Buy America requirements, the recipient's bid specifications, and federal Motor Vehicle Safety Standards. The requirement to undertake the preaward and post-delivery reviews arises from 49 U.S.C. 5323(m) and is specified in FTA regulations at 49 CFR part 663. Compliance must be certified on the annual list of certifications and assurances.

Procurements of twenty vehicles or fewer, purchased for serving rural areas and cities of less than two hundred thousand population are not subject to either review procedure. In urbanized areas of greater than two hundred thousand population the reviews are not necessary for a purchase of ten or fewer vehicles. The procurement of unmodified vans, in any quantity, is not subject to the review requirement.

When a state undertakes a consolidated state procurement on behalf of several subrecipients of FTA funds, the requirement for a resident inspector at the manufacturing site depends on the number of buses in a subrecipient's order. That is, for example, although a state may order thirty vehicles, if no subrecipient expects to receive twenty or more of the vehicles (ten or more for a large urbanized area subrecipient), the state is not required to place an inspector on site. If twenty or more vehicles are ordered for a single subrecipient an on-site inspector is required, and may be provided by either the state or

the subrecipient. In addition, if the on-site inspector is used on one subrecipient's order, then this meets the on-site inspection requirement for the state procurement even though there are other subrecipient orders of twenty or more vehicles.

In carrying out the reviews, it may be useful to obtain a copy of the manual, "Pre-Award and Post-Delivery Reviews for Bus Vehicles," from FTA's regional offices. Also, when purchasing buses tested by the Altoona Bus Research and Testing Center, the recipient must obtain a copy of the test report.

Information about conducting preaward and post-deliver audits for bus procurements can be found at http://www.fta.dot.gov/legislation_law/12921_5423.html.

- c. New Model Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested in accordance with the requirements in 49 CFR part 665 and must obtain a copy of the resulting test report before FTA funds can be released. FTA provides a bus testing section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

MAP-21 amended the bus testing provisions under 49 U.S.C. 5318 to require that FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if it has received a passing score. This requirement will take effect after FTA has issued regulations establishing the standard.

- d. Domestic Preference for U.S. Property—Buy America. Pursuant to 49 U.S.C. 5307(d)(1)(E), applicants and subrecipients must certify that they will comply with applicable Buy America laws as set forth under 49 U.S.C. 5323(j) in carrying out a procurement. FTA's Buy America requirements apply to all third party procurements funded by FTA. These requirements, published at 49 CFR part 661, are different from the Federal "Buy American" regulations, published in the Federal Acquisition Regulation at 48 CFR 25.1 and 25.2, which apply to direct federal procurements. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any procurement to ensure compliance with the requirements applicable at the time the recipient will undertake the procurement. Additional information is available on the FTA Buy America website: http://www.fta.dot.gov/legislation_law/12921_613.html.

- (1) General Requirement. In compliance with 49 U.S.C. 5323(j) and FTA's implementing regulation at 49 CFR part 661, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States. FTA may waive this requirement in certain circumstances, as discussed below.

- (2) Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and

- columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.
- (3) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin. 49 CFR 661.5(d).
- (4) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
- (a) if the FTA administrator determines a waiver is in the public interest;
 - (b) if no responsive or responsible bid offers a product manufactured in the United States;
 - (c) when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
 - (d) when including domestic material will increase the cost of the overall project by more than 25 percent(49 CFR 661.7).
- (5) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America requirements. Currently, DOT’s Common Grant Rule (49 CFR 18.36(d)) sets that threshold at \$100,000 or less. FTA bases the exemption on the total amount of the contract and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$20,000 each under a single purchase order, the \$200,000 contract would make the procurement subject to Buy America requirements
- (6) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (7) Responsibilities. Under 49 CFR 661.13, a recipient’s responsibilities are:
- (a) to adhere to the Buy America clause in its grant agreement with FTA;
 - (b) to include in its bid specification for procurement within the scope of FTA’s regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and

- (c) to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- e. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26. For further guidance, contact the FTA Office of Regional Civil Rights.

TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.

- f. Debarment and Suspension. The purpose of the DOT governmentwide Debarment and Suspension (Nonprocurement) regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration's (GSA) System for Award Management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a Website, at <https://www.sam.gov>, which is updated in real time as changes to the data occur.
- (1) DOT regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
- (a) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (b) Third party contracts of any amount for federally required audit services (such as those required under the Single Audit Act Amendments); and
 - (c) Third party contracts or subagreements requiring official DOT approval.

- (2) Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
- (3) The awarding party must verify that the person is not excluded or disqualified by:
 - (a) Checking the SAM list of excluded parties maintained by the GSA and available at <https://www.sam.gov>. (Note: Strongly recommended by FTA.);
 - (b) Collecting a certification from the prospective awardee; or
 - (c) Adding a clause or condition to the third party contract or subagreement with that awardee.

In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the regulations.

6. FINANCIAL MANAGEMENT

- a. State Financial Management Systems. The common grant rule requires a state to expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the state, as well as its subrecipients and cost-type contractors must be sufficient to:
 - (1) Permit preparation of reports described in this circular and reports necessary to comply with other program and statutory requirements; and
 - (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions applicable to the program.

Private nonprofit subrecipients must comply with the standards for financial management systems provided in 49 CFR part 19. If states purchase vehicles and equipment for subrecipients and subrecipients receive no cash from the recipient, this requirement does not apply to the subrecipients.

7. FTA ELECTRONIC AWARD MANAGEMENT SYSTEM. FTA provides a streamlined electronic interface between recipients and FTA that allows complete electronic award application submission, review, approval, and management of all grants. Among other things, recipients apply for grants, inquire about the status of grants, file the required federal financial report and milestone progress reports, and submit annual certifications and assurances in this system. A user guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants."

The U.S. Department of Labor (DOL) receives requests electronically for transit employee protective certification for projects through the FTA electronic award management system.

DOL will electronically issue the public transportation employee protective certifications, entering the certification date and attaching the certification letter into the FTA electronic award management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO), which is described in Section 11, below, and Appendix A of this circular. ECHO is an FTA Web-based application that processes FTA recipients' requests for payment. To access the FTA electronic award management system, a new applicant must complete the grantee/recipient user access request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is:

http://www.fta.dot.gov/funding/grants_financing_36.html.

8. **SYSTEM FOR AWARD MANAGEMENT (SAM) REQUIREMENTS.** The system for award management (SAM) is a free website that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance. On July 30, 2012, the central contractor registration (CCR), FedReg, and the excluded parties list system (EPLS) were migrated into SAM. Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance. The website is <https://www.sam.gov>.
9. **DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENT.** Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is inputted in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must update the recipient electronic profile to include the number.
10. **SUBRECIPIENT DUNS REQUIREMENT.** If it is authorized to make subawards under its agreement with FTA, the recipient must notify potential subrecipients that no entity may receive a subaward from the recipient unless the entity has provided its DUNS number to the recipient.
11. **ELECTRONIC CLEARING HOUSE OPERATING (ECHO) REQUIREMENTS.** FTA makes all payments by electronic funds transfer, regardless of the dollar amount involved. Payments are made under the electronic clearing house operation Web (ECHO-Web) system, by means of a control number assigned to the state. The state agrees to comply with the ECHO-Web requirements contained in the Treasury Regulations, 31 CFR part 205, "Rules and Procedures for Funds Transfers," and as established by the "Guidelines for Disbursements" set forth in FTA's ECHO-Web system operations manual. Detailed information about ECHO-Web can be found in Appendix A. In general:

- a. The state may initiate cash drawdowns only when actually needed for immediate disbursements for project purposes. The state must disburse the funds drawn down according to their treasury-state agreement or Subpart B of 31 CFR part 205, "Rules and Procedures for Efficient Federal-State Transfers." The state's access to the ECHO-Web system may be revoked or suspended, or other remedies may be invoked, if the state fails to expend federal funds within a reasonable period, to return funds to FTA within a reasonable period, or is unwilling or unable to establish procedures that will minimize the time elapsing between cash advances and the disbursement.
 - b. Costs incurred and available balances are reported annually on an accrual basis, on the Federal Financial Report in FTA's electronic award management system.
 - c. The state agrees to provide for control and accountability for all project funds consistent with federal requirements and procedures for use of the ECHO-Web system.
 - d. The state may not draw down funds for a project in an amount that would exceed the sum obligated by FTA or the current available balance for that project.
 - e. The state shall limit drawdowns to eligible project costs and ensure that subrecipients also follow applicable financial requirements.
12. STATE FINANCIAL RECORDS. FTA does not maintain detailed financial records on individual projects within a program of projects. Financial records, supporting documentation, and all other records pertinent to a grant must be retained by the designated state agency (and its subrecipients) and must be made readily available to authorized representatives of the U.S. DOT and the comptroller general of the United States for a period of three years from the date the state electronically submits the final federal financial report (SF 425). If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained beyond three years, until all litigation, claims, or audit findings involving the records have been resolved.

The state's financial records should adequately document the computation of the federal share and the provision of the required local share for each kind of project. The eligibility of any Americans with Disabilities Act of 1990 (ADA), Clean Air Act (CAA), or bicycle projects for which the increased federal share is claimed should be adequately documented.

13. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENT. FTA's recipients must report the information about each first tier subaward over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the recipient makes any subaward or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign subrecipient agreements until February, the FTA recipient would have until March 31 to report the subaward into the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <https://www.frs.gov>. Once the recipient submits an initial report, the recipient can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.

- a. No report is required until the month after the recipient makes a subaward. For example, if a state DOT received a Section 5311 grant in November and listed sixteen subrecipients in the program of projects but does not consider the subawards to be made until each subrecipient signs a letter of agreement, the state would not have to report any subawards in December, but would report them by the end of the month after the subrecipient signs the agreement. On the other hand, if the state DOT has a standing agreement with subrecipients and considers the subawards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the DOT. If the state allowed subrecipients to use preaward authority, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept subaward reports before the federal obligation is recorded in the system.
- b. FTA grant recipients that use funds to purchase vehicles from a statewide contract and then provide the vehicles to subrecipients have a subaward relationship with these subrecipients and should submit a subaward report for each subrecipient that is receiving vehicles from the statewide purchase. Grant recipients should enter the cost of the vehicles being transferred to the subrecipient as a proxy for the subaward amount in their subaward report. Recipients that are awarded grants directly from FTA and use these funds to purchase vehicles from a statewide contract for their own use do not have a subaward relationship with another organization and do not need to submit FFATA subaward reports.
- c. The required data elements in FSRS for each first tier subaward over \$25,000:
 - (1) Name of entity receiving subaward Doing Business As (DBA) Name;
 - (2) DUNS of the entity and its parent and DUNS+4;
 - (3) Amount of SubAward;
 - (4) Subaward Number (Note: assigned by recipient);
 - (5) CFDA Number (Note: The same CFDA associated with the FTA award);
 - (6) Place of performance (including congressional district);
 - (7) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 M and 80% of total revenue coming from federal funds);
 - (8) Award title descriptive of the purpose of the funding action; and
 - (9) Location of the entity (including congressional district).
- d. The amount the recipient must report for each subrecipient is the amount of the total subaward, not payments to date. Payment/drawdown information is not included in the data fields requested.

- e. After the recipient reports the subaward data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.

Information and training materials about FFATA sub-award reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to [USASpending.gov](http://www.usaspending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” Section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Recipients should direct technical questions about the reporting website to the FSRS help desk and FTA regional staff will assist with grant award information and requirements.

14. ALLOWABLE COSTS. Office of Management and Budget (OMB) Circular A-87 (2 CFR part 225) provides the federal guidelines for allowable costs for recipients that are governmental authorities. OMB Circular A-122 (2 CFR part 230) provides comparable guidance for nonprofit organizations. Expenses such as indirect costs or payments to a self-insurance fund must be documented appropriately.
15. CLOSEOUT. States should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. The states should similarly initiate program of project closeout with FTA within ninety days after all work activities for the program of projects are completed. A final federal financial report (SF 424), final budget, and final program of projects must be submitted electronically via the FTA electronic award management system at the time of closeout.

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. If small amounts of funds remain in an inactive grant, the state should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can reobligate the funds in a new grant to the state along with other currently available funds. Otherwise, the deobligated funds lapse and are reapportioned by FTA among all the states in a subsequent year.

16. AUDIT. State agencies are responsible for ensuring that audits are performed consistent with the requirements of OMB Circular A-133, “Audits of State, Local Governments, and Non-Profit Organizations,” resolving audit findings, and bringing problems to FTA’s attention. OMB has issued an audit compliance supplement for Section 5311 grants. FTA has not required an annual financial audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the state. Even if the amount of FTA funds the state passes to a particular subrecipient does not trigger the requirement for an A-133 audit, the state may wish to review A-133 audit reports prepared for subrecipients that are required to be audited because the total federal funds from all sources exceed the threshold (currently \$500,000). At a minimum, states should require subrecipients to bring to the attention of the state any audit findings relevant to their use of FTA funds.
17. REAL PROPERTY. Real property acquisition standards are included in the most current FTA Circular 5010, “Grant Management Guidelines” and in Chapter X of this circular,

“Other Provisions.” Subrecipients may use the state’s staff appraisers to prepare required independent appraisals.

18. CONSTRUCTION MANAGEMENT AND OVERSIGHT. The responsibility for construction management and oversight lies with the state. FTA does not approve design plans for construction projects by subrecipients.

19. REPORTING REQUIREMENTS

- a. Annual Program of Projects Status Reports. By October 31 each year, the state shall submit to FTA a program status report for each active grant, covering the twelve-month period ending September 30. Status reports are intended to meet minimal program information needs at the regional and national levels. Reports should include an updated program of projects for each approved grant that contains active projects. The updated program of projects should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The updated program of projects can be attached in the electronic status report. If revisions to the program of projects result in changes to the line item budget for the grant, these changes should be submitted as budget revisions. Significant civil rights compliance issues occurring during the year (such as Title VI, Equal Employment Opportunity [EEO], or Disadvantaged Business Enterprise [DBE] complaints against the state or subrecipients) should be addressed in the annual status report. In addition, the state may report notable accomplishments or problems involving Section 5311 subrecipients.
- b. Milestone Progress Reports (MPR). For activity line items (ALIs) for which milestones were required at the time of grant application (e.g., for vehicle procurements, construction projects, and program reserve), the recipient should enter revised milestone dates as part of the annual report. If the estimated completion date for the grant has changed, the revised date should be entered, with an explanation as to why the date was changed.
- c. Federal Financial Report (FFR). The state must submit electronically an annual federal financial report for each active grant, for the period ended September 30. For the purpose of this report, funds are considered encumbered when agreements are signed with subrecipients. States should prepare the reports using the accrual method of accounting.
- d. Disadvantaged Business Enterprise (DBE) Reports. If the state receives planning, capital, and/or operating assistance and awards prime contracts exceeding \$250,000 in FTA funds in a federal fiscal year, DOT regulations require the state to have a DBE program and establish a DBE goal methodology that applies to all direct and subrecipient contracting activity resulting from those funds. Subrecipients must follow the state’s established DBE program. FTA recipients that meet the above thresholds must submit a DBE goal to FTA for review by August 1 at three-year intervals, based on a schedule established by FTA.
- e. NTD Reports. The National Transit Database (NTD) is FTA’s primary national database for statistics on the transit industry. Recipients and subrecipients of Section 5311 grants

are required by 49 U.S.C. Section 5335(a) and (b) to submit data to the NTD as a condition of the award. Specific reporting requirements are included in the NTD reporting instructions manual issued each year. Visit the NTD website at www.ntdprogram.gov for the most recent rural reporting manual. Section 5311(b)(4) specifies that each Section 5311 recipient shall submit an annual report containing information on capital investment, operations, and service provided under Section 5311. Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. The state agency administering FTA's Formula Grants for Rural Areas (Section 5311) is responsible for ensuring that data is collected and compiled for the data collection and compilation from each Section 5311 subrecipient and transportation provider in the state that benefits from the grant.

20. STATE MANAGEMENT PLAN. The state management plan (SMP) is a document that describes the state's policies and procedures in administering the Section 5311 program. All states are required to have an approved SMP on file in FTA's regional office. Additions or amendments to the SMP must be made and submitted to FTA whenever a state significantly changes its management of the program, or when new program management requirements are imposed by FTA. Changes may be required as the result of a state management review by FTA. FTA has provided detailed requirements in Chapter VI of this circular, State Management Plan.
21. FTA STATE MANAGEMENT REVIEW. FTA's administration of Section 5311 results in relatively little federal involvement in the day-to-day program activities or in the review of individual applications from subrecipients. To ensure that the program objectives are being carried out, the FTA regional office, with contractor assistance, conducts state management reviews every three years or as circumstances warrant. The review includes an inspection of documentation on file at the FTA regional office, a visit to the state offices to examine the procedures the state uses in administering the program, and local subrecipient site visits. Local site visits to the state's subrecipients are selected at random and are meant to evaluate the state's effectiveness in meeting federal requirements and its own SMP (discussed in Chapter VI). The review assesses the accuracy and adequacy of the SMP, and may result in recommendations for changes to the SMP. A draft report with preliminary findings is presented at an exit conference. The state has an opportunity to comment on the report and to take corrective actions before a final report is issued. The regional office follows up on corrective actions required in the final report.

FTA periodically conducts state management review seminars to help states understand the federal requirements being reviewed and to provide technical assistance. Contact the FTA regional office for a current schedule of seminars.

FTA also conducts more specific compliance reviews of recipients and subrecipients in particular areas, for example financial management, procurement, drug and alcohol testing compliance, and the various aspects of civil rights compliance, usually in response to a risk assessment, complaint, or other indication of a possible problem. FTA coordinates reviews of subrecipients with the state.

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VI. STATE MANAGEMENT PLAN

1. GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering the state-managed portions of FTA's Section 5311, 5310, 5316, 5317, and 5339 programs. Each state is required to have an approved SMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The state shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. The state may include the required SMP for Section 5311, 5310, 5316, 5317, and 5339 programs in a single document or separate documents. States that have expended all of their Section 5316 (Job Access Reverse Commute) and Section 5317 (New Freedom) funds from SAFETEA-LU may remove those programs from their SMPs. Certain contents of the SMP, such as the project selection criteria, should be coordinated with the statewide transportation plan. All public documents developed under a grant from FTA must be prepared and submitted in electronic format.
2. PURPOSE. The SMP is intended to facilitate both state management and FTA oversight by documenting the state's procedures and policies for administering the Section 5311 program in a single reference. The SMP should be a document that is useful to the state and subrecipients, as well as to FTA. At a minimum, this document must include the state's objectives, policies, procedures, and administrative requirements, in a format readily accessible to potential subrecipients, state staff, FTA, and the public. The SMP's primary purposes are to serve as the basis for FTA state level management reviews of the program, and to provide public information on the state's administration of the Section 5311 program. It may also be used internally by the state as a program guide for local project applicants. If the state has other relevant documentation that provides the same information requested for the SMP, such as an annual application instructions manual, it may be included by reference, as an attachment.
3. STATE MANAGEMENT REVIEWS. FTA conducts state management reviews to examine each state's management procedures, and the relationship of the procedures to the SMP. When a state management review is scheduled, FTA and its contractors examine the SMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP satisfy current requirements. At the site visit, the reviewers document whether or not the state is following its own stated procedures. Review findings relating to the SMP might include recommendations that the state revises the SMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP.
4. STATE MANAGEMENT PLAN CONTENT While FTA does not prescribe a format for the SMP, the plan should address the following topics and provide the information as requested for each topic below.
 - a. Program Goals and Objectives. Describe the philosophy and policy underlying the state's management of the Section 5311 program. Include a description of any process that exists for tracking the program goals for 49 U.S.C. 5311 in Chapter II Section 2 of this Circular and establishing long-term goals for providing rural public transportation in rural areas of

the state, including the state's process for long-range planning and consultation with rural elected officials.

- b. Roles and Responsibilities. Specify the agency designated by the governor to administer the Section 5311 program. Explain the respective roles and responsibilities of the state agency and its subdivisions, other state agencies or review boards, local governments, private providers, local applicants, and other involved parties. Include a brief discussion of the statewide long-range transportation planning process.
- c. Coordination. Describe how the state coordinates with other agencies at the state level, and encourages and enhances coordination at the project level. This could include a description of any state level coordinating mechanisms, legislation, review boards, and state policies that encourage or mandate coordination at the local level.
- d. Eligible Subrecipients. Describe which entities may apply to the state for funds as subrecipients and what kinds of projects the state may conduct itself as primary recipient. Identify any way in which state eligibility is more restrictive than federal eligibility. Describe methods for participation by other entities, including private for-profit providers such as taxicab companies or intercity bus operators.
- e. Eligible Services and Services Areas. Describe eligible services and service areas, including any limitation the state imposes in addition to federal rules. The definition of transit service area is a state and local decision. Include here any state policies and procedures related to the provision of service to destinations outside the state.
- f. Eligible Assistance Categories. Describe eligible assistance categories, particularly when more explicit or more restrictive than federal categories. Include any restrictions on eligible expenses and the state's policy on allocation of costs between administrative, operating, planning, and capital expenses.
- g. Local Share and Local Funding Requirements. Describe the state's policies on provision of local share. Include any state programs which provide matching funds for Section 5311.
- h. Project Selection Criteria and Method of Distributing Funds. Describe the state's criteria for selecting projects and distributing funds fairly and equitably among various applicants for funding, including tribal governments and other entities serving Native American populations. Whether the state uses a formula for allocation, imposes its own limitations on use of the funds (e.g., capital only), or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used. This description should cover the state's procedures for assuring equity of distribution of benefits among groups within the state, as required by Title VI of the Civil Rights Act of 1964. Describe the state's procedures for coordinating with the metropolitan planning organization (MPO) responsible for project selection in any designated transportation management area within the state.
- i. Intercity Bus Transportation. Describe the state's procedures for implementing Section 5311(f), which requires the state to expend no less than 15 percent of its annual Section

5311 apportionment for the support of intercity bus transportation, unless the governor certifies that the state's intercity bus service needs are adequately met. Describe the state's process for consultation with private intercity bus operators, and any other public participation process in connection with a certification that needs are adequately met. Describe the state's process for assessing intercity bus mobility needs in the state. Also, if the in-kind provision is used for local match, the state must document the process used to validate the source of the in-kind match, and the unsubsidized segment of the intercity bus service.

- j. Annual Program of Projects Development and Approval Process. Describe the state's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the state's annual program of projects for Section 5311. The SMP may include instructions to potential subrecipients on how to prepare local project applications.
- k. Funds Transfers. Describe any policy the state has for transferring Section 5307 and/or 5311 apportionments between small urbanized and rural areas, or for transferring Section 5310 projects (fiscal year 2012 and prior) to Section 5311 subrecipients for administration. Effective with fiscal year 2013 funds, Section 5310 funds may not be transferred to Section 5311.
- l. State Administration and Technical Assistance. Describe the planning resources and technical and management assistance the state makes available to local areas. Also describe how the state uses Section 5311 funds within the 10 percent limitation for administration, planning, technical assistance, and research. Distinguish between the use of funds for state administration and the state Rural Transportation Assistance Program (RTAP) allocation, and describe any additional resources used for these purposes.
- m. State RTAP. Describe the state's procedures for administering its state RTAP funds, including project selection criteria, any local match requirements imposed by the state, goals and objectives, and methods for involving operators in program development and implementation.
- n. Private Sector Participation. Describe the state's procedures for providing for maximum feasible participation by private providers of public transportation.
- o. Civil Rights. Describe how the state meets federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, Equal Employment Opportunity (EEO), and Disadvantaged Business Enterprise (DBE). The SMP must include the program-specific Title VI requirements detailed in Chapter XI, "Other Provisions," including the state's efforts to assist minority applicants and to include subrecipients serving significant minority populations.
- p. Maintenance. Describe any maintenance plans and procedures required of subrecipients for vehicles and facilities, including maintenance of ADA accessibility features.
- q. Charter Rule. Describe the state's procedures for complying with the charter regulation (49 CFR part 604). Include the process used to ensure subrecipients are in compliance

with the charter regulation, and any agreements the state has with registered charter providers.

- r. Section 504 and ADA Reporting. Describe the state's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports, and certifications submitted to it under the provisions of those regulations.
 - s. NTD Reporting. Describe the state's method for collecting and reporting the data elements specified in the annual NTD reporting mandate, as required by 49 U.S.C. 5335(b).
 - t. State Program Management. Describe how the state administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit, and closeout. In addition, include any state procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the state for matters such as productivity, cost-effectiveness, or service standards. Detail any state reporting requirements.
 - u. Other Provisions. Describe the process by which the state complies with other federal requirements such as the employee protection provisions of Section 5333(b); NEPA and other federal environmental laws, regulations, and executive orders; Buy America provisions; preaward and post-delivery reviews; prohibition of exclusive school transportation; and drug and alcohol testing, including the state's procedures for monitoring compliance by subrecipients.
5. STATE MANAGEMENT PLAN REVISIONS. All states must have an SMP approved by FTA on file with FTA's regional office. An approved SMP remains valid until FTA approves a later plan submitted by the state, or an FTA state management review results in a specific request to the state by FTA for a revised SMP, or FTA announces significant new program changes. FTA strongly encourages the state to issue timely revisions to the SMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the state proposes significant revisions to the SMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other state agencies and representatives of other funding sources, and any relevant state associations and professional organizations.

If revisions are substantive but not pervasive, the state may submit changes and additions in the form of page changes that FTA can approve and incorporate into the SMP on file. If the state changes the SMP significantly, however, it should submit the entire revised plan to FTA for approval. The state is responsible for ensuring that FTA has a complete electronic copy of the current SMP. The state may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The state should reexamine the SMP to make sure it reflects current requirements of this FTA Circular 9040.1G and revise the SMP as necessary.

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VII. APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION

ASSISTANCE PROGRAM (ADTAP)

1. **PROGRAM SUMMARY.** Title 49 U.S.C. 5311(c)(2) authorizes the Appalachian Development Public Transportation Assistance Program (ADTAP), which allocates funds by statutory formula (see Formula Allocations section below). This new program is funded with a takedown from the Section 5311 program to provide additional funding to states in the Appalachian region of the United States. FTA apportions the funds to designated states (see Eligible Recipients below) for purposes eligible under Section 5311; including capital, operating, planning, job access and reverse commute projects, and administrative costs.

FTA intends to coordinate with the Appalachian Region Commission (ARC) to foster the development of public transportation service in eligible areas: FTA's ADTAP will enhance existing transportation service and create new services in order to decrease isolation within the region.

2. **NATIONAL PROGRAM OBJECTIVES.** While this program is funded under FTA's Section 5311 program, the national program objective is delivery of safe, reliable public transportation services to rural areas in the Appalachian region. Consistent with the objectives of the Section 5311 program, funds should enhance access to health care, shopping, education, employment, public services, and recreation.
3. **ELIGIBLE RECIPIENTS AND SUBRECIPIENTS.** Eligible rural recipients under the ADTAP include thirteen states located in the Appalachian region: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia as defined under Title 40, section 14010 of the Appalachian Regional Development. Subrecipients of ADTAP funding include state or local governmental authorities, nonprofit organizations, and operators of public transportation services.
4. **ELIGIBLE SERVICES AND SERVICES AREAS.** A service area must be located in the Appalachian region to be eligible for funds. (Please see Table 3: Eligible States and Counties in the Appalachian Region.)

TABLE 3
STATES AND COUNTIES IN THE APPALACHIAN REGION

State	Counties
Alabama	Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Limestone, Macon, Madison, Marion, Marshall, Morgan, Pickens, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston
Georgia	Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Dade, Dawson, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Heard, Jackson, Lumpkin, Madison, Murray, Paulding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield
Kentucky	Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nicholas, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe
Maryland	Allegany, Garrett, and Washington
Mississippi	Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Itawamba, Kemper, Lee, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Tippah, Tishomingo, Union, Webster, Winston, and Yalobusha
New York	Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Delaware, Otsego, Schoharie, Schuyler, Steuben, Tioga, and Tompkins
North Carolina	Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Davie, Forsyth, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey
Ohio	Adams, Ashtabula, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Trumbull, Tuscarawas, Vinton, and Washington
Pennsylvania	Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset,

	Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming
South Carolina	Anderson, Cherokee, Greenville, Oconee, Pickens, and Spartanburg
Tennessee	Anderson, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, De Kalb, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Loudon, McMinn, Macon, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Smith, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White
Virginia	Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pulaski, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Note: The following independent cities in Virginia are also within the Appalachian Region: Bristol, Buena Vista, Covington, Galax, Lexington, Martinsville, Norton, and Radford.
West Virginia	<i>All counties:</i> Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzell, Wirt, Wood, and Wyoming

Note: Link to maps of designated States and Counties in the Appalachian Region
http://www.arc.gov/appalachian_region/MapofAppalachia.asp

5. FORMULA ALLOCATIONS. FTA apportions ADTAP funds to designated states by a statutory formula based on the guidelines established under section 9.5(b) of the Appalachian Regional Commission Code. The allocation includes each state's remaining estimated need to complete eligible sections of the Appalachian Development Highway System (ADHS) as determined from the latest available cost estimates for completion of the system. Cost estimates are produced at approximately five-year intervals. Allocations contain upper and lower limits in amounts or percentages to be determined by the Commission and are made in accordance with legislative instructions.
6. FUNDS AVAILABILITY. Appalachian Development Program funds are available for the fiscal year in which they are apportioned plus two additional fiscal years. If the state does not obligate its allocation during this period, FTA reallocates the funds by formula among the states that are eligible to receive this funding.
7. ELIGIBLE PROJECTS. A state may use ADTAP program funds for capital projects, operating assistance, planning, job access reverse commute projects, and the acquisition of public transportation services, including service agreements with private providers of public transportation. The state may also use up to 10 percent of its ADTAP program funds to

administer the program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities, and research the state considers appropriate to promote effective delivery of public transportation in rural areas of the Appalachian region.

8. LOCAL SHARE.

- a. A 20 percent local match is required for capital and 50 percent for operating expenses.
- b. There is no local match required for the additional 10 percent permitted for administration and technical assistance for ADTAP projects.
- c. The sliding scale rate under Section 5311 is applicable to the ADTAP (see Chapter III, Section 5, for more information).
- d. For eligible sources of local match see Chapter III, Section 4.c of this circular.

9. PROGRAM ADMINISTRATION. The ADTAP funds are a separate allocation, but are apportioned annually and can be combined in the regular Section 5311 grant application as long as the state DOT accounts for the use of ADTAP funds in the Program of Projects. In order to maximize Section 5311 program funding an eligible state should use ADTAP formula funding as the funding source for selected rural transit projects within the designated Appalachian region. Section 5311 funds should be used to address needs not covered by the ADTAP allocation.

10. TRANSFER PROVISIONS. States that are eligible for the ADTAP may use amounts that cannot be used for operating expenses for a highway project if the governor approves the use in writing after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers in the Appalachian region. The governor must certify that the local transit needs are being addressed. In order for FTA to consider the transfer, a state must provide documentation to the FTA regional office that includes a description of the consultation used and certification by the local providers (i.e., state, local transit operators, and local RTPO [if applicable]) that all local operating needs are met. Upon receipt, FTA will review the request and if approved will transfer the funds consistent with FTA's transfer process (please see Chapter III, Section 6 of this circular).

11. STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) AND/OR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) REQUIREMENT. A state requesting ADTAP must comply with the planning requirements of 49 U.S.C. 5303 through 5305. Projects proposed for ADTAP funding must be a product of the statewide and nonmetropolitan transportation planning process and/or the metropolitan planning process specified in 23 CFR part 450 and 49 CFR part 613. With limited exceptions, states must include all federal funds to be used for highway or transit projects in a statewide transportation improvement program (STIP) consistent with 23 U.S.C. 135 and 49 U.S.C. 5304. States must include ADTAP funds in the STIP (see Chapter IV. 2 for detailed information).

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VIII. INTERCITY BUS

1. **PROGRAM SUMMARY.** Section 5311(f) of title 49, United States Code, requires each state to spend 15 percent of its annual Section 5311 apportionment “to carry out a program to develop and support intercity bus transportation,” unless the governor certifies that “the intercity bus service needs of the state are being met adequately.” Section 5311(f) requires a state to consult with intercity bus providers before seeking a governor’s certification. The consultation requirements are discussed in Section 4 of this chapter. The required percentage applies only to the amount of FTA’s annual apportionment of Section 5311 funds to the state. The required percentage does not apply to any funds the state subsequently transfers to its formula grants for rural area program from another program (such as Section 5307).
2. **NATIONAL OBJECTIVES.** In many states, intercity bus service is a vital link between otherwise isolated rural communities and the rest of the nation. Historically, major intercity bus carriers abandoned less productive routes. Patronage generated in rural areas, however, appears to be important to the continuing viability of the remaining intercity routes. One objective of the funding for intercity bus service under Section 5311, therefore, is to support the connection between rural areas and the larger regional or national system of intercity bus service. Another objective is to support services to meet the intercity travel needs of residents in rural areas. A third objective is to support the infrastructure of the intercity bus network through planning and marketing assistance and capital investment in facilities. FTA encourages states to use the funding under Section 5311(f) to support these national objectives, as well as priorities determined by the state.
3. **GOVERNOR’S CERTIFICATION.** A state is required to expend at least 15 percent of its apportionment for an intercity bus program, unless “the Governor of the State certifies to the Secretary, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately.”

The statutory provision for certification by the governor implies a statewide assessment of intercity bus service currently available and of any existing needs. The legislative history indicates that the assessment of intercity bus needs may be made relative to other rural needs in the state. A state certifying that its needs are adequately met must demonstrate that it has assessed statewide intercity mobility needs no more than four years before the date of the certification. The state must document in the state management plan (SMP) its consultation process and any process that it develops for periodically assessing statewide needs. FTA will evaluate evidence that the state has followed its process in state management reviews approximately every three years.

A state must certify that the intercity bus service needs of the state are being met adequately for each fiscal year that it does not intend to use 15 percent of its Section 5311 apportionment for intercity bus service. The state may include more than one year in a single signed certification. If the state determines that expenditure of some amount of funds less than the full 15 percent will result in needs being met adequately, it may submit a “partial” certification for the remainder of the 15 percent and spend only the portion needed to ensure that the intercity bus needs are met adequately.

In some cases, a state may have obligated and assigned funds to intercity bus projects in prior years, or reserved funds for intercity bus projects not yet selected. A state may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either of those cases, if the funds committed or reserved for intercity bus projects are later determined not to be needed for intercity bus service, the state may submit a retroactive certification within the period of availability of the funds. This action will permit the use of the prior year funds for other rural transit projects, subject to the notification and approval conditions described in Chapter IV of this circular and consultation with intercity bus providers before certification.

The governor of the state or his or her duly authorized designee must sign a certification letter addressed to the federal transit administrator, with a copy to the FTA regional office. The letter should include sufficient information regarding the consultation process and needs assessments for FTA to make an initial determination that the certification is supported by the results of the process. In addition, in its oversight activities, FTA will examine the basis for a governor's certification. The assurance the state makes as part of the annual certifications and assurances that it will meet the requirements of Section 5311(f) does not substitute for a certification by the governor that the needs are met adequately. Appendix F provides a sample certification letter.

4. CONSULTATION PROCESS REQUIREMENTS.

- a. "Consultation" is defined in the joint Federal Highway Administration (FHWA) FTA Planning Regulations, 23 CFR part 450 as, "one party confers with another identified party in accordance with an established process and, before taking action(s), considers that party's views and periodically informs that party about action(s) taken." For the purposes of this provision, FTA has adopted this definition of consultation.
- b. The state's intercity consultation process must include the following elements:
 - (1) identification of intercity bus providers in the state;
 - (2) activities the state will perform as part of consultation with identified providers and intercity bus organizations;
 - (3) an opportunity for intercity bus providers to submit proposals for funding as part of the state's distribution of its annual apportionment; and
 - (4) a direct correlation between the results of the consultation process and a determination that the state's intercity service needs are being met adequately.
- c. In developing the consultative process elements mentioned above, FTA suggests consideration of the following ideas, many of which are drawn from Transportation Cooperative Research Program (TCRP) Report 79, "Effective Approaches to Meeting Rural Intercity Bus Transportation Needs":
 - (1) Identifying Private Intercity Carriers. Intercity carriers serving a state can be identified from several sources, including:

- (a) Russell's Official National Motor Coach Guide;
 - (b) websites of private intercity bus operators;
 - (c) bus industry directories;
 - (d) state regulatory agency listings; and
 - (e) trade associations, such as the American Bus Association and the United Motorcoach Association.
- (2) Activities of Consultation.
- (a) Inform intercity bus carriers of the state's rural planning process and encourage their participation in that process, and where a state is considering possible certification of needs being met adequately, provide an opportunity to submit comments, and/or request a public meeting to identify unmet needs and discuss proposals for meeting those needs.
 - (b) Include intercity providers' participation in scheduled meetings, such as state agency transit meetings and public transit conferences.
 - (c) Meet with individual intercity providers periodically.
 - (d) Notify providers either through direct mail or advertise in various locations around the state of availability of funds for the current year's intercity bus program.
 - (e) Inform intercity bus providers about the development of local, coordinated public transit-human services transportation plans required by Section 5310 and encourage intercity bus provider participation.
 - (f) Solicit comments through direct mail and advertise in newspapers in various locations around the state of the state's intent to certify needs are being met adequately unless needs are identified.
- (3) Available Resources for Assessment and Analysis of Intercity Bus Needs. It is appropriate and conducive for the state to work in partnership with the American Bus Association, and/or carriers individually, in periodic assessment of needs including meaningful connections to the national intercity bus network.
- (a) Include an assessment of intercity bus needs in the development of coordinated public transit-human services transportation plans.
 - (b) Include intercity bus transportation in statewide long range planning.

- (c) Use Section 5311 state administration funds, statewide planning apportionments, or state Rural Transportation Assistance Program (RTAP) allocations for periodic statewide assessments of needs.
5. IN-KIND MATCH FOR INTERCITY BUS. Section 5311(g)(3)(D) provides that in the case of an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, the local match “may be derived from the costs of a private operator for the unsubsidized segment of intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 5311(f).”
- a. Defining the FTA Assisted Project. To use the net project cost provided by a private operator as in-kind match, the FTA-assisted project must be defined as including both the feeder service and an unsubsidized segment of the intercity bus network to which it connects.
 - b. Sources of In-Kind Match. The unsubsidized private operator costs can be used as the local match only “if the private operator agrees in writing to the use of the costs of the private operator for the unsubsidized segment of intercity bus service as an in-kind match.”
 - c. Cost Allowable As In-Kind Match. In order to be eligible to be used as in-kind match, a cost must be otherwise allowable under the project. Thus to be eligible under Section 5311, the net project costs contributed by the private operator as in-kind match must connect the rural community to further points.
 - d. Calculating the Eligible Net Cost of the Private Operator Allowable as In-Kind Match. Fare revenues of the private operator for the unsubsidized segment must be subtracted from the total cost to operate the unsubsidized segment to determine the eligible amount of in-kind match. For administrative simplicity, FTA allows two methods for the private operator to determine its eligible net cost that can be used as local match.

Under the first method, the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the unsubsidized service, and thus only the capital costs of the unsubsidized service may be used as in-kind match. To simplify matters, FTA will use the percentages allowed in the capital cost of contracting guidance to determine how much of the private operator’s total costs are attributable to capital. (e.g., 50 percent where the operator provides and maintains all the equipment, less if FTA funded equipment is provided).

Under the second method, the private operator can directly calculate the net project cost of the unsubsidized segment and must provide to FTA verifiable information showing the eligible capital and operating expenses as well as fare revenues attributable to the unsubsidized segment that were used to make the calculation.

e. Example of a Project.

- (1) Feeder service: point A to B (\$15,000 total cost less \$5,000 fare box revenue equals \$10,000 net project cost to be matched by 5311(f)).
- (2) Connecting unsubsidized private service:
 - a. Method 1: point B to C: \$10,000 net project cost based on 50% capital cost of contracting guidance.
 - b. Method 2: point B to C: \$10,000 net project cost based on \$15,000 in operating costs, \$5,000 in capital costs and subtracting \$10,000 in fare box revenues (\$15K + \$5K - \$10K).
- (3) The FTA Section 5311(f) project is defined as service from A to C.

The net project cost is \$20,000 (\$10,000 from A to B and \$10,000 from B to C).

FTA Section 5311(f) can fund \$10,000, matched with \$10,000 contributed by the private operator in the B-C segment.

The examples above assume a 50/50 match ratio for operating assistance. The federal share may be different if a state is eligible to use the sliding scale match ratios.

- f. Excess or Insufficient In-Kind Match. If there is excess in-kind match available from the net project costs of the private provider, it cannot be used to increase the federal share above the actual operating deficit of the project. If there is not enough capital in-kind match to equal the Section 5311(f) funds needed to cover the operating deficit, the state or local agency would have to produce the difference in cash.
- g. Documentation Required in State's Application for Section 5311 Funding. When applying to use in-kind match, the state must provide the following supplemental information with its Section 5311 grant application:
 - (1) For each project using the match, the state must provide a description of the feeder service and the connecting service, identifying locations served by each, and the connections. Only those runs that actually connect with the feeder service can be used for match. For example, if the private operator makes four trips per day through point B but the feeder service only operates twice daily, only the capital costs of the two daily connecting trips can be used as in-kind match.
 - (2) Itemize the total and net costs of each segment used in the project description (e.g., A-B and B-C, by actual place names, and level of service). The value of the in-kind match must be based on the documented costs incurred by the private operator in providing the connecting service, with reasonable calculations by costs per mile, or costs per hour, for example. Capital cost of contracting percentages may be used to determine the amount of total costs attributable to capital, unless the operator can

provide documentation that the capital costs (including preventive maintenance) are higher or the operator intends to include net operating costs not being covered by fare box revenue

- (3) If the amount calculated as in-kind does not provide sufficient match for the entire operating deficit of the feeder service, additional cash match is required.
- (4) The application should include documentation that the private operator has consented to the arrangement, documented the costs of the private service being used for in-kind match, and acknowledged that the private service is part of the FTA project and thus is covered by the labor warranty and other federal requirements.

h. Grant Applications Review and Processing.

(1) FTA Role.

- (a) Review the documentation to ensure the project is eligible for Section 5311(f) assistance and that sufficient local match is provided by the in-kind capital contribution or other sources to match the operating assistance provided.
- (b) Add a comment to the internal review comments in FTA's electronic award management system noting that the use of in-kind match has been reviewed and approved pursuant to this guidance for this provision.

(2) State Role. The state implements Section 5311(f) as part of its management of the Section 5311 program. FTA encourages the state to look at the intercity bus transportation needs of the entire state and to work with neighboring states in order to adopt a program that will support a network of intrastate services and provide connections with a national network of interstate service. The state is encouraged to work with private providers of intercity bus transportation for potential use of the program. The state will provide available information to FTA or its contractors upon request to support a national evaluation of the implementation of Section 5311(f).

6. ELIGIBLE SUBRECIPIENTS. The definition of a subrecipient in Section 5311(a)(2) includes an operator of intercity bus service that receives federal transit program grant funds through a state or Indian tribe that is a recipient. In some instances, intercity bus providers may be unwilling or unable to accept the terms and conditions the state applies to subrecipients and may prefer to maintain a contractual relationship, in order to isolate the remainder of their operations from federal requirements related to a grant. The state may use either mechanism to provide assistance to private operators for intercity bus service. In either case, the state should use a merit-based selection process to ensure that the private operator is qualified, will provide eligible service, can comply with federal and state requirements, and is the best, or only, provider available to offer service at a fair and reasonable cost.
7. ELIGIBLE SERVICES AND SERVICE AREAS. Connection to the national network of intercity bus service is an important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Intercity bus projects may include package express service, if it is incidental to passenger transportation. The definition of intercity bus

does not include commuter service (service designed primarily to provide daily work trips within the local commuting area). Commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311 but not counting toward the required percentage for Section 5311(f).

Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Intercity bus does not include air, water, or rail service. While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long distance trips are included in the definition of intercity service. For example, service that provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community) is not considered intercity service, although it may be an eligible public transportation service. Similarly, service that only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route that covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service.

8. ELIGIBLE ACTIVITIES Eligible activities under Section 5311(f) must support intercity bus service in rural areas. Section 5311(f) specifies eligible intercity bus activities to include “planning and marketing for intercity bus transportation, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small public transportation operations and intercity bus carriers.” This listing does not preclude other capital and operating projects for the support of rural intercity bus service. For example, the state may provide operating assistance to a public or private nonprofit organization for the direct operation of intercity service after appropriate consideration of participation by private for-profit service providers. Capital assistance may be provided to purchase vehicles or vehicle-related equipment such as wheelchair lifts for use in intercity service. Charter and tour services are not eligible for FTA assistance. See 49 CFR part 604.

FTA encourages the participation of private companies that provide public transportation to the maximum extent feasible in this and other FTA programs. Among the various types of projects in which private intercity bus operators may wish to participate are improvements to existing intercity terminal facilities for rural passengers, modifications to transit facilities to facilitate shared use by intercity bus, intercity rail, and rural transit operators, operating assistance to support specific intercity route segments, and applications of intelligent transportation systems (ITS) technology for coordinated information and scheduling.

FTA funds can be used for all aspects of intercity bus and rail facilities in facilities (such as intermodal terminals) that meet the criteria in Section 5302(3)(G) for joint development projects. FTA published final guidance for joint development projects in the *Federal Register* on February 7, 2007 (72 FR 5788).

9. FEEDER SERVICE. The “coordination of rural connections between small transit operations and intercity bus carriers” may include the provision of service that acts as a feeder to intercity bus service, and which makes meaningful connections with scheduled intercity bus service to more distant points. The feeder service is not required to have the same

characteristics as the intercity service with which it connects. For example, feeder service may be demand-responsive, while intercity service is by definition fixed route. Examples of eligible costs include marketing and extended hours of service in order to connect with scheduled intercity service. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service. Rural transit providers operating feeder service with destinations across state lines are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations. Intrastate feeder service may also trigger compliance with FMCSA regulations if interlining is involved (issuing a single ticket for the feeder service and the trip provided by an interstate carrier). Section 5311(f) funds may be used for expenses incurred by a public transit operator as a result of FMCSA requirements triggered by the provision of feeder services.

10. ADA REGULATIONS. Intercity bus operators are subject to the Department of Transportation's (DOT) Americans with Disabilities Act of 1990 (ADA) over-the-road bus regulations, at 49 CFR part 37, subpart H (49 CFR 37.181 *et seq.*). Effective October 29, 2012, 100 percent of over-the-road buses operated by large operators (Class I motor carriers) that provide fixed-route service—service operated along a prescribed route according to a fixed schedule—must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Small operators must either ensure their vehicles are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or must ensure that equivalent service, as defined in 49 CFR 37.105, is provided to individuals with disabilities. Generally, over-the-road buses that comply with 49 CFR part 38, subpart G (49 CFR 38.151 *et seq.*) will be considered accessible. In the event the intercity bus service is provided by a public entity or under contract to a public entity, the vehicles must be compliant with both 49 CFR 38.23 and subpart G of part 38. Complementary paratransit service is not required for intercity bus service.
11. FEDERAL SHARE. The federal share for intercity projects is the same as for the Section 5311 program as a whole: 50 percent of the net cost for operations and 80 percent of the net cost for capital projects and project administration. State administration, planning, and technical assistance in support of intercity bus transportation are eligible at 100 percent federal share if applied against the cap on state administration expenses. The amount of Section 5311 funds used for planning for intercity bus transportation is not limited by the 10 percent cap on state administration. However, the federal share of any planning assistance for intercity bus not included in the 10 percent allowed for state administration is limited to 80 percent of the planning costs. The sliding scale match described in Chapter III, part 3 is applicable.
12. CAPITAL PROJECTS IN URBANIZED AREAS. Use of Section 5311(f) funds for capital projects in UZAs is limited to those aspects of the project that can be identified as directly benefiting and supporting service to and from rural areas. These projects must be included in both the metropolitan transportation improvement program (TIP) and the statewide transportation improvement program (STIP) and follow the appropriate project selection requirements contained in the joint planning rule. (See 23 CFR part 450 and 49 CFR part 613.)

13. OBLIGATION OF FUNDS. In the absence of a certification from the governor that intercity needs are adequately met, 15 percent of the state's annual apportionment must be obligated for intercity bus transportation within the period of availability (three years).
 - a. Program of Projects. All projects in support of intercity bus service should be clearly identified and grouped together in the state's program of projects. Funds may be listed for specific projects in Category A or B. (Note, however, that funds in Category B must be advanced to those projects identified within the period of availability.) See Chapter IV, section 5, for detailed information on Category A and B projects. The percentage required to be expended for intercity bus transportation may be withheld and not obligated in a given year, if the state plans to obligate the funds at a later date along with funds from subsequent years' apportionments. The state should note its intention to withhold funds for later obligation in the state's application to FTA.
 - b. Budget. In the project budget, the state should separately group the projects that are dedicated to the support of intercity service under the scope code 634, "Intercity Bus Transportation." The budget may include any activity code under scope code 634 to describe the intercity projects (e.g., capital, operating, and planning projects, or program reserve for intercity bus projects not yet identified).
 - c. Labor Protections. All Section 5311 operational projects, including intercity bus projects, require agreement to the terms and conditions of the standard Section 5333(b) special warranty for the Section 5311 program.
 - d. Enforcement of Compliance. If the state does not ultimately expend the funds for intercity service, the funds will lapse and will be reapportioned among all states. If a state chronically fails to comply with the requirement to fund projects for intercity bus needs within the period of availability, FTA may impose other sanctions. Within the parameters described in this chapter, FTA will rely on the state's determination of which projects support intercity bus services.

14. SURFACE TRANSPORTATION PROGRAM ELIGIBILITY. Funds made available under title 23 of the United States Code for the surface transportation program (STP) may be transferred to the 5311 program. The funds may be used to cover capital costs of publicly or privately owned vehicles and facilities that are used to provide intercity bus service.

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IX. RURAL TRANSPORTATION ASSISTANCE PROGRAM

1. **PROGRAM SUMMARY.** Title 49 U.S.C. 5311(b)(3) authorizes the secretary “to make grants and contracts for transportation research, technical assistance, training and related support services in rural areas.” The rural transportation assistance program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas. No more than 2 percent of the funds appropriated for Section 5311 each year are available for RTAP. Of that amount no more than 15 percent is available for projects of a national scope, with the balance apportioned to the states. The state program provides an annual allocation to each state to develop and implement training and technical assistance programs in conjunction with the state’s administration of the Section 5311 formula assistance program. The national program provides for the development of information and materials for use by local operators and state administering agencies and supports research and technical assistance projects of national interest.
2. **PROGRAM OBJECTIVES** The objectives of RTAP are:
 - a. to promote the safe and effective delivery of public transportation in rural areas and to make more efficient use of public and private resources;
 - b. to foster the development of state and local capacity for addressing the training and technical assistance needs of the rural transportation community;
 - c. to improve the quality of information and technical assistance available through the development of training, technology, and technical assistance resource materials;
 - d. to facilitate peer-to-peer self-help through the development of local networks of transit professionals;
 - e. to support the coordination of public, private, specialized, and human service transportation services; and,
 - f. to build a national database on the rural segment of the public transportation industry.
3. **FUNDING AND ALLOCATIONS**
 - a. **Authorization.** RTAP is authorized at 49 U.S.C. 5311(b)(3). Not more than 2 percent of the funds available to carry out Section 5311 shall be available for the RTAP program.
 - b. **Allocation.** FTA allocates RTAP funds to the states by an administrative formula that consists of a \$65,000 floor for each state, including Puerto Rico, and a \$10,000 floor for the insular areas of Guam, American Samoa, and Northern Marianas. FTA allocates the balance based on rural population in the 2010 Census.
 - c. **Funds Availability.** State RTAP funds have the same period of availability as the Section 5311 formula funds: the fiscal year in which they are allocated plus two additional fiscal

years. If the state does not obligate its allocation during this period, FTA reallocates the funds among all the states the following fiscal year.

- d. Federal Matching Requirements. There is no local match requirement for RTAP funds.

4. STATE PROGRAM DEVELOPMENT AND DELIVERY.

- a. Eligible Assistance Categories. States may use RTAP funds to support rural transit activities in four categories: training, technical assistance, research, and related support services. The purchase of equipment to support the four eligible activities is an eligible expense.

- b. Program Development. The state should develop state RTAP activities through a process that provides maximum opportunity for the participation of rural transit operators, both public and private, in identifying and establishing priority areas of need for transportation research, technical assistance, training, and related support services in rural areas. Establishment of a state RTAP advisory committee is one effective way to enable rural transit operators within the state to provide ongoing review and comment on the state's program development and delivery. The costs associated with implementing a state RTAP advisory committee are eligible RTAP expenses.

- c. Program Delivery. States have broad discretion in deciding how best to provide assistance and implement projects under the state RTAP program. Delivery mechanisms include:

(1) assistance by in-house state staff;

(2) contracts with private consultants, universities, nonprofit organizations, state transit associations, or other organizations of operators;

(3) contracts for administration of the state RTAP program or particular elements of it by the state's local technical assistance program (LTAP) center (a Federal Highway Administration [FHWA]-sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);

(4) support of peer-to-peer networks of individuals to provide assistance to each other;

(5) interagency agreements with other state agencies, both within the state and in other states; and

(6) scholarships or tuition and expenses for people to attend training courses or workshops.

- d. State Administrative Expenses. The state may not use state RTAP funds for state administrative or overhead expenses. However, any state administrative expense incurred in administering the state RTAP program may be covered by the 10 percent of a state's annual Section 5311 formula apportionment available for state administration. The direct

cost of using state staff to deliver RTAP services such as training or technical assistance is a program expense, not an administrative expense. Contracts with other organizations to administer and deliver RTAP services may include reasonable administrative and overhead costs.

- e. RTAP Participation by Providers in Urbanized Areas. Providers of specialized transportation in urbanized areas, such as Section 5310 funded agencies, as well as public transit operators in small urbanized areas, have many of the same training and technical assistance needs as transit providers in rural areas. FTA permits participation by these providers in RTAP sponsored activities, at the state's discretion, so long as the activities are primarily designed and delivered to benefit rural transit providers. When urbanized area providers are more than incidental beneficiaries of an RTAP supported activity, the state should allocate the costs of the project fairly between RTAP and other sources. RTAP funds should pay only for the proportion of the project costs attributable to the rural beneficiaries.
- f. Participation by Indian tribes. FTA strongly encourages states to consider the needs of Indian tribes, including those tribes that are not receiving funding from the state's Section 5311 apportionment, for technical assistance and training related to tribal transit service.
- g. Pooling of State RTAP Funds. FTA encourages states to consider "pooling" or consolidating RTAP funds in order to support activities or projects that would be more effectively carried out on a larger scale than a single state. Two or more states within a region could do such pooling.

Examples of activities that could be funded through pooled state RTAP funds include regional workshops or training courses, development of technical assistance information, and peer-to-peer assistance activities. Contributions to combined efforts such as the Multistate Technical Assistance Program (MTAP) of the American Association of State Highway and Transportation Officials (AASHTO) are eligible only to the extent that they support RTAP objectives and benefit rural public transportation. FTA has determined that annual MTAP dues are an eligible state RTAP expense.

Two methods are available to consolidate or pool funding:

- (1) Participating states may obligate funds for the joint project as part of the state RTAP program of projects in its Section 5311 grant and subsequently transfer the funds to the implementing organization through a contract or subagreement; or
- (2) Participating states may designate a single state to receive and administer all of the pooled funds.

Each participating donor state informs its FTA regional office, in writing, of the amount of state RTAP funds to be transferred to the allocation of the state administering the joint project. FTA will adjust the allocations accordingly and the administering state will apply to FTA for the entire funding of the joint project as part of the state RTAP program of projects in its Section 5311 grant application.

5. PROGRAM MANAGEMENT. The state administers state RTAP funds in conjunction with its management of the Section 5311 formula assistance program. Application procedures, program administration, and management requirements must correspond to those for Section 5311 as described throughout this circular.

6. NATIONAL PROGRAM. The purpose of the National RTAP is to support the state programs and develop information resources about rural public transportation. A fifteen-member project review board that includes both state administrators and local transit operators, including one tribal representative, guides the development of national program activities and products. FTA directly funds the national program through cooperative agreements and contracts. The national program currently includes the following elements:
 - a. development of training materials and information resources;
 - b. a national resource center, including a toll-free hotline for information and technical assistance (1-888-589-6821), online information resource center, on the link at <http://www.nationalrtap.org/>, a peer-to-peer technical assistance network;
 - c. regional and national meetings and workshops that support the state RTAPs and promote information exchange about rural public transportation; and
 - d. periodic updates and analysis of the national rural transportation database and publication of directories of subrecipients under FTA formula programs for rural areas and for seniors and people with disabilities.

7. OTHER TECHNICAL ASSISTANCE RESOURCES. Other national programs and projects also provide valuable technical assistance resources for state and rural transit providers. FTA-funded technical assistance activities include Easter Seals Project ACTION, The National Center for Senior Transportation, and the National Center for Mobility Management. Information about these and other federal resources are available at <http://www.unitedweride.gov>. In addition, regional centers such as FHWA's Tribal Transportation Assistance Program (TTAP) Centers and the Small Urban and Rural Transit Center (SURTC) at North Dakota State University offer additional resources to states and providers in those regions.

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X. PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS

1. **PROGRAM SUMMARY.** Title 49 U.S.C. 5311(j) authorizes the Public Transportation on Indian Reservations (Tribal Transit) Program, which allocates funds by both statutory formula and through a competitive discretionary program. FTA consulted with Tribal recipients and stakeholders to implement these program requirements. FTA apportions the available formula funds for grants to Indian tribes for purposes eligible under Section 5311, including capital, operating, planning, job access and reverse commute projects, and administrative costs. For the discretionary allocations, specific project eligibility will be announced in the Notice of Funding Availability (NOFA) that solicits proposals.

FTA will publish a NOFA on an annual basis in the *Federal Register* for the discretionary funds. The NOFA will announce the available funding, application procedures, specific eligibility, and criteria for project selection for the discretionary program. FTA posts all competitive grant opportunities on the federal government's centralized source for information on discretionary grants, Grants.gov. More information about Grants.gov, visit <http://www.grants.gov/>

2. **NATIONAL PROGRAM OBJECTIVES.** The Tribal Transit Program provides direct funding to federally recognized Indian tribes to provide public transportation service on and around Indian reservations or tribal land in rural areas. Funds set aside for the Indian tribes are not meant to replace or reduce funds that Indian tribes receive from a state's Section 5311 funds. The Tribal Transit Program funds are meant to complement any other 5311 funds or other FTA grant funds that applicants may receive.
3. **ELIGIBLE RECIPIENTS.** Eligible recipients under both the discretionary and formula program include federally recognized Indian tribes or Alaska native villages, groups, or communities as identified by the U.S. Department of the Interior Bureau of Indian Affairs (BIA). A tribe must have the legal, financial, and technical capabilities to receive and administer federal funds.
4. **ELIGIBLE SERVICES AND SERVICE AREAS.** The purpose of the Tribal Transit Program is to provide and enhance public transportation on Indian reservations/tribal lands and to provide transit services to serve tribal communities. Tribes must be located in rural areas with populations under fifty thousand, and not identified as an urbanized expansion area by the Bureau of the Census. Tribes must be providing public transit or proposing to provide public transit services. Funds may be used for public transportation capital projects, operating costs of equipment and facilities, transit planning, and acquisition of public transportation services, including service agreements with private providers of public transportation services. Funding may be for planning, start-up transit service, enhancement of existing services, purchase of transit capital items, including vehicles, and operating expenses. Operating expenses include fuel, oil, driver and dispatcher salaries, fringe benefits, and licenses (see Chapter III for full details on Section 5311 eligibility).

5. FORMULA PROGRAM.

- a. Eligibility. The Tribal Transit formula program is distributed to federally recognized Indian Tribes providing public transportation on tribal lands. In order to receive formula funds a tribe must report to the National Transit Database (NTD) on an annual basis.
- b. Tribal Transit Formula. FTA apportions Tribal Transit funds to Indian tribes by a statutory formula using the NTD and the latest available U.S. decennial census data. The three tiers under the formula prescribed by MAP-21 include:
 - (1) Tier 1: 50 percent of the available funds are apportioned based on vehicle revenue miles;
 - (2) Tier 2: 25 percent of the available funds are apportioned among Indian tribes providing at least two hundred thousand annual vehicle revenue miles; and
 - (3) Tier 3: 25 percent of the available funds are apportioned among Indian tribes providing public transportation on tribal lands where more than one thousand low-income persons reside.

6. DISCRETIONARY PROGRAM ELIGIBILITY. Title 49 U.S.C. 5311(j) continues the tribal discretionary program and funds are competitively selected on an annual basis. The funds will be allocated for grants to Indian tribes for purposes eligible under Section 5311; however, FTA may limit the discretionary program based on funding priorities. Eligible projects include:

- a. planning;
- b. capital (replacement or expansion); and
- c. operating for new transit service (start-up).

7. TERMS AND CONDITIONS FOR THE TRIBAL TRANSIT FORMULA AND DISCRETIONARY PROGRAM. When tribes receive funds under the state's Section 5311 program, all federal requirements apply. When tribes receive *only* Tribal Transit funds, tribes must comply with the following cross-cutting requirements:

- a. Common Grant Rule (49 CFR part 18);
- b. Title VI of the Civil Rights Act of 1964;
- c. Section 504 of the Rehabilitation Act of 1973;
- d. Americans with Disabilities Act (ADA) of 1990;
- e. Drug and Alcohol Testing Requirements (49 CFR part 655);
- f. National Environmental Policy Act (NEPA);

- g. Charter Service and School Bus Transportation Requirements in (49 CFR parts 604 and 605);
- h. NTD Reporting Requirement (49 U.S.C. 5335);
- i. Bus Testing (49 CFR part 665);
- j. Labor Protection requirement from the U.S. Department of Labor (DOL); and
- k. Buy America requirements.

Transit Asset Management and Safety Provisions may apply and will be addressed in FTA's rulemaking process for these areas.

8. MATCHING REQUIREMENTS.

- a. No local match is required for the formula program.
- b. A 10 percent local match is required under the discretionary program for both capital and operating expenses. There is no match requirement for planning grants under the discretionary program.

9. INDIRECT COST RATE. FTA will apply a 10 percent cap on indirect costs that are eligible for reimbursement under the formula and discretionary program for operating grants so long as the tribe has an approved cost allocation plan and approved indirect rates by a cognizant federal agency.

10. STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) AND/OR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) REQUIREMENT. There is no STIP or TIP requirement under the Tribal Transit Formula or Discretionary Program.

11. FUNDS AVAILABILITY. Funds allocated both by formula and awarded under discretionary competition remain available to tribes for obligation for three federal fiscal years, beginning with the year of apportionment plus two additional years. For example, funds awarded to a tribe in fiscal year 2014 are available until September 30, 2016.

12. PROGRAM ASSISTANCE. Appendix H provides information regarding how to contact FTA regional offices for grant management assistance. Each region has a regional tribal liaison who is available to assist tribes with program requirements and grant applications.

13. NATIONAL TRANSIT DATABASE REPORTS. The National Transit Database (NTD) is FTA's primary national database for statistics on the transit industry. Recipients and subrecipients of Section 5311 grants are required by 49 U.S.C. 5335(a) and (b) to submit data to the NTD as a condition of the award. Specific reporting requirements are included in the NTD reporting instructions manual issued each year. Visit the NTD website at www.ntdprogram.gov for the most recent rural reporting manual. Section 5311(b)(4) specifies that each Section 5311 recipient shall submit an annual report containing information on capital investment, operations, and service provided under Section 5311.

Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size and type, and related facilities; revenue vehicle miles; and ridership. To be considered in the formula apportionment Tribal Transit providers must report to the NTD.

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XI. OTHER PROVISIONS

1. **INTRODUCTION**. In addition to the program-specific requirements and guidance provided in this circular, FTA recipients are held to a number of FTA-specific and other federal requirements. This chapter attempts to highlight the major requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. Readers should use this chapter in conjunction with FTA's master agreement and the current fiscal year's certifications and assurances that applicants must sign annually via the FTA electronic award management system to establish or renew their funding relationship with FTA. The master agreement and the certifications and assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grant programs.

Some of the topics covered in the master agreement and the certifications and assurances are summarized below, as a reminder to grant recipients of their obligations to FTA. More information about individual requirements can be found in the master agreement and the certifications and assurances on the FTA electronic award management system, and in the references provided below. Recipients may contact their FTA regional counsel for more detail about these requirements.

2. **CHARTER BUS SERVICES**. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604—Charter Service, amended effective April 30, 2008 (73 FR 2326, Jan.14, 2008). Each recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of certifications and assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter registration website (http://www.fta.dot.gov/laws/leg_reg_179.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains

hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Transit Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) The Americans with Disabilities Act (ADA), as amended (42 U.S.C. 12101 et seq.), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a subrecipient or under a contract or other arrangement) providing fixed-route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regard to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (5) Providers of fixed-route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements

described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed-route service as defined in 49 CFR 37.121.

- (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964.
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), and DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons.
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005). This guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and executive order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out U.S. DOT Order 5610.2 to Address Environmental Justice in Minority Populations and Low-Income Populations, and executive order 12898 on environmental justice that describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.
 - (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate

- environmental justice principles (as embodied in executive order 12898 on environmental justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity (EEO). The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
 - e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
 - f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
 - g. Disadvantaged Business Enterprise (DBE). To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
 - (1) The recipient agrees and assures that it will comply with MAP-21 Section 1101(b) (23 U.S.C. 101 note), which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBEs. This 10 percent national goal is aspirational and is used by DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities.
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.
 - (3) The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin, in the award and performance of any third party contract, or subagreement supported with federal assistance derived from DOT, or in

the administration of its DBE program, and will comply with the requirements of 49 CFR part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the recipient's DBE program is incorporated by reference and made part of the grant agreement or cooperative agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by DOT to the recipient of a failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*).

For further guidance, refer to the federal laws, regulations, and executive orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and transportation improvement programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the metropolitan planning organization (MPO), and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen passengers (including the driver) or of vehicles which

have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.

6. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Rural Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. 5331 to establish Drug and Alcohol (D&A) Testing Programs. In the MAP-21 legislation, although the 5316 Job Access and Reverse Commute (JARC) and 5317 New Freedom Programs (NF) were consolidated into the applicable formula programs (5307 and 5311), FTA intends for JARC and NF to continue to be exempt from D&A testing applicability if the recipients receive JARC and NF only.

The purpose of the testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning drug and alcohol testing (49 CFR parts 40 and 655 respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with Parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219 – for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382 – for contractors with mixed transit/motor carrier/school bus), or United States Coast Guard (USCG) (46 CFR parts 4 and 16 – for ferryboat) regulations concerning drug and alcohol programs.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Technical assistance materials and training information to help recipients implement the rules are available at FTA's website <http://www.fta.dot.gov> or through contacting the FTA Office of Safety and Oversight, FTA headquarters.

7. DRUG-FREE WORKPLACE. In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. These provisions apply only to FTA's recipients and do not extend to subrecipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be

taken for violations. The Department of Labor provides a drug-free workplace advisor to assist recipients in developing tailored policy statements at the following link: <http://www.dol.e.laws/drugfree.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and drug and alcohol testing rules are available on FTA's website <http://www.fta.dot.gov> or by contacting FTA's Office of Safety and Oversight, FTA headquarters, 1200 New Jersey Ave. SE, Washington, DC 20590.

8. EMPLOYEE POLITICAL ACTIVITY. To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. 1501–1508 and 7324–7326, and U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(l)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.
9. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with NEPA implementing regulations (40 CFR 1500-1508), FHWA and FTA's Environmental Impact and Related Procedures (23 C.F.R. part 771), Efficient Environmental Reviews for Project (23 U.S.C. 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR part 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion [CE], environmental assessment [EA], or environmental impact statement [EIS]) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., final design and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a CE. Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until a ROD, FONSI, or CE is issued.

10. ENVIRONMENTAL JUSTICE. Executive order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of our programs, policies, and activities on minority populations and/or low-income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” provides FTA recipients and subrecipients with guidance and instructions necessary to carry out the executive order.

11. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the secretary of Labor and in accordance with the Davis-Bacon Act, as amended. The secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the master agreement.
- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), formerly Section 13(c) of the Federal Transit Act as amended). Those arrangements must be certified by the secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-1519, 200 Constitution Avenue NW, Washington, DC 20210; telephone, 202-693-1193; fax, 202-693-1344.

12. LEASE VS. BUY CONSIDERATIONS. A recipient may use capital funds to lease capital assets from another party in cases where it determines that leasing would be more cost effective than either purchasing or constructing the asset. Recipients with preaward authority must conduct the cost comparison before entering into the lease. Recipients should refer to FTA regulations for further details on conducting the cost effectiveness comparison (49 CFR part 639).

When a recipient intends to enter into a lease of considerable duration (rather than paying for the lease in a lump sum at the beginning of the lease period), the recipient must be able to

complete the acquisition with local funds in the event FTA funds are not available in later years. Generally, it is not considered cost effective to lease real estate.

When a recipient receives a congressional earmark for a project and proposes to enter into a capital lease for some element of the project, the recipient must submit the cost comparison for FTA approval as part of the grant application.

13. PREAWARD AUTHORITY.

- a. General. FTA provides blanket, or automatic preaward authority in certain program areas. This preaward authority allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This automatic preaward spending authority permits a recipient to incur costs on an eligible transit capital or planning project without prejudice to possible future federal participation in the cost of the project or projects.

The authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual *Federal Register* Notice of Apportionments and Allocations triggers preaward authority for design and environmental work on the project. Following authorization of formula funds or appropriation and publication of discretionary projects, preaward authority for other capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental record of decision (ROD), finding of no significant impact (FONSI), or a determination that the project is a categorized exclusion, and included in the state transportation improvement program (STIP). Recipients may incur costs under preaward authority for projects that clearly meet the criteria for a CE; however, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance. If an applicant is concerned that a project may not clearly qualify as a CE, the applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.

FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements.

Preaward authority for operating and planning projects under the formula grant programs is not limited to the authorization period.

- b. Conditions. In general, all federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. Specifically:
 - (1) Preaward authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

- (2) All FTA statutory, procedural, and contractual requirements must be met.
- (3) The recipient must take no action that prejudices the legal and administrative findings that the federal transit administrator must make in order to approve a project.
- (4) Local funds expended by the recipient pursuant to and after the date of the preaward authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the recipient before the date of the preaward authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of preaward authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with federal environmental laws and may render the project ineligible for FTA funding.
- (5) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the federal/local match ratio at the time the funds are obligated.
- (6) For funds to which the preaward authority applies, the authority expires with the lapsing of the fiscal year funds.
- (7) When a grant for the project is subsequently awarded, the federal financial report in FTA's electronic award management system, must indicate the use of preaward authority.

14. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

15. PROCUREMENT RESTRICTIONS. An applicant seeking federal assistance under the federal transit laws as codified at 49 U.S.C. 5301 *et seq.* to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third party procurement requirements. FTA's procurement requirements are codified in 49 U.S.C. 5325. In addition, regulations promulgated at 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) establish uniform administrative rules for federal grants, cooperative agreements, and subawards to state, local, and Indian tribal governments (private, nonprofit organizations must comply with similar regulations in 49 CFR part 19). Provisions of the common grant rule pertaining to procurement requirements for FTA recipients that are governmental authorities are set forth at 49 CFR 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's master agreement FTA MA(20) October 1, 2013, at

Section 17, “Procurement,” and are updated annually with issuance of each new master agreement. Finally, FTA has published additional guidance on recipient compliance with third party procurement requirements within the most current FTA Circular 4220 and its “Best Practices Procurement Manual.” These regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration, and documentation of all federally funded contracts.

Each recipient of FTA assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36 that its procurements and procurement system will comply with all applicable third party procurement provisions of federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant that fails to provide this certification may be determined ineligible for award of federal assistance if FTA determines that its procurement practices and procurement system are incapable of compliance with federal laws, regulations, and directives governing procurements financed with FTA assistance.

16. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If an applicant intends to use federal financial assistance in a project which will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1D.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-wide regulations that apply to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR part 24 is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html or on FHWA’s website at: <http://www.fhwa.dot.gov/realstate/49cfr.htm>. Also, recipients should be aware of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and Circular 5010.1D.

17. RESTRICTIONS ON LOBBYING. Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or cooperative agreement. The state, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

18. SAFETY AND SECURITY. Title 49 U.S.C. 5329 provides FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that FTA issue a national public transportation safety plan, establish safety performance criteria for all modes of public transportation, define a “state of good repair,” establish minimum safety performance standards for public transportation vehicles, and develop a safety certification training program. States with rail fixed guideway systems are required to strengthen their state safety oversight (SSO) programs and submit them to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will be issuing regulations and interim guidance to implement these new requirements in consultation with public transportation industry stakeholders.

Note: FTA has entered into a memorandum of understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers.

19. SCHOOL BUS TRANSPORTATION. Title 49 U.S.C. 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose of FTA’s school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start Program limit the types of vehicles which may be used to transport children participating in a Head Start Program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.
20. TRANSIT ASSET MANAGEMENT REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit asset

management practices and procedures. The intent of the statute is to promote coordinated capital investments aimed at bringing transit systems into and maintaining a state of good repair. FTA will publish a rule in the future on transit asset management.

APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. PREAPPLICATION STAGE.

- a. System Access. Applications for FTA grant program funds must be submitted electronically through the FTA electronic award management system. Applicants must have access to FTA's FTA electronic award management system in order to enter a grant. If an applicant does not have access to the system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix I.
- b. Planning Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved statewide transportation improvement program (STIP) for capital and/or operating projects or a unified planning work program (UPWP) for planning projects. In addition, although not statutorily required, FTA encourages recipients to include Section 5311 projects in a locally developed, coordinated public-transit, human services transportation plan.
- c. Environmental Determination. The impact that a proposed FTA-assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant approval.
- d. Annual Submission of Certifications and Assurances. An applicant applying for assistance under the rural formula program, or any other FTA grant program, must annually submit certifications and assurances that are applicable to the applicant's active and new grants during the fiscal year. The certifications and assurances were discussed in Chapter IV, "Program Development." The certifications and assurances should be examined annually for changes and additions.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, and Americans with Disabilities Act (ADA) Paratransit Plan. FTA's regional civil rights officer must verify that all required civil rights submissions are current at the time that the grant application is entered into FTA electronic award management system. The required documentation must be submitted before the official submission of the grant. An applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. (See Chapter X, Other Provisions.)
- f. Flexible Funding Documentation (If Applicable). An applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once

this resource of funds is included in the transportation improvement program (TIP), and incorporated into the STIP, the applicant informs the state transportation agency that a grant application is in development to FTA for the use of flexible funds and requests that the state inform the Federal Highway Administration (FHWA) of the need to transfer the funds to FTA for obligation (in some states, in practice, the metropolitan planning organization [MPO] or FTA notifies the state transportation agency). Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the agency will use the funds for public transportation purposes and requests that FHWA transfer funds for the project to FTA. Information showing that these processes are under way should be included in the grant application. The applicant should also include the type of flexible funds, the amount, the purpose for which the funds will be used, and where they appear in the STIP. (See Appendix E, "Procedures Related to Flexible Funding.")

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEM INFORMATION). Applicants should submit their grant applications electronically in FTA's electronic award management system database accessible via the Internet. The user guide, available on the homepage of the electronic award management system provides detailed information on how to access and use FTA's system. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements; grant amendments; budget revisions; and closeout procedures are also addressed. Applicants should enter the following information into the system when preparing an application:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields in FTA electronic award management system, including recipient address, contact information, union information, urbanized area identification number (UZA), congressional district(s), Data Universal Numbering System (DUNS) Number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.

Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information is requested. As soon as the DUNS number is received, the applicant must inform the appropriate FTA regional office and update the recipient profile to include the number.

- b. Project Information. Certain basic information is required on the Federal Grant Application Standard Form 424 which has been incorporated into the project setup fields. Applicants must identify:

- (1) Whether the application is a new grant, a grant amendment or a budget revision;
- (2) The project start/end date;

- (3) The program date,
 - (4) Executive order 12372, Intergovernmental Review of Federal Programs, review date if applicable (additional information regarding EO 12372 can be found at <http://www.whitehouse.gov>); and
 - (5) The metropolitan planning organization (MPO) concurrence date (if applicable).
- c. Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. The program of projects (POP) should be attached or included in this section. At a minimum, the project description should identify subrecipients funded through the grant application and the projects being implemented by each subrecipient. There is a project description field as well as a specific text field for this information associated with each activity line item. Project activities shall be sufficiently described to assist the reviewer in determining eligibility under the program. FTA suggests that maps or diagrams be included for all projects involving construction to expedite review of their project.
- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, an applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details section.
- f. Budget. The appropriate scopes and alternative line items (ALI) should be used when developing the project budget. All sources of funds shall be identified and confirmed. All rolling stock procurements shall include vehicle description and fuel type; expansion activities shall include discussion on vehicle needs. The project budget should reflect the

precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for specific funding programs. If the grant contains funding for tribal governments, the non-add scope 992-00 should also be added to the budget and identify the amount of funding in the application allocated to each tribe. The non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Other non-add scopes are used for Intelligent Transportation Systems (ITS), security funds, and other special emphasis areas.

- g. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will autopopulate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If it does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- h. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.118.) Applicants should refer to part 771.118(c) and (d) for a listing of the Class II (categorical exclusion) projects. Most projects under the Section 5311 program meet the criteria for a categorical exclusion (CE). The application should include sufficient information for FTA to determine whether a CE applies, such as a description of the project, as well as any maps or figures typically included with the application or as requested by the FTA regional office. However, if a project does not clearly meet the criteria for a CE, an applicant should contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.

Under NEPA, FTA must assess the potential environmental impacts resulting from an FTA "action" (for FTA's purposes this generally means a stand-alone FTA-funded project that has independent utility and logical termini). However, a grant application generally includes several ALIs that could be organized to constitute one or more stand-alone actions. For applications containing more than one action, applicants should clearly identify the separate actions and their corresponding ALIs. It is important to keep in mind that not all ALIs are separate actions under NEPA, nor does one grant application necessarily contain only one action. For each action identified the applicant should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.118.) Applicants should refer to part 23 CFR 771.118 (c) and or (d) for a listing of the Class II (categorical exclusion) projects; for actions requiring an EA or EIS, clearly indicate whether an EA or EIS is proposed.

- i. Fleet Status. Fleet status data are not required for Section 5311 grant applications.

- j. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (approved) and submitted in the system by the designated recipient/recipient.
- k. Certification of Labor Protective Arrangements. Section 5311 grants are covered by a special warranty and are not submitted for certification to the Department of Labor (DOL). Currently states are required to submit a letter to DOL regarding subrecipient signing of the warrantee and labor union information.
- l. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements have been met, FTA awards and obligates funds requested in the grant.
- m. Congressional Notification Process. FTA must notify Congress not less than three full business days before awarding discretionary grants over \$1 million. Subsequent appropriations acts should be reviewed for changes to this mandate. In addition, FTA provides congressional representatives with courtesy notification for all grants that contain earmarked funds.
- n. Grant Execution. After FTA has approved and awarded the grant, the applicant shall execute the award before funds can be drawn down from the grant. Grants that include preaward activity require the submission of a financial status report before grant execution.

3. GRANT APPLICATION REVIEW CHECKLIST

Date: _____ Recipient #: _____

1. APPLICATION CHECKLIST.

Applicants should use the following checklist in preparing a complete application:

Section 5311 APPLICATION CHECKLIST	
Part I—Recipient Information	
	Are annual certifications and assurances selected and pinned/signed by the authorized official and attorney?
	Is the recipient contact, designated signatory, opinion of counsel, authorizing resolution, and other information complete?
	Is UZA/congressional district information entered and accurate?
	Is union contact information entered and accurate?
	Has civil rights program documentation been approved by FTA?
	Has the applicants DUNS number been entered in the appropriate field?
Part II—Project Information	
	Does the project description include adequate detailed information of the project(s) such as an appropriate project title?
	Is information on any subrecipient(s) and their projects included?
	Is this a new application or grant amendment?
	Does the application include an appropriate start/end date?
	If a supplemental agreement is applicable, has “yes” been selected?
	Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included?
	Are STIP/UPWP approval dates and page numbers or location identifiers included in the application?
	If preaward authority is applicable, has “yes” been selected?
	If federal debt delinquency is applicable, has “yes” been selected? (If yes, applicant must explain in details section.)
	Has the EO 12372 review been completed, if applicable?
	Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements?
	Is UZA/congressional district information entered and accurate?
Part III—Budget	
	Are ALI codes entered under the appropriate scope codes and consistent with project descriptions?
	Are funding percentages and match ratios acceptable?
	Does the funding amount entered in the budget match financial information entered in the “Project Information” field for:
	a. Federal funds
	b. Local match
	Does the rolling stock (vehicle) line item contain accurate information such as:
	a. Description
	b. Fuel type
	Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? If appropriate and necessary.
	Will the applicant expend 1 percent of the Section 5307 funds in this application for security purposes? (If yes, list security-related projects in the project budget and summarize them in the non-add scopes. If no, select the reason.)
	If applicable, has the applicant expended 1 percent of Section 5307 funds for associated transit improvements in areas over 200,000 in population?
	Where applicable, have non-add scopes been added showing the funds allocated to intelligent transportation systems, security funds, tribal governments, or other special areas of emphasis?
Part IV—Project Milestones	
	Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.)
	Have estimated completion dates been entered?
Part V—Environmental Findings (NEPA)	
	Has an environmental finding been entered for each ALI or scope?

	For categorical exclusion II (d), EA, and EIS, has decision documentation been referenced or attached?
Part VI—Fleet Status	
	Has information pertaining to current and future revenue vehicles been entered?
	If applicable, are vehicles entered in the table consistent with the budget?
	If applicable, is the spare ratio 20 percent or less?

Project #: _____ Final: _____

4. ECHO INFORMATION.

- a. Office of Management and Budget (OMB) Circulars A-102, A-110, and 31 CFR part 205 govern payment to recipients for financing operations under federal grant and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System User's Manual for Recipients": <https://ftaecho.fta.dot.gov/echologin.asp>.

ECHO Control Number
(ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A")

Initial Setup

Info. Change

Recipient Information Change

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a recipient's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH payment system.

Note: See the bottom for instructions on completing this form.

RECIPIENT INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ()
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ()
DATE: //	
AGENCY INFORMATION	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>1200 New Jersey Avenue, SE Washington, DC 20590</i>	
CONTACT PERSON NAME:	<i>202-366-9748</i>
FINANCIAL INSTITUTION INFORMATION	

(Note: Have Your Bank Complete This Section)		
NAME:		
ADDRESS:		
CITY/STATE/ZIP:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()	
NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: //	FAX NUMBER: ()

b. Instructions for Completing Form.

(1) Fill in your ECHO control number. If this is an **Initial ECHO Setup**, agency will assign ECHO control number.

(2) Check appropriate box(es):

(a) Initial Setup.

(b) Change in Bank Information.

(c) Change in Recipient Information.

(3) Fill out information in the appropriate section(s) listed below:

c. Recipient Information Section. Print or type the name of the recipient and address that will receive ECHO/ACH payments. Also include a contact person's name, date, and telephone and telefax numbers.

d. Financial Institution Information Section. Have your bank fill out this section. They should print or type the name and address of the financial institution who will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (recipient) account title, depositor (recipient) account number, type of account (type can **ONLY** be designated as **Checking** or **Saving**), and signature and title of representative, date, and telefax number.

- e. Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.

- f. If there are any questions, please call **202-366-9748** and ask for the agency's ACH contact.

SUBTOTAL – Operating	_____	_____
SUBTOTAL – Capital	_____	_____
SUBTOTAL – Planning	_____	_____
SUBTOTAL – Job Access and Reverse Commute	_____	_____
SUBTOTAL – PROJ. ADMIN	_____	_____

INTERCITY BUS PROJECTS [Section 5311(f)]

Subrecipient Name	Subrecipient Type	Category A or B	Project Description	Counties Served	Net Project Cost	Federal Share
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
SUBTOTAL – Intercity Bus Capital					_____	_____
SUBTOTAL – Intercity Bus Operating					_____	_____
SUBTOTAL – Intercity Bus Administration					_____	_____
SUBTOTAL – INTERCITY BUS					_____	_____

STATE ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE
 [Section 5311(e)]

(Not to exceed 10 percent of Section 5311 apportionment and any flex funds transferred to the Section 5311 account may be used to provide a 100 percent federal share. Section 5307 funds transferred to the Section 5311 account may be used to provide 80 percent federal share for planning projects without regard to the 10 percent cap.)

	Net Project Cost	Federal Share
SUBTOTAL – State Administration (projects funded at 100 percent)	_____	_____

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP) [Section 5311(b)(3)]

	Net Project Cost	Federal Share
SUBTOTAL – RTAP Training	_____	_____

FTA C 9040.1G
DATE 11/24/2014

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SUBTOTAL – RTAP Technical Assistance
SUBTOTAL – RTAP Transit Research
SUBTOTAL – RTAP Support Services
SUBTOTAL – RTAP Reserve
SUBTOTAL – RTAP

APPENDIX C

BUDGET INFORMATION

1. INTRODUCTION. This Appendix provides information about the items that appear on an approved project budget and provides instruction for preparing a project budget. A Federal Transit Administration (FTA) grant obligates a recipient to undertake and complete activities defined by the purpose or purposes of a grant and the budget incorporated into the grant agreement. A grant budget is the approved financial plan that FTA and the recipient agree the recipient will follow in carrying out the purposes of the grant.

The recipient will use the FTA electronic award management system to prepare project budgets. The user's guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose. A grant program and budget may have several scopes.

2. DEVELOPING THE BUDGET. FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the scope and activity levels of information on the approved project budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system

Use the chart of ALI codes to prepare a consolidated budget for the entire program of projects. Group related line items under appropriate scope codes. The scope is usually identified by the first three digits of the ALI followed by a two digit sequence number. A few exceptions for the 5311 program are noted below. The same scope may be used more than once in a complex budget. If so, the repeated scope is numbered sequentially. The state may enter the project and recipient descriptions from the program of projects as extended text associated with the scopes.

For each ALI, enter the net project cost and the federal share. The FTA electronic award management system generates standard descriptions for each ALI code, but the text may be overridden to enter more specific descriptions that are consistent with the standard description.

3. CAPITAL. Use of the correct ALI codes identifies all vehicles as replacement or expansion, and indicates the size and type of vehicle or equipment. Enter a quantity for each vehicle ALI. For example, if there are ten subrecipients in the program of projects and each will receive three replacement vans and one will get a mid-sized bus for new service, the scope 111 (Bus, revenue rolling stock) would include two ALI codes: 11.12.15, quantity thirty, and 11.13.03, quantity one. The individual recipients and types of service provided could be

identified in extended text. Through the system, the FTA is able to use this information to generate detailed reports electronically on the use of program funds. When recipients use the higher federal match for equipment purchased to meet clean air or ADA accessibility requirements, a special non-add scope must be used for tracking, in addition to the usual coding. Use as many capital scopes and activity codes as necessary to aggregate capital projects from the program of projects. Capital projects in support of intercity bus transportation should not be included here, but rather under scope 634.

4. OPERATING. The ALI for operating assistance for all FTA programs is 30.09.XX. The grant project number is sufficient to identify the program as Section 5311. Operating assistance may be shown either under scope 300 or grouped with other miscellaneous items in scope 600.
 - a. For intercity bus operating assistance, the ALI should be shown under scope 634-00.
 - b. For job access and reverse commute operating assistance the ALI is as follows and should be shown under scope 646-00:
 - 30.09.05 Job access and reverse commute operating assistance
 - c. The last two digits 30.09.XX (operating assistance) indicates different match ratios available:
 - 30.09.01 Up to 50 percent federal share
 - 30.09.02 Sliding scale (5311 or 5310)
 - 30.09.03 80 percent CMAQ
5. OTHER PROGRAM COSTS. The scope 600 may include the ALIs for all other program costs, such as state or program administration (11.80.00) and project administration (11.79.00). This creates a shorter printed project budget. Quantities are not used for these line items.
 - a. Alternately, these activities may also be listed under separate scopes in the 600 series:
 - 610-00 – State administration
 - 620-00 – Project administration

It may be preferable to use the separate scopes if only one of these activities is included in the grant, or to list individual subrecipients for project administration.

- b. Show both net cost and federal share for each ALI. The maximum federal share for project administration is 80 percent. The 10 percent of the apportionment or transferred flex funds allowed for state administration, planning, and technical assistance may be funded at 100 percent federal share.

c. For fiscal year 2012 funds and earlier, specific codes must be used for Section 5310, Job Access and Reverse Commute (JARC), and New Freedom projects included in a Section 5311 grant after funds for selected projects have been transferred to the rural formula grants for rural areas program. These codes are additive, not non-add. Include all activities for the transferred funds under the relevant scope code in the main part of the project budget. The following scope should be used.

- 641-00 Section 5310
- 646-00 JARC (should also be used for job access and reverse commute projects in 5311)
- 647-00 New Freedom

6. INTERCITY BUS [Section 5311(f)]. All projects used to fulfill the statutory requirement to spend 15 percent of the apportionment in support of intercity bus service must be included in scope 634. Any of the ALI codes may be used under this scope, even if they have been used elsewhere in the budget for other rural transit projects. However, the same project should not be double-counted. For example, if a single subrecipient receives capital and/or operating assistance for local rural transit services and also for service meeting the criteria for Section 5311(f), the costs would be separated out and only the intercity bus portion reported under scope 634 with the other project costs shown under other appropriate scopes.

The activity codes for intercity bus projects are the same as those used elsewhere. Eligible activities also include planning and marketing, in addition to capital and operating. Inclusion under scope 634 identifies these activities as intercity projects and enables FTA to track and report on intercity bus obligations. The following ALIs should be used under the fifth and sixth digit for station stops/terminals:

- .03 Terminal, Intermodal (transit)
- .11 Terminal, Intermodal (Intercity bus)
- .12 Terminal, Intermodal (Intercity rail)

7. PLANNING. Planning is now eligible under the Section 5311 program. Funds programmed for planning should be documented in the state's UPWP. The new scope code is:

- 441.00

ALI codes should also be used in the project budget when funds transferred from Section 5307 are being used for planning outside the state administration cap or if the planning or marketing activity is for intercity bus and is included in scope 634. The FPC 09 is used when obligating funds for planning permitted outside the state administration limitation. All other planning is subject to the 10 percent limitation on state administration and must be included in the ALI for state administration (11.80.00) and included in the funds obligated using FPC 06.

8. RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP). The scope code for RTAP is 635. This code, which departs from the usual numbering scheme, was chosen so that RTAP would appear at the bottom of the printed budget used at the time, since it is funded from a separate allocation. There are five ALI codes for RTAP, which reflect the eligible assistance categories:

- 43.50.01 – Training
- 43.50.02 – Technical assistance
- 43.50.03 – Research
- 43.50.04 – Support services
- 43.50.05 – Program reserve (not to exceed 10 percent of RTAP allocation)

More specific project descriptions should be included either in the extended description at the grant level (i.e., the program of projects) or in the extended description fields for the RTAP ALIs.

9. FORMULA AND DISCRETIONARY GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS PROGRAM. Grants for public transportation on Indian reservations are required to use the non-add code 992 for Tribal Transit Program projects.

A non-add code was added to enable FTA to track the funding for tribal transit under Section 5311 grants to states. Use this code to identify tribal projects under any program.

- 992.mn Tribal Projects

10. APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM. A new scope code has been added under the new Appalachian Development Public Transportation Program.

- 648-00

11. NON-ADD SCOPES. FTA uses non-add scopes in the project budget to track the use of the enhanced federal share for vehicle related equipment and facilities required for Americans with Disabilities Act of 1990 (ADA) or Clean Air Act (CAA) compliance, for tribal projects, and for other special initiatives. Include under these non-add scopes the portions of ALIs used elsewhere in the project budget for these purposes. The amounts included in the non-add scopes are not computed in the budget totals.

12. ACCOUNTING CLASSIFICATION CODES. FTA uses accounting classification codes to indicate the source of funds in a grant. Each digit in the code has a specific meaning. For example, the accounting classification code 2013.25.18.81.2 provides the following information:

The accounting classification codes have the following structure and meaning:

- a. Positions 1–4: “Year”—indicates the year of appropriation or allocation of the funds.
 - b. Positions 5–6: “Appropriations”—indicates which of the several large FTA accounts is being used to fund the grant (formula and bus grants, capital investment grants, research and university centers, or administrative). For example, “25” represents the formula and bus grants account funded entirely from the mass transit account of the Highway Trust Fund.
 - c. Positions 7–8: “Section”—indicates the program under which the funds are being awarded. Many of the codes were established before the FTA Act was codified and refer to the former section numbers in the old statute (e.g., Section 5310 used to be Section 16). For the new programs, the new codes are related—to the extent possible—to the section number in the codified act. For example, “18” is used for the rural program.
 - d. Positions 9–10: “Limitation”—allows FTA to track set-asides, transfers, limits, and special uses. The next two digits indicate the specific program source of the funds. The original Section 5311 apportionment is coded 81. Funds transferred from Section 5307 are U8 (unrestricted). Section 5311 funds transferred to Section 5307 are coded T9. Each flexible funding program has its own code, so FTA and the Federal Highway Administration (FHWA) can track the specific source of the funds.
 - e. Position 11: Indicates whether funds are appropriated general funds (1) or contract authority (2). The funds from the mass transit account (“trust funds”) are coded (2) for contract authority.
13. FINANCIAL PURPOSE CODES. When the funds are obligated for a grant, FTA uses a financial purpose code (FPC) to indicate any broad statutory restrictions on the funds. All funds used for state administration within the 10 percent cap are obligated using FPC 06. The RTAP funds are obligated under FPC 07. Starting with fiscal year 2013 Section 5311 funds, all job access and reverse commute projects (capital, operating, and planning), use FPC 03. For Section 5311 only, everything else is obligated under FPC 09, the general purpose code. In other FTA grant programs, 00 is used for capital obligations, 04 for operating, and 02 for planning. Because the states have the flexibility to move funds around among projects within the program of projects, FTA maintains the maximum flexibility by aggregating the obligations as broadly as possible. However, FTA wants to know the amount of Section 5311 funds obligated and expended for job access and reverse commute projects, so FPC 03 must be used at both time of reservation and draw down for these projects. For other activities that use FPC 09, when the funds are actually expended and drawn down, the state indicates the use of the funds by substituting a number for the X in the project number in the draw down request. Operating (4), capital and project administration (0), and planning (2) all draw against the funds obligated using FPC 09. Program administration (6) draws against the funds obligated use FPC 06 and RTAP (7) draws against RTAP funds obligated using FPC 07.

SAMPLE APPROVED PROJECT BUDGET

RECIPIENT: ANYSTATE DEPARTMENT OF TRANSPORTATION

CAPITAL, ANYSTATE

PROJECT NO.: AN-18-X015-00 BUDGET NO.: 01

SCOPE	FEDERAL AMOUNT	TOTAL AMOUNT
111-00 BUS ROLLING STOCK		
QUANTITY 16.....	\$1,500,000	\$1,875,000
<u>ACTIVITY</u>		
11.12.01 PURCHASE REPLACEMENT		
<30 FT. BUSES WITH LIFTS		
QUANTITY 8	\$1,350,000	\$1,687,500
11.12.15 PURCHASE REPLACEMENT		
VANS WITH LIFTS		
QUANTITY 8	\$150,000	\$187,500
SCOPE		
300-00 OPERATING ASSISTANCE	\$1,750,000	\$3,500,000
<u>ACTIVITY</u>		
30.09.00 OPERATING ASSISTANCE	\$1,750,000	\$3,500,000
SCOPE		
610-00 STATE ADMINISTRATION	\$652,500	\$652,500
<u>ACTIVITY</u>		
11.80.00 STATE ADMINISTRATION	\$652,500	\$652,500
SCOPE		
600-00 OTHER PROGRAM COSTS	\$200,000	\$250,000
<u>ACTIVITY</u>		
11.79.00 PROJECT ADMINISTRATION	\$200,000	\$250,000
SCOPE		
634-00 INTERCITY BUS PROJECTS	\$652,500	\$1,005,000
<u>ACTIVITY</u>		
11.33.01 REMODEL INTERMODAL		
TERMINAL	\$400,000	\$500,000
30.09.00 OPERATING ASSISTANCE	\$252,500	\$505,000
SCOPE		
635-00 RURAL TRANSIT ASSISTANCE		
PROGRAM	\$150,000	\$150,000
<u>ACTIVITY</u>		
43.50.01 TRAINING	\$50,000	\$50,000
43.50.02 TECHNICAL ASSISTANCE	\$25,000	\$25,000
43.50.03 RESEARCH	\$50,000	\$50,000
43.50.04 SUPPORT SERVICES	\$25,000	\$25,000

646-00 Job Access and Reverse Commute Project	\$25,000	\$50,000
<u>ACTIVITY</u>		
30.09.05 OPERATING ASSISTANCE	\$25,000	\$50,000
TOTAL.....	\$4,525,000	\$7,089,375
ESTIMATED NET PROJECT COST	\$7,089,375	
FEDERAL SHARE	\$4,525,000	
LOCAL SHARE	\$2,589,375	

OTHER (Scopes and Activities not included in Project Budget Totals)

SCOPE:

992.0 TRIBAL PROJECTS	\$50,000	\$62,500
<u>ACTIVITY:</u>		
11.12.15 PURCHASE VAN W/LIFT	\$50,000	\$62,500

SOURCES OF FEDERAL FINANCIAL ASSISTANCE

FUNDING UZA: 990000 FUNDING UZA NAME: ANYSTATE

<u>ACCOUNTING</u>	<u>PREVIOUSLY AMENDMENT</u>		
<u>CLASSIFICATION</u>	<u>FPC FY SEC</u>	<u>APPROVED</u>	<u>AMOUNT</u>
2013.25.18.81.2	09 2013 18		\$4,125,000
2013.25.18.81.2	06 2013 18		\$652,500
2013.25.18.R7.2	07 2013 18		\$150,000
2013.25.18.81.2	03 2013 18		\$25,000
		TOTAL	\$4,952,500
			\$4,952,500

APPENDIX D

PROCEDURES RELATED TO FLEXIBLE FUNDING

1. FLEXIBLE FUNDS. Flexible funding categories are those programs authorized under the Federal-Aid Highway Program that are permitted to be used for either transit or highway projects. The funds may be transferred to FTA for any nonoperating purpose, including preventive maintenance, eligible under FTA's Urbanized Area Formula Program (Section 5307), the Enhanced Mobility for Seniors and Individuals with Disabilities Program (Section 5310), and the Formula Grants for Rural Areas Program (Section 5311). The primary flexible fund programs are the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality (CMAQ) Improvement programs, although other Federal Highway Administration (FHWA) programs have some limited intermodal flexibility.
2. PROCEDURES. Funds may be used in an area of the state other than the area for which they were apportioned under certain circumstances. The following guidance refers only to the funds transferred to the Formula Grants for Rural Areas Program.
 - a. General. For those flexible funds transferred from FHWA to FTA for use in a rural area, the funds are placed in a state account under the Section 5311 program. Thereafter, the funding will be treated as Rural Area Formula Program funds although they retain a special identifying code. Flexible funds may not be combined with regular FTA formula funds in a single grant application, except that flexible funds transferred before fiscal year 2007 can be combined with Section 5311 funds in a single grant.
 - b. Funds Transferred to FTA. Funds available under the STP may be transferred to FTA and used for any capital purpose eligible under FTA's Section 5311 program. In addition, National Highway System (NHS) funds and portions of FHWA's interstate maintenance and bridge programs may be transferred to the STP and then made available to FTA for transit capital projects consistent with FTA requirements of the Section 5311 program. Finally, funds available under CMAQ may be used in ozone and carbon-monoxide "nonattainment" areas for any transportation project or program (including several transit activities eligible under Section 5311) which helps lead to the attainment of national ambient air quality standards.

Transit projects in rural areas (under fifty thousand population) that will be funded under any of these flexible programs must be identified in a statewide transportation improvement program (STIP). Inclusion in the STIP constitutes a state's commitment to funding programmed projects with the identified FHWA source.

Once a project is ready to be implemented, the FTA recipient submits a complete application to the appropriate FTA regional office according to the application instructions of Appendix A. At the same time, the recipient notifies the designated state highway/transportation agency that it has submitted an application to FTA that will require a transfer of FHWA funds to FTA. Once the state highway/transportation agency determines the state has sufficient obligation authority, the state agency notifies FHWA

that the funds will be used for transit purposes and requests that the budget authority be transferred to FTA.

Once FTA approves and obligates the grant, the recipient carries out the project following the guidance of most current version of the FTA Circular 5010.1, "Grant Management Guidelines" and this circular. FTA's regional office will administer the project as a Section 5311 project.

- c. Matching Share for Flexible Funds. The nonfederal share provisions of Title 23, U.S. Code apply to FHWA funds that are transferred for use in transit projects. Thus, flexible funds transferred to FTA require the same nonfederal matching share that such funds would have had if used for highway purposes and administered by FHWA.

An instance in which a higher than 80 percent federal share could be maintained is in states with large areas of Indian and certain public domain lands, and national forests, parks, and monuments, wherein the local share for highway projects is determined by a sliding scale rate, calculated on the basis of the percentage of public lands within that state. This sliding scale, which permits a greater federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased federal share. This is the same as the sliding scale share under the Section 5311 program.

There is no need to transfer STP, CMAQ, and NHS funds that would be used for planning, since planning for both transit and highways is eligible under FHWA's formula programs.

APPENDIX E

SAMPLE INTERCITY BUS CERTIFICATION

(On official letterhead)

Month, Day, Year

Mr./Ms. (Name of FTA Administrator)
Administrator
Federal Transit Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Dear FTA Administrator:

I hereby certify to the Secretary of the United States Department of Transportation that the intercity bus service needs of the state are being met adequately. Pursuant to 49 U.S.C. 5311(f)(2), the state accordingly does not intend to expend 15 percent of its fiscal year(s) Section 5311 apportionment(s) to carry out a program for the development and support of intercity bus transportation as would be required by federal law in the absence of this certification.

[The model letter constitutes a certification by the person signing the letter. Thus, if this letter is signed by anyone other than the governor, explain the authority under which this person signs the certification.]

The state has conducted an assessment of statewide intercity bus mobility needs between [fill in dates], which dates are no more than four years before the date of this certification. What follows is a description of the assessment process and findings: ...

Before this certification, as required by 49 U.S.C. 5311(f)(2), the state consulted with affected intercity bus operators. That consultation process contained the four elements required by the circular and involved the following activities: [description of activities and how they complied with required elements]:

Considering the state assessment and the results of the consultation process, the basis for the certification that there are no unmet intercity bus needs in the state is (explain in detail):

[Additional explanatory information may be added to determine the correlation between the results of the consultation and needs assessment and the decision to certify. For example, a description of the process used to assess whether unmet needs existed, the extent of any public participation in the decision, state financial support for intercity bus service, or the amount to be used in the case that intercity bus needs can be adequately met using less than the full 15 percent.]

Sincerely,

Jane Doe
Governor
cc: FTA Regional Administrator

APPENDIX F

CAPITAL COST OF CONTRACTING

Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor's providing vehicles for public transportation service, the capital consumed is equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient these capital assets. FTA refers to the concept of assisting with capital consumed as the "capital cost of contracting."

Only the costs attributable to the privately owned assets are eligible under this policy. With one exception, items purchased with federal, state, or local government assistance are not eligible. The exception is a public transportation vehicle privately owned in which the recipient has invested FTA funds from the Over-the-Road Bus Accessibility Program to finance incremental capital costs of complying with ADA. Capital consumed for service or maintenance in the provision of service outside the public transportation portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which is defined as all maintenance. In some instances, the recipient contracts with outside sources for both maintenance and public transportation service, and the contractor provides both maintenance and vehicles. In such cases, both FTA's capital cost of contracting and preventive maintenance standards will apply.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. Appendix G, below, shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the NTD. Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, paratransit, or demand-responsive service.

**PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE
WITHOUT FURTHER JUSTIFICATION***

Bus and Paratransit-Related Contract Services	Percent of Contract Eligible for 80 Percent Federal Share
Type of Contract	
1. Service Contract (contractor provides maintenance and transit service; recipient provides vehicles)	40 percent
2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance)	0 percent
3. Vehicle Maintenance Contract (contractor provides maintenance; recipient provides vehicles and transit service)	100 percent
4. Vehicle Lease Contract (contractor provides vehicles; recipient provides maintenance and transit service)	100 percent
5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service)	100 percent
6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent
7. Vehicle/Service Contract (contractor provides vehicles and transit service; recipient provides maintenance)	10 percent

Some of the calculations above are based on the assumption that the contractor (or someone other than the recipient) provides the assets. For example, if a contractor provides maintenance, FTA assumes in the calculations that the contractor does so in a facility provided by the contractor. For another example, in a contractor-operated vanpool program that qualifies under a Turnkey Contract (see type 6), a vanpool driver may provide the service rather than a contractor employee, but since the recipient does not provide the service, these costs are treated as part of the contract.

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APPENDIX G

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Forth Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 320 Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

APPENDIX H

REFERENCES

- a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
- b. Moving Ahead for Progress in the 21st Century, (MAP-21)(Public Law 112-141, July 6, 2012)
- c. Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, August 10, 2005).
- d. Federal-aid highway and surface transportation laws, Title 23, United States Code.
- e. Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998).
- f. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, Dec. 18, 1991).
- g. Federal Public Transportation Act of 1978 (Pub L. 95-599, Nov. 6, 1978).
- h. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq.
- i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
- j. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
- k. Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
- l. Section 404 of the Clean Water Act, as amended, 33 U.S.C. 1344.
- m. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. 303.
- n. National Historic Preservation Act, 16 U.S.C. 470f.
- o. Lobbying Restrictions, 31 U.S.C. 1352.
- p. State Infrastructure Provisions of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note.
- q. Congressional Declaration of Policy Respecting Insular Areas, 48 U.S.C. § 1469a.
- r. Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et seq.
- s. Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, 42 U.S.C. 4601, et seq.

- t. Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.
- u. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq.
- v. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.
- w. Federal Funding Accountability and Transparency Act of 2006 (Pub. L 109-282, 120 Stat 1186, Sept. 26, 2006).
- x. Davis-Bacon Act, as amended, 40 U.S.C. 3141 et seq.
- y. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 701 et seq.
- z. Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1601 et seq.
- aa. Joint Federal Highway Administration/FTA regulations, "Planning Assistance and Standards," 23 CFR part 450 and 49 CFR part 613.
- bb. Federal Highway Administration regulations, "Classes of Actions," 23 CFR part 771.115.
- cc. Federal Highway Administration regulations, "Categorical Exclusions," 23 CFR part 771.117.
- dd. Judicial Administration regulations, "Nondiscrimination; Equal Employment Opportunity; Policies and Procedures," 28 CFR part 42.
- ee. U.S. Department of Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 CFR part 205.
- ff. U.S. Environmental Protection Agency regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR part 93.
- gg. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR part 18.
- hh. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR part 19.
- ii. U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR part 20.
- jj. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21.
- kk. U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs," 49 CFR part 24.

- ll. U.S. DOT regulations “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- mm. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26.
- nn. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 27.
- oo. U.S. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 CFR part 29, as amended by 71 FR 62396, Oct. 25 2006.
- pp. U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR part 32.
- qq. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR part 37.
- rr. U.S. DOT regulations, “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR part 38.
- ss. U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR part 40.
- tt. FTA regulations, 49 CFR Chapter VI.
- uu. Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994).
- vv. Executive Order 13330, “Human Service Transportation Coordination” (February 24, 2004).
- ww. Office of Management and Budget Circular 2 CFR 225, “Cost Principles for State, Local, and Indian Tribal Governments,” dated Aug. 31, 2005.
- xx. Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” dated Jun. 27, 2003.
- yy. U.S. Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377 (Apr. 15, 1997).
- zz. U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (Dec. 14, 2005).
- aaa. FTA Circular 4220.1D, “Third-party Contracting Requirements,” dated Jun. 19, 2003.
- bbb. FTA Circular 5010.1C, “Grant Management Guidelines,” dated Oct. 1, 1998.

- ccc. FTA Circular 9030.1E, “Urbanized Formula Program Guidance and Application Instructions,” dated.
- ddd. FTA Circular 4702.1, Title VI Program Guidelines for FTA Recipients,” dated Oct. 1, 1998.
- eee. Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, 72 FR 5788 (Feb. 7, 2007).
- fff. Federal Highway Administration Notice N 4540.12, Attachment 1 (Mar. 17, 1992).
- ggg. U.S. General Services Administration, “Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.”
- hhh. FTA Master Agreement FTA MA(13), dated Oct. 1, 2013.
- iii. “Guidelines for Disbursements,” FTA ECHO-Web System Operations Manual.

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**Rules and Regulations by the
Colorado Department of
Transportation for Implementation
of the Section 5311 Program of the
Federal Transit Laws, 49 U.S.C.
Section 5300 et seq, 2 CCR 603-1**

RULES AND REGULATIONS
BY THE
COLORADO DEPARTMENT OF TRANSPORTATION
FOR
IMPLEMENTATION OF THE SECTION 5311 PROGRAM
OF THE FEDERAL TRANSIT LAWS,
49 U.S.C. SECTION 5300 ET SEQ,
2 CCR 603-1 (THE RULES)

I. PURPOSE

The purpose of the Rules is to prescribe procedures for application to the Department for federal assistance for public transportation projects in areas other than urbanized as authorized by Section 5311 (formerly Section 18) of the Federal Transit Laws, 49 U.S.C. Section 5300 et seq.

Section 5311 offers federal assistance for public transportation projects in areas other than urbanized by way of a formula grant program. The Section 5311 program is administered by the Department pursuant to the U.S. Department of Transportation's Federal Transit Administration (FTA) Circular 9040.1C, November 3, 1992, (FTA C 9040.1C), entitled "Section 18 Program Guidance and Grant Application Instructions."

II. AUTHORITY

The Rules are promulgated by the Department pursuant to the specific statutory authority of Sections 43-1-701 and 702 C.R.S. (1984).

A. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the January, 1990 revision to the Rules is hereby incorporated by reference.

B. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the February, 1992 revision to the Rules is hereby incorporated by reference.

C. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the May, 1996 revision to the Rules is hereby incorporated by reference.

Copies of the Statements of Basis, Specific Statutory Authority, and Purpose described above shall be available for copying or public inspection during regular business hours from the Transit Unit Manager, Colorado Department of Transportation.

III. DEFINITIONS

The following definitions shall apply to the Rules.

A. "Administrative expenses" means the expenses incurred in administering the Project, as specified in FTA C 9040.1C.

B. "Capital expenses" means facilities or equipment with a unit cost over \$500.00 and a useful life of more than one year, including buses and other vehicles and related equipment needed to support the provision of transportation planning.

C. "Department" means the Colorado Department of Transportation.

D. "Interagency Advisory Committee" (IAC) means the committee which evaluates and scores applications for FTA funding. The committee shall consist of representatives of State of Colorado agencies, including but not limited to, the Department of Local Affairs, the Department of Transportation, the Department of Human Services, and the Public Utilities Commission.

E. "Multi-year application" means a grant application which covers a two or three year period.

F. "Net Operating Deficit" means expenses incurred in operating the Project less fares, donations, and advertising revenue, as specified in FTA C 9040.1C.

G. "Operating expenses" means those costs incurred in operating the Project, as specified in FTA C 9040.1C.

H. "Program of Projects" means the annual summary of projects for public transportation in areas other than urbanized, recommended by the Department for receipt of

federal Section 5311 funds and submitted by the Department
to FTA for approval.

I. "Project" means public transportation services which an applicant proposes to provide within a given area, and has described in its application.

J. "Public transportation" means transportation by bus, rail, or other conveyance, either publicly or privately operated, which provides to the public general or special service on a regular and continuing basis, but not including school bus, charter or sight-seeing service.

K. "Regional Transportation Plan" means a technically based, twenty-year plan designed to meet the future mobility needs for a Transportation Planning Region including, but not limited to, anticipated funding, priorities, and implementation plans, pursuant to, but not limited to, 43-1-1103(1) and (2) C.R.S.(1991), as further described in 43-1-1102(6) C.R.S.

L. "Service Area Population" means the total population in the geographical areas where the Project is actually provided. Service Area Population will be determined using appropriate data from the most recent census as published by the U.S. Department of Commerce.

M. "State Management Plan" (SMP) means the current document that is developed by the Department and submitted to FTA on a periodic basis and that describes those details of the Department's policies and procedures for administering the Section 5311 program which are not included in the Rules.

N. "Statewide Transportation Plan" means the twenty-year comprehensive, intermodal state transportation plan adopted by the Transportation Commission pursuant to the provisions of 43-1-1103(5), C.R.S.(1991), as further described in 43-1-1102(8) C.R.S.

O. "Transit Development Program" (TDP) means a document adopted by duly authorized public officials within an identified geographical area for a specific time period and accepted by the Department which identifies: general and specialized transit needs and coordination of transit services within the service area; existing transit services and proposed additional services; capital and operating

costs of the proposed services; existing and proposed sources of funding; and an operations plan.

P. "Urbanized area" means an area within the boundary of a metropolitan area having a population of fifty thousand or more as determined by the United States Bureau of the Census in its latest census, and as included on the urbanized area map approved by the Department.

IV. APPLICATION PROCEDURE

The purpose of this section is to describe the procedures concerning applications for FTA funds.

Whether annual or multi-year applications are to be submitted, the Department will notify all known transit operators in Colorado of the availability of FTA funds, instructions for requesting an application package, and the deadline to submit an application to the Department for FTA funds.

The application package will contain instructions and guidelines for completing the application, as more fully described in the State Management Plan (SMP). The SMP and the application package will be available upon request 45 days in advance of the application deadline, from the Department Transit Unit Manager. It is the responsibility of an interested party to request an application package and a SMP from the Department.

An application must be submitted by the deadline. The application must be completed as described in the application package. If an application is received by the Department after the deadline or is incomplete it shall be rejected and not considered for funding.

V. THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY

The purpose of this section is to describe the threshold criteria the Department will use to determine if an applicant will be considered for available funding. The threshold criteria are more fully described in the SMP.

An applicant must comply with all the following threshold criteria.

A. Applicants for Section 5311 funds shall be limited to the following: State or local government agencies, political subdivisions as defined in 29-1-202, C.R.S., Indian tribes, and nonprofit organizations, that provide public transportation services in a geographical area other than an urbanized area.

Provided, however, that where a mass transportation agency has been created by statute to provide transportation services in a particular geographical area, such agency shall be the only eligible applicant in that area unless such agency specifically requests in writing that this eligibility requirement be waived. Such a waiver request must be received by the Department not less than thirty days before the application deadline in the year it is to become effective and shall remain in effect until withdrawn by the mass transportation agency in writing.

B. An applicant must ensure that a current Transportation Development Program (TDP) or Regional a Transportation Plan (RTP) which contains the elements of a TDP, is on file with the Transit Unit Manager, Colorado Department of Transportation, by the application deadline. To be current, the TDP shall cover a minimum time period of six years including the year for which funds are requested, and also include a twenty-year element unless otherwise approved by the Department. The Project services for which an applicant requests Section 5311 funding must have been described in and be consistent with the TDP, or a RTP which contains the elements of a TDP, in order to be eligible.

C. An applicant must demonstrate in the application the fiscal and managerial capability to manage the funds being requested. To determine compliance with this criterion, the Department will consider the following factors:

1. Experience managing public funds.
2. Ability to maintain an accounting system that is consistent with generally accepted accounting principles, and that segregates funds.
3. Ability to establish reasonable safety and risk management procedures.

4. Demonstrated ability to comply with regulations and contractual requirements.
5. Any other relevant factor.

When considering such factors, the Department may also consider, in its discretion, the guidelines described in the SMP.

D. An applicant must ensure that all forms, assurances and resolutions required by the application are signed by the appropriate officer or individual with authority to legally bind the applicant.

E. An applicant requesting funding for vehicles must demonstrate in the application the ability to maintain such vehicles. To determine compliance with this criterion, the Department will consider the following factors:

1. Ability to follow the vehicle manufacturers' minimum maintenance requirements.
2. Ability to provide regularly scheduled preventive maintenance.
3. Ability to provide unscheduled maintenance.
4. Ability to maintain records of all maintenance.
5. Any other relevant factor.

When considering such factors, the Department may also consider, in its discretion, the guidelines described in the SMP.

F. An applicant must demonstrate that the local match will be available when required.

G. An applicant must submit a completed application to the Department no later than 5:00 p.m. on the deadline date specified in the application package.

H. An applicant must demonstrate that the Project will provide regular and continuing general public transit service in an area other than an urbanized area.

Compliance by an applicant with all threshold eligibility criteria does not obligate the Department to award funds, but

only allows the applicant to be evaluated by the Department for consideration for available funding based upon the certain evaluation criteria described in Section VI of the Rules.

VI. EVALUATION CRITERIA

The purpose of this section is to describe the evaluation criteria which will be used by the Department to determine whether an eligible applicant will be funded and to assist in determining the level of funding to be awarded. Guidelines, instructions, and details concerning such evaluation criteria are described in the application package.

The Department will use the following criteria to evaluate eligible applicants.

A. Financial Justification, i.e. the extent to which the applicant demonstrates justification for funding, based upon:

1. The costs to operate and administer the Project (excluding capital costs).
2. The amount of revenue available to the applicant, including contract revenue and earmarked funds.
3. The maintenance of existing local funding commitments.
4. The proportion of Project costs covered by local funds (Local Support).
5. The concerted, good faith effort to obtain funds for the Project from other sources.
6. The economic condition of the area described in the Project.
7. Other relevant factors.

This criterion will have a value of 30% out of a total of 100%.

B. Service Justification, i.e. the extent to which the applicant demonstrates justification for the Project, based upon:

1. Lack of appropriate general public transportation alternatives as demonstrated in the local TDP.

2. The transit dependency of the population in the geographical area of the Project including, but not limited to elderly, disabled, low income, and other transit dependent persons.

3. Whether the Project is provided by the applicant on behalf of other organizations.

4. The type(s) and total number(s) of transit riders served and trips provided.

5. Other relevant factors.

This criterion will have a value of 30% out of a total of 100%.

C. Coordination of Services, i.e. the extent to which the applicant demonstrates coordination of services, based upon:

1. Coordination of Project services with other public and private transit providers, social services agencies, and community organizations.

2. Reduction of the total amount of miles traveled, operating expenses incurred, number of vehicles used, and lead time for passenger scheduling in administering and operating the Project, as a result of such coordination. This criterion applies only to a Project which primarily offers curb to curb, demand responsive services.

3. The absence of duplication or overlap of the Project and transit services provided by others.

4. Other relevant factors.

This criterion will have a value of 40% out of a total of 100%.

VII. SCORING PROCEDURES:

The purpose of this section is to describe the general procedures to score annual and multi-year applications. In using such procedures, the Department and the IAC members may consider the guidelines described in the SMP.

A. The Interagency Advisory Committee (IAC) members will assign quantitative scores to the applicants based upon:

1. An evaluation of applicants' responses to the criteria described in Section VI, of the Rules.
2. The values assigned to such criteria described in Section VI, of the Rules.

The following scoring procedures will be used. Scores of 0, 1, 2, or 3 will be assigned by the IAC members to each criterion described in Section VI for each application, based upon the judgement of the IAC members of whether and the extent to which each application meets and satisfies such criterion. In making such judgements, the IAC members may, at their discretion, consider the guidelines described in the SMP concerning such criteria. The scores assigned by IAC members will be averaged to arrive at a final score. An applicant must receive a final score of 1.45 out of a maximum score of 3 to be considered by the Department for funding.

B. The Department in consultation with the IAC members will consider the following factors to determine whether to grant a Capital Expense Award to a particular applicant and the amount of the grant. Capital Expense Awards shall be considered separately from Service Area Population and Merit Awards.

The Department, in consultation with the IAC shall assign scores of 0, 1, 2, or 3 for each capital expense request based upon the following equipment need criteria:

1. The demonstrated need to replace or rehabilitate equipment, based upon the age, condition, and odometer reading of the respective equipment. If expansion equipment is requested, the demonstrated need for expansion equipment, based upon a review of ridership estimates and patterns.
2. The Department's determination of the extent to which FTA funds may be better utilized for Service Area Population Awards and Merit Awards.
3. The lack of suitable alternatives to obtain or rehabilitate capital expense equipment, including

the availability and appropriateness of Section 5310 funds to make a Capital Expense Award.

4. The relative operating effectiveness of the equipment to be obtained or rehabilitated, based upon hours per day in operation, days per week in operation, and passengers per miles per hours per capita.

5. Other relevant factors.

C. The Department will develop a ranked list of capital expense awards based upon the combined evaluation scores described in A. and B. above. The weighting of the scores for each capital expense request will be 60% for equipment need and 40% for evaluation score.

VIII. FUNDING PROCEDURE

The purpose of this section is to identify the procedures that the Department, in consultation with the IAC, will use for an annual or multi-year application, to recommend awards of available FTA funds. These procedures may be further described in the SMP.

A. Annual Application

When the Department uses an annual application, it shall list proposed awards in its Program of Projects based on the amount of funding actually available for that year. Awards for the projects described in that program will be made subject to FTA approval.

B. Multi-year Application

1. When the Department uses a multi-year application, in year one of that application the Department will do the following.

a. List proposed awards for that year, based on the amount of funding actually available for that year, as described in A. above.

b. List the projects it anticipates funding in any succeeding year(s) of that application, based on the amount of funding estimated by the Department to be available for those years. Such list shall not be a commitment to provide funds in those years.

2. In any succeeding year(s) of that application, the Department also will do the following.

a. Require applicants for funding in those years to provide an update in those years of certain information contained in their original application.

b. Determine whether each of the projects listed in year one are still eligible in those succeeding years.

c. Consider (based on their ranking) capital expenses applied for in year one but not funded in year one, concurrently with capital expenses applied for in year one for a succeeding year. In that ranking, an applicant's evaluation score will be used for all three years, but a separate capital expense score will be assigned each year.

d. Adjust the listed projects based on the then current need, or on compliance with conditions established by the Department, or on the appropriation and budgeting and availability of funds therefor.

e. Develop a Program of Projects in each of those years to identify the projects to be actually funded in that year.

C. The Department shall allocate funds into the five general categories described below.

1. State Administration: Funds used by the Department to administer the Section 5311 program and to provide technical assistance.

2. Capital Expense Awards: Funds awarded only for the purchase of capital equipment.

3. Intercity Bus Service Awards: Funds awarded for the provision of intercity bus services. These funds may be used for operating, administrative, capital, or planning. The Department may make available certain funds for Intercity Bus Services to carry out a program for the development and support of intercity bus transportation, pursuant to federal requirements.

4. Service Area Population Awards: Funds awarded based upon applicants' Service Area Population. These funds may be used for operating or administrative expenses, but shall not be used for capital expenses.

5. Merit Awards: Funds awarded based upon the relative quantitative scores assigned by Department and the IAC members to applicants based on the evaluation criteria, as described in Section VI of the Rules. These funds may be used for operating or administration expenses, but shall not be used for capital expenses.

D. The Department will use the following procedures to allocate funds into the five general categories.

1. The Department shall first deduct from the total FTA funds the amount needed for State Administration, which shall not exceed 15% of the total apportionment awarded to the State.

2. The Department will then deduct from the remaining FTA funds an amount for Capital Expense Awards.

3. The Department will then deduct from the remaining FTA funds an amount for Intercity Bus Service Awards.

4. The Department will then use the remaining FTA funds for Service Area Population Awards and Merit Awards.

E. The Department will recommend awards from the above categories based upon the following procedures.

1. The Department will consider certain factors to determine:

a. Whether to make either Capital, Intercity Bus Service, Service Area Population, or Merit Awards to a particular eligible applicant.

b. The amount of such award(s).

c. Whether to allocate funds to any of the five general categories.

Such factors are: (i) the total amounts of FTA funds available for the respective categories of awards in a given year; (ii) the total amounts requested by eligible applicants from the respective categories, and the total number of eligible applicants in that year; and, (iii) the need to provide for a fair and equitable distribution of available FTA funds within the State.

2. The federal share payable for Capital Expense Awards shall not exceed 80% of the eligible capital expenses. The federal share payable for administrative awards shall not exceed 80% of the eligible administrative expenses. The federal share payable for operating expenses shall not exceed 50% of the net operating deficit. A minimum of 50% of the local share for capital, administrative, and operating expenses must be provided by the applicant from sources other than federal funds or revenues from the operation of the project. The local share for capital expenses must be provided by the applicant in cash from sources other than federal funds.

F. The Department will allocate the required percentage of total available FTA Section 5311 funds for Intercity Bus Services pursuant to applicable requirements. In implementing such requirements, the Department may consider, in its discretion, the guidelines described in the SMP.

G. The Department will distribute the remaining FTA funds by Service Area Population Awards and Merit Awards in the

following percentages: 30% Service Area Population, and 70% Merit.

H. The Department will grant Service Area Population Awards to applicants that have received at least the passing score, based upon each applicant's prorated share of the total Service Area Population of all applicants receiving the passing score.

I. The Service Area Population for each applicant shall consist of the population of non-urbanized areas which receive regular and continuing public transportation services described as part of the Project. The Service Area Population shall further be limited to: a.) incorporated areas; b.) areas defined by the Department as urban by using the most recent U.S. Census data; and c.) unincorporated areas of population concentration, as agreed upon by both the applicant and the Department.

J. The Department will grant Merit Awards to applicants that have received at least the passing score, based upon the rank of each applicant's evaluation score, relative to the evaluation scores of all eligible applicants.

IX. APPEAL PROCEDURE

The Department shall notify all applicants of its annual program of projects. If an application is denied, the grounds therefore shall be given to the applicant. The notice shall be deemed received by the applicant three days after the date of mailing of the notice. An applicant that is aggrieved by a Department determination under the Rules may request a hearing pursuant to the provisions of Section 24-4-104, C.R.S., as amended, of the State of Colorado Administrative Procedures Act. If a hearing is requested, it will be conducted in accordance with 24-4-105 C.R.S., as amended. The request for a hearing must be made within 60 calendar days after an applicant is notified of the Department's decision.

Resolution #TC-18-03-03 FTA Section 5311 and FASTER Distribution Methodology

Resolution # TC-18-03-03

FTA Section 5311 and FASTER Transit Distribution Methodology for Operating and Administrative Funds

Approved by the Transportation Commission on March 15, 2018.

WHEREAS, 49 U.S.C. 5311 outlines the requirements for CDOT to administer 5311 program funds on behalf of FTA; and

WHEREAS, C.R.S. 43-1-701 further guides the fair and equitable fund distribution on FTA's behalf for rural transit throughout Colorado; and

WHEREAS, Resolution TC-17-11-13 established the FASTER Transit Distribution methodology which included funds for local agency operating and administrative expenses; and

WHEREAS, CDOT places high value on rural transit in Colorado, and the fair and equitable distribution of federal and state operating funds; and

WHEREAS, in 2016 CDOT could not fund new eligible 5311 applicants without reducing funding to current recipients; and

WHEREAS, a Subcommittee of the Transit & Rail Advisory Committee (TRAC) was established to evaluate and devise a contemporary distribution methodology consistent with the Transportation Commission policy framework of 1) Fair and Equitable Distribution, 2) Transparent Process, 3) Stable Funding Base, 4) Available to all Eligible Providers, and 5) Rewards Performance; and

WHEREAS, the TRAC Subcommittee devised and recommended a distribution methodology with a suggested five year transition period, with endorsements from the TRAC and STAC; and

WHEREAS, The TRAC Subcommittee recommended that the FASTER funds should be allocated based on equity factors while the 5311 funds are allocated according to agency size.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission approves the Subcommittee-recommended 5311 distribution methodology as a framework and shown on Attachments A1 & A2, and including the following additional provision:

- Provide regular reports back to the Transit and Intermodal Committee on the application of the methodology. Include information about how the methodology accounts for new transit agencies and transit agencies that substantially expand or decrease service.

Herman A. Stockinger #

Herman Stockinger, Secretary
Transportation Commission of Colorado

3-15-18

Date



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS *A3. Section 5339*

Draft August 2019

Outline

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- Attachment A3-1. Subrecipient Information Request (SIR) and Site Review Checklist
- Attachment A3-2. FTA FY 2019 Certifications and Assurances
- Attachment A3-3. CDOT Standard Subaward Agreement
- Attachment A3-4. Sample Personal Services RFP
- Attachment A3-5. DTR Quick Procurement Guide

Flowcharts

Flowchart A3-1. FTA Award Application

Flowchart A3-2. Subrecipient Information Request (SIR) and Site Review Process

Flowchart A3-3. Amendment for Capital Project

Flowchart A3-4. Capital Project Reimbursement Request

Flowchart A3-5. Personal Services Procurement

Flowchart A3-6. Third-Party Procurement

Flowchart A3-7. Project Closeout

Additional Attachments

FTA Circular: FTA C 9030.1E: Urbanized Area Formula Program: Program Guidance and Application Instructions

FTA Circular: FTA C 5100.1: Bus and Facilities Formula Program: Program Guidance and Application Instructions

A3. FTA SECTION 5339—BUS AND BUS FACILITIES FORMULA GRANT

The purpose of the Section 5339 program is to provide capital funding to replace, rehabilitate, and purchase buses and related equipment, and to construct bus-related facilities. The program is also available for supporting clean fuel projects and to advance transit-related technology.

Documents that govern how the Colorado Department of Transportation (CDOT) administers Section 5339 funds include:

- Federal Transit Administration (FTA) Circular 5100.1.
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_C_5100_4-16-15.pdf
- FTA website Overview: <https://www.transit.dot.gov/bus-program>

A3.1 Program Goals and Objectives

CDOT awards funds under the Section 5339 program to eligible subrecipients for the purpose of financing capital bus and bus-related projects that support the continuation and expansion of public transportation services in the Colorado.

A3.2 Roles and Responsibilities

The parts of CDOT’s organization that are involved in the administration of FTA and state transit funds are listed in the following table.

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
CRBRC = Civil Rights and Business Resource Center	MPO = Metropolitan Planning Organization
DAF = Division of Accounting & Finance	OFMB = Office of Financial Management & Budget
DTD = Division of Transportation Development	STIP = Statewide Transportation Improvement Program
DTR = Division of Transit and Rail	TIP = Transportation Improvement Program
FFATA = Federal Funding Accountability and Transparency Act	TPR = Transportation Planning Region
FFR = Federal Financial Report	TRAC = Transit and Rail Advisory Committee

CDOT Organization	Role
DTR	Primary entity responsible for the management of FTA funds and for the oversight of subrecipients that are the operating entities throughout the state who perform the work.

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
CRBRC = Civil Rights and Business Resource Center	MPO = Metropolitan Planning Organization
DAF = Division of Accounting & Finance	OFMB = Office of Financial Management & Budget
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CDOT Organization	Role
Transportation Commission	Approves high-level policy criteria and transit metrics by which transit funds are evaluated and allocated. Adopts statewide plans related to transit, including the STIP. Approves DTR's annual budget and recommended project awards.
Executive Director	Reviews/approves FTA award amendments and award appeals, if required
Office of Policy and Governmental Relations	Submits CDOT lobbying certifications.
DAF	<p><u>OFMB:</u> Sets CDOT's budget structure, prepares and approves STIP, approves FTA and state transit pool funds,</p> <p><u>Accounting:</u> Enters financial information into CDOT's financial management system (SAP), manages the drawdown of federal funds, performs the FFR and FFATA reporting.</p> <p><u>Business Office:</u> Updates STIP, manages the accounts payable functions for all subaward agreements builds budgets in SAP, approves subrecipient reimbursement request, reconciles project budgets, approves final reimbursement request to FTA.</p> <p><u>Office of Procurement:</u> Sets CDOT procurement policies, maintains master subrecipient subaward agreements, reviews and executes subaward agreements, reviews subrecipient procurement processes for compliance with federal requirements and required federal clauses.</p>
CRBRC	Develops CDOT's civil rights programs and policies, provides DTR guidance on civil rights requirements, oversees subrecipients' compliance with civil rights requirements in providing services and third-party contracting, maintains CDOT and subrecipients' required civil rights documentation
Division of Audit	Approves subrecipient cost allocation plans or indirect cost rates.
Office of Communications	Issues public notices of public comment periods for statewide planning process, issues statements of project awards
CDOT DTD (supported by TRAC)	Conducts statewide planning process, coordinates with MPOs and TPRs regarding TIPs and STIP

Acronyms and Abbreviations:

CDOT = Colorado Department of Transportation	FTA = Federal Transit Organization
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FFATA = Federal Funding Accountability and Transparency Act	TPR = Transportation Planning Region
FFR = Federal Financial Report	TRAC = Transit and Rail Advisory Committee

CDOT Organization	Role
CDOT Regions	Participate in statewide planning process, manage Region transit construction projects

The Division of Transit and Rail’s (DTR) direct access to the CDOT Executive Director to perform duties and functions under CDOT and the Executive Director is established in state law CRS 24-1-127.7(3)(e), CRS 24-1-103 through 105, and CRS 43-1-117.5.

Federal law, 49 Code of Federal Regulation (CFR) 26.25 requires that CDOT’s Disadvantaged Business Enterprise (DBE) Liaison Officer has direct, independent access to the Chief Executive Officer concerning DBE program matters. CDOT meets this requirement under a notice of Assurance of Direct and Independent Access executed January 2016 by CDOT’s Executive Director.

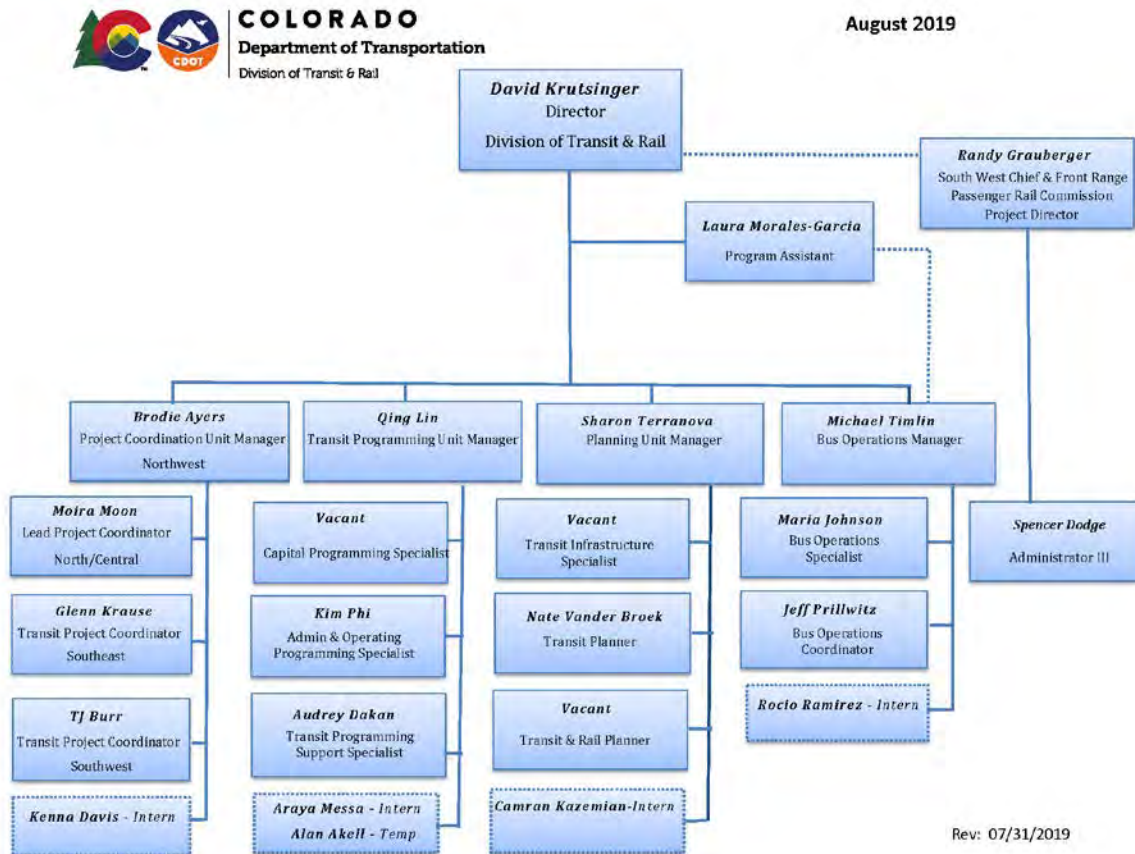
A3.2.1 Division of Transit and Rail

The DTR organization is shown in Figure A3.1.

Individual units within DTR have the following general responsibilities:

- **Planning Unit:** This group oversees the statewide planning process related to transit, and oversees distribution of federal and transit funds.
- **Programming Unit:** This group conducts and oversees the application process, award of projects, development and execution of the subaward agreement, and budgeting of federal and state funds.
- **Project Coordination Unit:** This group provides oversight and technical assistance to subrecipient agencies during the project and oversees the project close-out process.
- **Bus Operations Unit:** This group is responsible for regional, interregional, and intercity bus (ICB) programs (Bustang and Outrider operations, Funding Advancement for Surface Transportation and Economic Recovery Act [FASTER] Operating assistance, and FTA 5311(f) programs).

Figure A3.1. DTR Organizational Chart



A3.2.2 Advisory Committees

There are several advisory committees that participate in CDOT’s transit and rail planning processes, as described in the following sections. As required by the FTA, CDOT encourages minority participation in its advisory committees.

A3.2.2.1 Transportation Commission and the Transit and Intermodal Committee

The state’s transportation system is managed by CDOT under the direction of the Transportation Commission. The commission comprising 11 commissioners who represent specific districts. Each commissioner is appointed by the Governor, confirmed by the Colorado Senate, and serves a 4-year term. To provide continuity, the commissioners’ term expiration dates are staggered every 2 years. Under state law, the powers and duties of the Transportation Commission include:

- Formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state.

- Advising and making recommendations to the Governor and the General Assembly relative to transportation policy; and promulgating and adopting CDOT's budgets and programs, including construction priorities and approval of extensions or abandonments of the state highway system. The General Assembly appropriates the administrative budget for CDOT.

The Transit and Intermodal Committee is one of three Standing Committees created by the Transportation Commission, as set forth in 2CCR 601-11, Rules Governing Practice and Procedures of the Transportation Commission of Colorado (<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=6937&fileName=2%20CCR%20601-11>). The Chairman of the Transportation Commission with consent of the full Commission, appoints at least three but no more than five members of the Commission who meet periodically with executive management and the DTR Director to review transit and rail policies and practices.

A3.2.2.2 Statewide Transportation Advisory Committee (STAC)

The Statewide Transportation Advisory Committee (STAC) advises CDOT and the Transportation Commission on the needs of the transportation system in Colorado and reviews and comments on all Regional Transportation Plans and the Statewide Transportation Plan. STAC membership includes Colorado's 15 urban and rural Transportation Planning Regions (TPR) and 2 Indian Tribes. Voting representatives are selected by the 5 Metropolitan Planning Organizations (MPO), 10 rural Regional Planning Commissions, plus the Southern Ute and the Ute Mountain Ute Indian Tribes in southwest Colorado.

<https://www.codot.gov/programs/planning/planning-partners/stac.html>

A3.2.2.3 DTR's Transit and Rail Advisory Committee

The Transit and Rail Advisory Committee (TRAC) works with DTR to develop and promote the DTR's vision, policies, and priorities for transit and rail services in Colorado. The committee's 18 members are representatives from public and private transit providers, Class I and Shortline railroads, interest groups, CDOT TPRs, counties, cities, and the general public. TRAC subcommittees are formed as needed to address specific issues—for example, FTA Sections 5310/5311 distribution, performance asset management, Bustang/Rural Regional Bus, and the Statewide Transit Plan (SWTP) implementation.

<https://www.codot.gov/about/committees/trac>

A3.2.2.4 Southwest Chief & Front Range Passenger Rail Commission

The Southwest Chief & Front Range Passenger Rail Commission was created by Senate Bill 17-153 in May 2017. It has 11 voting members (MPOs, freight railroads, Regional Transportation District, passenger rail advocacy, local leaders, and others) and 3 non-voting members (Amtrak, Cheyenne Chamber of Commerce, and CDOT). It has two purposes: (1) to preserve and improve the existing Amtrak Southwest Chief service through track maintenance and other improvements, and (2) to facilitate the development of a passenger rail service along

the greater I-25 corridor. Information about this Commission is located at <https://www.codot.gov/about/southwest-chief-commission-front-range-passenger-rail>.

A3.3 State and Local Coordination

Every 5 years DTR completes an SWTP to establish a framework for creating an integrated statewide transit system that meets the mobility needs of Coloradans, while minimizing duplication of services and leveraging limited funds. The plan also meets state and federal planning requirements and guides CDOT's transit investments, project processes, and actions over the short-, mid-, and long-term. The SWTP includes needs, funding, and recommendations across the entire state. The Plan also integrates Regional Transit Plans for each of the state's ten rural TPRs. Local transit agencies in rural areas that are not part of an MPO are encouraged to work with the appropriate rural planning region regarding transit needs. The SWTP is located at: <https://www.codot.gov/programs/colorado-transportation-matters/other-cdot-plans/transit/transit>.

Part of DTR's application process requires the subrecipient to demonstrate that the project has been coordinated at the local level through Regional Coordinating Councils or Local Coordinating Councils.

CDOT's Chief Engineer participates in a statewide Strategic Action Planning Group on Aging (SAPGA), which makes recommendations to the governor and state legislature about issues related to an aging population—transportation included.

A3.4 Eligible Recipients

Eligible recipients of Section 5339 funds include (1) designated recipients that allocate funds to fixed route bus operators, (2) states, and (3) local governmental entities that operate fixed route bus service.

Subrecipients that are public agencies, or private nonprofit organizations engaged in public transportation; including those providing services open to a segment of the general public, as defined by age, disability, or low income, are also eligible recipients of Section 5339 funding.

The FTA Section 5339 program is available to public and private nonprofit agencies, as well as tribal governments, providing public or specialized transportation. Section 5339 funds for the Denver and Colorado Springs areas are administered by their designated recipient agencies, not CDOT.

All applicants are required to meet certain minimum (threshold) criteria to be considered for an award of funds. A new applicant (potential subrecipient) must submit a New Applicant Questionnaire that includes an overview of the agency's transit services, legal standing, financial management and capacity, technical capacity, asset management plan, procurement procedures, and civil rights policies. The agency must demonstrate that it meets

minimum requirements in financial and managerial capability and capacity for managing awarded funds, as well as demonstrate that it has the resources necessary to operate the project on an ongoing basis. The applicant must also be willing to follow federal and state guidelines for third-party procurements. Should an applicant not meet these threshold criteria, DTR is available to work with the agency to meet the criteria and become eligible to apply for funds.

A3.5 Local Share and Local Funding Requirements.

The federal share for capital projects that receive funding under the Section 5339 program may not exceed 80% of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the subrecipient's revenues.

All projects funded through these programs require some form of local match and sufficient operating funds to operate and maintain FTA-funded programs and projects. The federal share of eligible capital costs is 80% of the net capital project cost, unless the subrecipient requests a lower percentage. The Federal share may exceed 80% for certain projects related to the Americans with Disabilities Act (ADA), the Clean Air Act, and certain bicycle projects.

Local match may consist of any non-Department of Transportation (DOT) federal funds, such as Medicaid, Older Americans Act funding, or other funds that may be used for transportation; local tax revenues; local general operating funds; donations; or in-kind goods and services.

A3.6 Transfer of Funds

Section 5339 funds are eligible to be transferred by CDOT to supplement urban and rural formula programs (Section 5307 and Section 5311, respectively). The current policy of the state is to not transfer funds between these programs.

A3.7 Project Selection Criteria and Method of Distributing Funds.

A3.7.1 Eligible Projects

Circular C5100.1 states that Section 5339 funds may be used to subsidize capital projects to replace, rehabilitate and purchase buses, vans, and related equipment, and to construct bus-related facilities. CDOT has prioritized the following as eligible:

- The acquisition of buses for fleet and service expansion
- Bus maintenance and administrative facilities
- The acquisition of vans for fleet and service expansion, including specialized vans and related facilities used to provide ADA complementary paratransit service
- Transfer facilities
- Bus malls
- Acquisition of replacement vehicles

- Bus rebuilds
- Bus overhauls
- Passenger amenities such as passenger shelters and bus stop signs
- Accessory and miscellaneous equipment such as:
 - mobile radio units
 - supervisory vehicles
 - fare boxes
 - computers
 - shop and garage equipment
- Clean Fuels projects
- Introduction of new technology; Examples of transit-related Intelligent Transportation Systems (ITS) projects include:
 - real-time bus arrival information available to passengers through electronic displays at bus stops
 - automatic vehicle locators
 - automated passenger counters
 - vehicle component monitoring (diagnostics)
 - advanced fare payment methods
 - computer-aided dispatching and real-time ridesharing
 - automated information for travelers using more than one mode of transportation
- Costs associated with environmental compliance

NOTE: Planning activities, preventive maintenance activities (other than bus overhauls), and mobility management activities are not eligible under the section 5339 Program.

A3.7.1.1 Consolidated Capital Projects Call

Every year CDOT pools (consolidates) funds from federal and state programs and conducts a single competitive application process for local capital projects.

A3.7.1.1.1 Selection Criteria

Projects for these programs are evaluated based on the type of project—that is, revenue vehicles (rolling stock); facilities, design, and equipment; or studies—and whether the project is for replacement or expansion (new) vehicles. Evaluation metrics (or criteria) for each type of project are listed below.

For Replacement of Revenue Vehicles

Metric 1: *The vehicle's State of Good Repair (SGR):* Age, Mileage, Usage, Readiness, including how the vehicle's replacement is projected and prioritized within the agency's Asset Management Plan; higher mileage vehicles will be scored higher than lower mileage units.

Metric 2: Higher scoring will be awarded to applicants that can demonstrate a good state of repair through effective, documented, formal preventive maintenance programs or Transit Asset Management (TAM) programs, and to those that have and follow a capital replacement plan.

For Expansion of Revenue Vehicles

Metric 1: *Demonstrated Need and Readiness:* Higher scoring will be awarded to projects that clearly demonstrate the need for the expanded service in terms of documented ridership or need studies and community support, that demonstrate an effective business case and can demonstrate they are truly ready to implement and sustain the expansion.

Metric 2: *Special Considerations:* For vehicle requests, applicants with a lower fleet spare ratio, who have a capital replacement plan and follow sound asset management practices, who can show strong institutional commitment, and who can show a strong financial commitment (higher local match ratio), will be scored more strongly.

For Facilities, Design, and Equipment

Metric 1: *Readiness and Demonstrated Timetable:* Higher priority will be given to those that are shovel ready (National Environmental Policy Act [NEPA] clearance finalized, at least 30% design completed, and site location selected and purchased), and to the completion of existing projects.

Metric 2: *Project Purpose, Cost Savings, and Efficiency:* Higher priority will be given to those projects that: have a high degree of local and regional support; well-developed and defensible business case, and support or provide significant transit operational and utilization benefits.

Metric 3: *Special Considerations.* Higher scoring in this area will be given to those projects that demonstrate they were developed in partnership with the local community. In the case of requests for the expansion of existing facilities, higher scoring will be applied if the project demonstrates the need for the facility and for growth in the program it supports. Agencies that adequately demonstrate institutional commitment, funding, financial capacity, and capability to sustain the service and project over time will be also be scored more strongly.

Civil Rights Requirements. In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, "The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin." For purposes of this requirement, "facilities" does not include bus shelters, as these

are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with the regulations:

The recipient must complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

A3.7.1.2 Geographical Distribution

DTR undertakes a geographic equity analysis as part of the SWTP update process every 5 years that ensures that each part of the state, as defined by the TPRs, receives an equitable share of FTA funding. In addition, geographic equity is one of the criteria used to award projects under the Calls for Projects.

DTR coordinates with the MPOs of the Fort Collins and Colorado Springs large Urbanized Areas (UZA) by sharing information about project requests. DTR coordinates with these entities so that state-managed funds like FASTER do not compete with or supplant regionally managed funds.

A3.7.1.3 Application Evaluation and Scoring

DTR staff reviews the applications to ensure that minimum eligibility requirements are met. Any applicant not meeting the criteria will be contacted by DTR and given the opportunity to respond to the finding of ineligibility.

An evaluation committee made up of CDOT staff (DTR, Division of Transportation Development [DTD], the Policy and Government Relations Office, Civil Rights & Business Resource Center) evaluates and scores applications. In selecting projects for funding, consideration is given to geographic distribution.

The evaluation committee has two to three weeks to review applications and prioritize projects. The committee compiles scores and puts together a recommended prioritized award list.

After the committee evaluates the project according to the criteria included in the Notice of Funding Availability, each project is ranked according to its project type and score. Because of limited available funding, CDOT continues to put an emphasis on a fix-it-first approach—that is, giving higher priority to the replacement and refurbishment of buses, facilities, and equipment, rather than on new or expansion capital or planning projects. This does not mean, however, that expansion projects are not funded—only that an applicant seeking funding for

expansion projects must make a very strong case, with documented justification and evidence of sustainability, in order for the project to be considered. Annual Program of Projects Development and Approval Process

From the final list of subawards for a given Call for Projects, DTR develops a Program of Projects (POP) for each FTA program. The POP includes a brief description of the projects; identifies each subrecipient and indicates whether they are governmental authorities or private nonprofit agencies; and lists total project costs and federal share of each project. The POP summarizes the available and applied funds for the program and the sources of funding for each parent award and project within the parent award (FTA, local match, local in-kind match). Additional detail on each project includes specific information about the agency, award status, civil rights compliance status, and contract identifiers in the CDOT accounting system.

DTR then assembles an award application in FTA's Transit Award Management System (TrAMS) based on the POP. The award application includes the following minimum information:

- Fiscal Year (FY) of funding and whether Program Requirements are met
- Period of Performance
- Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)/Unified Planning Work Program
- Project Locations
- Activity Line Item and Budget Line Information, Federal and Local match ratio
- Local Match Sources
- Vehicle Useful Life, fuel Type and Quantities
- Local Transportation Human Service Coordination Plan for 5310 projects
- Milestones
- NEPA Requirements

FTA reviews the POP and application for compliance, then approves and releases the funds to CDOT. This process is illustrated in Flowchart A3-1 FTA Award Application.

A3.8 Civil Rights

CDOT's Civil Rights and Business Resource Center's (CRBRC) mission is to promote equal access to and participation in CDOT programs and activities. Additionally, the CRBRC collaborates with CDOT Regional Civil Rights Offices and various CDOT program staff to foster equality in CDOT's transportation contracting processes.

Within the CRBRC is the role of the Title VI Specialist/Civil Rights Liaison for DTR. This position works with DTR to implement and monitor compliance with the FTA's civil rights requirements, including Title VI, Equal Employment Opportunity, and DBEs.

CRBRC and DTR monitor subrecipient compliance with FTA civil rights regulations through the following:

- Including civil rights requirements in each Call for Projects.
- Oversight of third-party contracting procedures.
- Review of subrecipient websites.
- Review of the subrecipient's programs prior to awarding funds.
- Requiring subrecipients to submit updated programs to DTR through Colorado Transit & Rail Awards Management System (COTRAMS) annually with certifications and assurances, or as required.
- Review of program documents during scheduled Subrecipient Information Request (SIR) and Site Review Process every 3 years.
- Technical assistance and training to subrecipients in the development of and execution of their programs, including minority applicants and those serving minority or traditionally underserved populations.
- Assistance in resolving complaints.
- Filing required reports to FTA.

A3.9 Section 504 and ADA Reporting

DTR and CRBRC jointly oversee subrecipient compliance with ADA requirements. They must ensure that all vehicles acquired with FTA funds are equipped, maintained, and operated in accordance with 49 CFR Parts 27, 37, and 38, unless certification of equivalent service is filed annually, and that service provided does not discriminate against individuals with disabilities. Newly constructed facilities, including joint use stops and depots for ICB transportation, must comply with ADA accessibility standards.

In addition, CRBRC participates in the SIR and Site Review Process every 3 years. A subrecipient's ADA Program is part of this review.

A3.10 State Program Management

Once an executed subaward agreement is in place, CDOT/DTR is responsible for oversight of the subrecipient agency and its implementation of the project. Oversight includes monitoring, training, and technical support for subrecipient agencies to support them in compliance with federal and state regulations and guidelines associated with receiving and disbursing funds.

When subrecipient agencies enter into contracts with contractors and subcontractors to perform work funded by FTA or state transit funds, the subrecipient agencies are responsible

for oversight and compliance of the contractors and subcontractors with federal and state regulations and guidelines.

DTR utilizes the Comprehensive Review Guide, updated annually by the FTA, as a guide to conduct oversight. The most current Comprehensive Review Guide can be found through a link on FTA's Program Oversight web page (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

A3.10.1 Baseline Activities

DTR Project Coordinators and subrecipients have responsibilities related to ongoing oversight and participating in oversight activities. Subrecipients are expected to participate in baseline activities, unless deemed not required by DTR. Baseline activities are outlined in Table A3.1.

Table A3.1. Baseline Activities

	Activity	Subrecipient	DTR
	COTRAMS = Colorado Transit & Rail Awards Management System LCC = Local Coordinating Council RCC = Regional Coordinating Council RTAP = Rural Transit Assistance Program CASTA = Colorado Association of Transit Agencies		NTD = National Transit Database DTR = Division of Transit and Rail FTA = Federal Transit Administration TrAMS = Transit Award Management System
Daily/Weekly	Customer Service and COTRAMS support		Assist subrecipients as requested
	Reimbursement Requests for Capital projects (COTRAMS)	Submit	Approve
Monthly	Transit Conference Calls	Participate and contribute	Prepare for and conduct
	Informal Site Reviews	Prepare for and participate	Schedule and conduct
	Reimbursement requests for Admin/Operating and Mobility Management projects (COTRAMS)	Submit	Review and approve
Quarterly	Local Coordinating Council (LCC) and Regional Coordinating Council (RCC) meetings	Attend	Attend as needed
	RTAP and other training opportunities	Attend	Schedule and conduct
	CASTA committees	Participate and attend	Participate and attend
	Risk assessments (COTRAMS)	Complete	Complete
	Quarterly Reports (Section 5311 and Section 5311[f] recipients)*	Prepare	Review

Table A3.1. Baseline Activities

COTRAMS = Colorado Transit & Rail Awards Management System		NTD = National Transit Database	
LCC = Local Coordinating Council		DTR = Division of Transit and Rail	
RCC = Regional Coordinating Council		FTA = Federal Transit Administration	
RTAP = Rural Transit Assistance Program		TrAMS = Transit Award Management System	
CASTA = Colorado Association of Transit Agencies			
	Activity	Subrecipient	DTR
	Program Measures Reports (Section 5310 recipients)**	Prepare	Review
Annually (spring)	Transit Open Houses	Attend	Prepare for and conduct

*Quarterly Reports are designed to assist 5311 and 5311(f) subrecipients capture the service information quarterly that they are required to report annually in the National Transit Database (NTD). Subrecipients that have active 5311 and 5311(f) projects must complete these reports in COTRAMS quarterly.

** Program Measures Reports are required from subrecipients that have active 5310 projects. These reports ask for updates on program performance: gaps in service filled and ridership. Subrecipients are encouraged to include a client story or success story, as these are important to share with the FTA. Subrecipients must complete these quarterly in COTRAMS; DTR then submits the reports to FTA using TrAMS.

A3.10.2 Subrecipient Information Request and Site Review

All subrecipients are required complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from FTA’s current Comprehensive Review Guide

(<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>) that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

The SIR may be completed differently by agencies because some of the areas are only applicable to certain funding sources or for certain types of projects. The process is illustrated in Flowchart A3-2 Subrecipient Information Request (SIR) and Site Review and includes the following:

Pre-Review. Project Coordinators send notifications to the agencies scheduled to have a Site Review. The notification stating the purpose of the SIR according to the risk-based and SIR oversight policy. A site review date is agreed upon and scheduled. The subrecipient receives a SIR custom created for the agency made up of questions for the subrecipient to answer and a request for copies of the subrecipient's program documents. The notification includes a deadline to return the completed SIR and upload the requested documents to COTRAMS.

Desk Review. Project Coordinators complete an Internal SIR document that captures their comments on the subrecipient's SIR and documents submission. Based on the review of the provided documentation, the Project Coordinator develops questions, highlights areas of concern, and identifies additional areas for discussion, such as upcoming projects and needs. A detailed agenda for the site review is sent to the subrecipient prior to the scheduled Site Visit.

Site Visit. The Site Visit view is typically a one-day meeting with facility and/or bus tours, as appropriate. The reviews are an opportunity for the Project Coordinator and the subrecipient to review projects, help subrecipient reach compliance requirements, identify opportunities for improvement, answer questions, and identify future needs. Attendees include the agency executive staff, the Project Coordinator, and representatives from other CDOT/DTR programs, as needed (TAM, Civil Rights, Audit, Business Office, Drug & Alcohol program, Rural Transit Assistance Program (RTAP), CDOT Regional Planner, and others). Subrecipients are responsible for ensuring that pertinent staff members are available.

Site Visits begin with an entrance conference stating the purpose of the review and a reminder that the informal "findings" are a reflection on CDOT's oversight. Site Visits follow the pre-arranged agenda and leave ample time for the in-person checklist, especially checking maintenance records. The site visit ends with an exit conference to review the notes taken during the site visits and clarify any next steps.

Post-Review: The Project Coordinator sends a follow-up letter declaring whether or not the subrecipient is in compliance; and documenting observations, recommendations, and conclusions. Follow-up actions required by the subrecipient are also identified, including, if needed, additional training and technical assistance or a corrective action plan with a timeline.

A3.10.2.1 Frequency and Level of Oversight

After the initial SIR and Site Review, the frequency and level of oversight are based on the results of the scores of the Risk Assessment completed by the subrecipient and DTR in COTRAMS after an award. The Risk Assessment process is described in Chapter 3 (Section 3.5.1). DTR’s objective is to provide the appropriate level of oversight based on the risk assessment scores and the needs of the specific agency.

The combined numerical score from the Risk Assessment corresponds to High, Medium/High, Medium/Low, and Low level of oversight. DTR uses the Low to High ratings to determine how often a Subrecipient is asked to complete the SIR and participate in a Site Review. The percentage of Subrecipients at the different risk levels participating in the SIR and Site Review is illustrated in Figure A3.2.

Figure A3.2. Subrecipients Participating in SIR



A3.10.3 FTA Certifications and Assurances

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA Assistance Programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient’s award during the current federal fiscal year.

FTA issues a list of required certifications and assurances for each fiscal year. The FY 2019 list available at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances> and is included as Attachment A3-2 FTA FY 2019 Certifications and Assurances. Some certifications and assurances apply to all applicants. Others are required from applicants requesting more than \$100,000 in federal assistance or depend on the type of applicant or project.

A3.10.3.1 Program Documents

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the SIR and Site Review Process; however, subrecipients are expected to have updated documents in COTRAMS on an ongoing basis.

These documents cover all of the applicable areas of review in the FTA's Comprehensive Review Guide (<https://www.transit.dot.gov/regulations-and-guidance/program-oversight/program-oversight>).

Individual FTA programs require additional submittals. Specific program requirements are detailed in Appendix A (FTA programs) and Appendix B (state programs).

Finally, there are Civil Rights requirements related to Civil Rights programs for both CDOT and subrecipients. These are described in Chapter 5.

A3.10.3.2 Remedies for Noncompliance

Remedies for a subrecipient's noncompliance with the statutes, regulations, or the terms and conditions of the award or the executed subaward agreement are set forth in 2 CFR 200 (<https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>). If CDOT determines that a subrecipient is not complying with the general or specific terms of an award, CDOT may impose additional conditions to the award, as described in 2 CFR 200.207, or take additional actions, as detailed in 2 CFR 200.338. Rules pertaining to noncompliance are defined in CDOT's executed subaward agreement with the subrecipient in the Breach of Agreement and Remedies sections. CDOT's standard subaward agreement is included as Attachment A3-3 CDOT Standard Subaward Agreement.

A3.10.4 Project Amendments

Subrecipients are responsible for reporting to DTR whenever one or more of the following occurs:

- Budget or schedule changes.
- Milestone or completion dates were not met.
- Identification of problem areas and how the problems will be resolved.
- Expected impacts and the efforts to recover from delays.

DTR takes proactive steps to address issues on projects that are not meeting performance standards, including identifying resources for subrecipient project managers, identifying specific issues causing the delay, and providing a date certain by which time requirements must be met.

CDOT works with a subrecipient to obtain FTA's prior approval of proposed changes, then amend the subaward agreement to extend the end date or adjust awarded amount to reflect the approved changes. The process DTR uses to amend a capital project is shown in Flowchart A3-3 Amendment for Capital Project.

A3.10.5 Subaward (Project) Performance Schedule

The subrecipient is responsible for meeting the schedule requirements included in the executed subaward agreement and reporting through COTRAMS on meeting milestones. The DTR Project Coordinator confirms on a regular basis that the project is performing on schedule. If it falls behind schedule, Project Coordinator notifies the DTR Unit Manager and DTR Director of the underperforming project, and a plan is developed to remediate or terminate the project.

The DTR Unit Managers and the DTR Director monitors schedule changes, with the goal of efficiently addressing underperforming projects and taking proactive steps to close out the projects in a timely manner.

A3.10.6 Invoicing and Reimbursement

A3.10.6.1 Governing Policies

The federal Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called Uniform Guidance) is the authoritative set of rules and requirements for federal awards and project management (<https://www.grants.gov/learn-grants/grant-policies/omb-uniform-guidance-2014.html>). In addition, specific requirements are outlined in FTA Circular 5010.1E Award Management Requirements, which is included as an Appendix to the State Management Plan (SMP) and can be found at: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/32136/5010-1e-circular-award-management-requirements-7-21-2017.pdf>. Requirements for invoicing and reimbursement are also covered in 2 CFR 200.

The State of Colorado “Fiscal Rules” govern the administrative procedures for reviewing and accepting all requests for reimbursement, and are stricter in some instances than required by federal law. The state fiscal rules are available from the Office of the State Controller at <https://www.colorado.gov/pacific/osc/alpha-index-6#F>

A3.10.6.2 DTR Reimbursement to Subrecipients

According to state fiscal rules, CDOT will not reimburse subrecipients for expenses incurred prior to the date of subaward agreement execution, unless the agreement contains a 60-day retroactivity clause (typically operating projects). Under an executed subaward agreement, a subrecipient must first incur costs before submitting an invoice for reimbursement.

Reimbursement Requests may be held for payment due to any breach of the executed subaward agreement, i.e., lack of reporting or other documented noncompliance with the subaward agreement terms.

A3.10.6.2.1 Eligible Expenses

According to federal and state policies, CDOT pays all reasonable and fully and accurately documented requests for reimbursement within 30 to 45 calendar days of submittal. If the documentation is incomplete or there are ineligible expenses in the invoice, the process may take longer.

Eligible expenses are defined in an exhibit to the executed subaward agreement titled Verification of Payment checklist and vary depending on the type of project. Information about how to submit documentation for reimbursement is outlined in the COTRAMS Manual.

Supporting documentation for the expenses and payment of expenses includes, but is not limited to, accounting records, such as cancelled checks, paid bills with receipts, or other proof-of-payment; payroll; time and attendance records; contracts; and subaward documents. Some programs have specific requirements related to documentation.

A3.10.6.2.2 Invoicing/Reimbursement Request Schedule

CDOT requires subrecipients to submit reimbursement requests in a timely fashion and regularly, according to the executed agreement.

Delay in submitting invoices may result in the subrecipient being considered a higher-risk agency and more stringent requirements may be placed on the agency. For example, the agency may be required to provide additional or more detailed documentation in its reimbursement requests. Or, the agency may be required to clear the backlog of invoices before CDOT will approve future applications from the agency.

The process for reimbursement for capital projects is illustrated in Flowchart A3-4 Capital Project Reimbursement Request.

A3.10.7 Procurement Policies and Procedures

A3.10.7.1 CDOT Direct Procurements

CDOT's Procurement and Contract Services office oversees CDOT's direct procurement of goods and services in accordance with State of Colorado Procurement Code and Fiscal Rules. This includes procurement of professional architectural and engineering services, as well as services that do not require an architectural or engineering license. Resources are available at <https://www.codot.gov/business/procurement-and-contract-services>.

The State of Colorado procurement policies and procedures are located here: <https://www.colorado.gov/pacific/osc/procurement-resources> and described further in the following documents:

- Procurement Code (Title 24, Article 101 to Article 112), modernized under Colorado House Bill 17-1051.
(<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYT>)

[kxMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crd=de9a576c-afd4-46c2-8253-d5e72996d564\)](https://www.colorado.gov/pacific/sites/default/files/2017A_1051_signed.pdf)

https://www.colorado.gov/pacific/sites/default/files/2017A_1051_signed.pdf

- State of Colorado Procurement Code of Ethics and Guidelines
<https://www.colorado.gov/pacific/sites/default/files/State%20of%20Colorado%20Procurement%20Code%20of%20Ethics%20and%20Guidelines.pdf>
- State of Colorado Procurement & Fiscal Rules
(<https://www.sos.state.co.us/CCR/NumericalCCRDclList.do?deptID=14&deptName=100,800%20Department%20of%20Personnel%20and%20Administration&agencyID=40&agencyName=101%20Division%20of%20Finance%20and%20Procurement>)

A3.10.7.2 Professional Services Contracts

In Colorado, procurement of professional architectural and engineering services is governed under The Brooks Act. Professional services that are not performed by a licensed architect or engineer are considered “personal services.” CDOT’s Procurement Office conducts the procurement process in collaboration with DTR for these types of services according to the Procurement Code and State of Colorado Procurement & Fiscal Rules. The selection is generally made based on meeting minimum requirements and that are outlined in an Invitation for Bid (IFB) or Request for Proposal (RFP).

CDOT’s process for this type of procurement is documented in Flowchart A3-5 Personal Services Procurement. A sample RFP is included as Attachment A3-4 Sample Personal Services RFP.

A3.10.7.3 Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards set forth in 2 CFR 200.319 and Title 49 United States Code 5325(a) (<https://www.gpo.gov/fdsys/pkg/USCODE-2009-title49/pdf/USCODE-2009-title49-subtitleIII-chap53-sec5325.pdf>). CDOT encourages full and open competition.

For its direct procurements, CDOT advertises in the Rocky Mountain Bid System and has an open prequalification process for consultants and contractors wishing to do business with CDOT.

A3.10.7.4 Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

In accordance with 49 CFR Part 26, CDOT seeks to ensure non-discrimination in the award and administration of DOT-assisted contract and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

Detailed information about CDOT’s DBE Program and requirements for subrecipients regarding DBE contracting are provided in Chapter 5.

A3.10.7.5 Third-Party Procurements

As recipients of federal funds used in third-party procurements, CDOT and its subrecipients must comply with the State of Colorado Procurement Code for non-federal procurements, as well as the federal procurement standards outlined in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions. Subrecipients must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (2 CFR 200.321).

CDOT and its subrecipients are also responsible for ensuring that all of its contracts or subcontracts made in connection with FTA transit funds comply with provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Subrecipients must track all prime contractors and subcontractors, including DBEs, on all awarded, in process, and closed FTA-funded contracts.

DTR's policies and procedures related to third-party procurements are outlined in Attachment A3-5 DTR Quick Procurement Guide.

A3.10.7.5.1 DTR Oversight of Third-party Procurements

In its oversight role, DTR monitors and oversees subrecipient purchases of goods and/or services using FTA and state funds to confirm that the procurements are conducted in compliance with applicable state and federal regulations. Subrecipients must incorporate DBE nondiscrimination language into procurement documents and awarded contracts.

DTR coordinates, as needed, with the CDOT Procurement and Contract Services office throughout the procurement process. The Procurement Office reviews the scope of work/specifications; makes recommendation on type of procurement; and drafts and reviews the procurement subaward agreements, Purchase Orders, and associated documentation. The Procurement Office conducts annual training for subrecipients on CDOT procurement procedures. In addition, DBE civil rights requirements related to procurement are coordinated with the CRBRC in accordance with 49 CFR part 26.

A3.10.7.5.2 Subrecipient Written Procurement Procedures

Subrecipients are required to have written procurement procedures that conform to applicable state and local regulations, as well as the federal law and the standards set forth in 2 CFR § 200.318 General Procurement Standards through 2 CFR § 200.326 Contract Provisions.

Below is a list of what should be included in a subrecipient's written procedures for third-party procurements:

- DBE policy or goal
- Identified dollar thresholds, specifically for sealed bids/competitive process

- Description of management of payment to contractors
- A protest and appeal process
- Standards of conduct
- Graduated purchasing authority (what employee can authorize what type of purchase?)
- Policy for the documentation of responsibility determinations (prior to the award, the bidders are checked for integrity, compliance, past performance, etc.)

A3.10.7.5.3 Subrecipient Third-Party Procurement Process

Subrecipients are required to submit required documentation in COTRAMS for Project Coordinator's review and approval at each step of the third-party procurement process. The procurement process is explained in detail in Attachment A3-5 DTR Quick Procurement Guide.

An overview of the Procurement process is illustrated in Flowchart A3-6 Third-Party Procurement. Requirements for the submittals are detailed in the following sections.

Prepare Independent Cost Estimate

Subrecipients must prepare an Independent Cost Estimate prior to conducting a procurement process. This helps to determine the appropriate procurement method and the special requirements for it, as outlined in 2 CFR 200.320.

Determine Procurement Method

A Project Coordinator is available to assist a subrecipient in determining which procurement method to use. Procurements may be conducted by an individual agency or through a joint procurement with multiple agencies with common specifications.

Requirements for the different procurement methods can be referenced in Attachment A3-5 DTR Quick Procurement Guide.

Procurement Forms

DTR follows a 4-step Procurement Approval process in COTRAMS, where the following forms are collected. These forms are more fully explained in Attachment A3-5 DTR Quick Procurement Guide.

- PCR: Procurement Concurrence Request
- PA: Purchase Authorization
- NA: Notice of Acceptance and Vehicle Checklist
- SA: Security Agreement

Post-Procurement Administrative Requirements

The subrecipient must include the following items in its procurement records and make them available for the Project Coordinator upon request.

- Record of any debriefing with proposers

- Record of any protest and subrecipient response

Retention Requirement for Procurement Documentation

A subrecipient must keep written documentation of each procurement process for 3 years following completion of the project/procurement or project closeout.

The FTA's Procurement Best Practices Manual recommends that agencies maintain records for three years following project completion

(<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>). Some examples of documentation to maintain in a written record of procurement history could include:

- Purchase request, acquisition planning information and other pre-solicitation documents.
- Rationale for the method of procurement (e.g., RFP, IFB, Sole Source).
- Independent cost estimate.
- Copy of the solicitation, all addenda and all amendments.
- List of sources solicited.
- Copies of published notices of proposed contract action.
- An abstract of each offer or quote.
- Reasons for contractor selection or rejection.
- Determination that contractor is responsive and responsible.
- Determination that price is fair and reasonable including an analysis of the cost and price data.
- Required internal approvals for award.
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing.
- Record of any protest.
- Required insurance documents, if any.
- Notice to proceed.

A3.10.8 Project Close-Out

Upon completion of the project—after the purchase of the goods for capital projects or at the end of the service period for operating or mobility management agreements as provided in 2 CFR § 200.343 and within 30 days of the final invoice paid—the subrecipient must submit a project closeout form through COTRAMS and notify the Project Coordinator to close the project. The executed subaward agreement includes the required project close-out elements or other project deliverables.

DTR's process for this is shown in Flowchart A3-7 Project Closeout.

CDOT's policy is to close out projects and FTA awards as soon as practicable and deobligate and reobligate unspent funds such that "older money" from these closed awards is used first for new projects.

The Project Coordinator verifies that the subrecipient has completed all of its responsibilities related to the project. Examples include:

- Final report and Quarterly reports submitted to DTR
- Vehicle title on file with DTR
- Copy of completed plan, if applicable for planning projects

When a project is closed out, terminated or partially terminated, the recipient is responsible for compliance with the requirements in 2 CFR § 200.344 Post-Close Out Adjustments and Continuing Responsibilities.

A3.10.9 Construction Projects

Construction projects each have a specific schedule and milestones as part of the subaward agreement. The subrecipient/contractor must follow the requirements set forth in the CDOT SMP and the Local Agency Manual, as it applies. The Local Agency manual can be found online at: https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual

Project Coordinators working with their subrecipients confirm on a regular basis that the project is performing on schedule. If the project falls behind schedule, the Project Coordinator notifies the Project Coordination Unit Manager and the DTR Director of the underperforming project. At that point, a plan will be developed to remediate or terminate the project.

A3.10.10 Other Provisions

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA assistance programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

All subrecipients are required to complete the SIR and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA's Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control

- Maintenance
- Procurement
- DBE
- Title VI
- ADA General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus
- Drug and Alcohol Program

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the SIR and Site Review process, but subrecipients are expected to have updated documents in COTRAMS on an ongoing basis.

Environmental protection requirements are reviewed during the pre-award phase of the application process, where DTR confirms that the required environmental clearances for the project have been obtained.

Buy America provisions, and pre-award and post-delivery reviews are confirmed through DTR's oversight of the subrecipient's procurement processes. Review and approval occurs with a PCR, PA, and NA—which the subrecipient is required to submit through COTRAMS for DTR's approval.

Restrictions on lobbying are included as part of the subaward agreement and are reaffirmed through annual Certifications and Assurances submittals through COTRAMS.

DTR has contracted with a drug and alcohol program consultant that works directly with subrecipients to comply with the regulations. The consultant is responsible for subrecipient training, compliance monitoring, and technical assistance.

The consultant reviews the subrecipient drug and alcohol testing program at a minimum every 3 years. Through review of the policy and records, the consultant confirms that the program meets federal requirements, that there is a compliant process for conducting random tests, that reports are adequate, secure and complete, that post-accident and pre-employment testing are conducted appropriately, and that collection sites meet federal requirements.

Training is provided to new recipients of Section 5307, 5309, 5311, 5316, or 5339 funds, as well as refresher training at the spring and fall Colorado Association of Transit Agencies (CASTA) conferences. The refresher training centers around determining reasonable suspicion for supervisors, training employees on drug and alcohol programs, and best practices for drug and alcohol programs.

The consultant monitors the subrecipient testing programs throughout the year. Subrecipients are required to report program testing results in the FTA's Drug & Alcohol Testing Management Information System (DAMIS) by March 15 for the prior year. DTR and the consultant work with subrecipients to make sure the reports are accurately submitted by the annual deadline.

ATTACHMENTS

Attachment A3-1. Subrecipient Information Request (SIR) and Site Review Checklist

COLORADO DEPARTMENT OF TRANSPORTATION: DIVISION OF TRANSIT AND RAIL

CHECKLIST IS MEANT FOR USE DURING SITE REVIEWS, DOES NOT REFLECT OFFICIAL FINDINGS

SITE REVIEW	NOTES
Use as an opportunity to show how well projects are progressing and to identify problem areas that might require technical assistance	
PROGRAM	
✓ Interview staff and review files to determine effectiveness of programs	
✓ Sample program brochures and hear updates	
FINANCIAL	
✓ Sample a few financial transactions for accuracy, completeness and review of source documentation (receipts), especially the appropriate use of funds.	
✓ Determine that accounting transactions are recorded in a timely manner.	
✓ Ask business office if they have any concerns.	
✓ Review where records are kept and how they are secured.	
PERSONNEL	
✓ Any new staff? Turnover contributed to?	
CONTRACTS	
✓ Review that contracts or subcontracts for services are conducted competitively (obtained multiple bids, use of selection procedures and monitoring techniques); maintains detailed records documenting the basis of all solicitations/procurements	
✓ Review contract and procurement records; view where they are stored and how they are secured. (PCR, PA, NA, SA)	
PROPERTY	
✓ Review whether recipient keeps adequate property records and maintains an up-to-date inventory of all property used on the grant	
✓ Are there proper controls in place to safeguard property against loss, damage, theft (ie, locked fences or garage, lighting, security system); Where are keys secured?	
✓ Check vehicle maintenance plan for preventative maintenance schedules.	

✓ Check that vehicle maintenance plan coincides with vehicle manufacturing recommendations?	
✓ Has your alternate maintenance schedule been approved by the manufacturer?	
✓ Check 2-3 vehicle records for +/- 500 mi or are within 10% variance to actuals in 80% of the audit sample.	
✓ How are warranty claims handled and tracked back to the manufacturer?	
✓ Record retention - policy & practice (3 years)	
CIVIL RIGHTS	
✓ Where is the (ADA & Title VI) discrimination complaint log kept? If any within the last 3 years, were they sent to CDOT Civil Rights Specialist?	
✓ Is the location of a discrimination complaint process posted on vehicles? At the transit center? Website?	
✓ Ensure correct Civil Rights contacts and ADA & Title VI complaint procedures are posted on the agency's website.	
✓ Ensure requests for reasonable modification are posted on the agency's website.	
SIGNAGE	
✓ Job Safety & Health Protection sign	
✓ If a Job Injury Occurs sign	
✓ Rights as a Worker sign	
✓ Equal Opportunity is the Law sign	
✓ Nondiscrimination public notice (i.e. reception desk - public location - and on the website)	
✓ ADA Policy (if applicable)	
TRANSIT FACILITIES	
<ul style="list-style-type: none"> ✓ Check that transit facilities are open to the public are ADA accessible: <ul style="list-style-type: none"> ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? ○ Is there clear access to the boarding area? ○ Is there a flat concrete pad at the boarding area? ○ Is there adequate seating present at the stop/station? ○ Are route numbers on the bus stop sign at least three inches tall? 	

<ul style="list-style-type: none"> ○ Are other signs at the stop/station easy to read? ○ Are there braille signs indicating which buses/trains use that stop/station? ○ Is visual information in terminals, bus stops, or stations variable: by size, contrast, color, layout, spacing, etc. ○ Is auditory information available and are alternatives provided, such as text or voice recognition-to-text technology, visual symbols for emphasis, sound alerts, etc. ○ Is there a clear path of travel from the transit stop/station to adjacent pedestrian pathways? 	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features in public facilities are operational i.e. automatic doorways 	
<p>If RIDE ALONG</p>	
<ul style="list-style-type: none"> ✓ Stop announcements made? 	
<ul style="list-style-type: none"> ✓ Ask operator to operate the lift or ramp. 	
<ul style="list-style-type: none"> ✓ Review if a pre-trip vehicle inspection checklist is used. What items are tracked on it? Lifts? 	
<p>ADA-VEHICLE</p>	
<ul style="list-style-type: none"> ✓ Review ADA accessibility features on vehicles are operational (ie, lifts, ramps, kneeling) 	
<ul style="list-style-type: none"> ✓ Review complementary paratransit bus schedules to ensure that they mirror the fixed route service provided. 	

Attachment A3-2. FTA FY 2019 Certifications and Assurances

CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

This certification appears on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 C.F.R. Part 21;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 C.F.R. Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated

- against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
- (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 C.F.R. Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 C.F.R. Part 24.
- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 C.F.R. Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.

- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a sub-recipient from:
- (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget's standard form 424D "Assurances—Construction Programs" and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 C.F.R. 200.324, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards,” 2 C.F.R. Part 200, particularly 2 C.F.R. §§ 200.317–200.326 “Procurement Standards;

- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 C.F.R. Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 C.F.R. § 180.300. Additionally, each applicant must disclose any information required by 2 C.F.R. § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

CATEGORY 2. TAX LIABILITY AND FELONY CONVICTIONS.

Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. As prescribed by U.S. DOT Order 4200.6, FTA requires each applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 3. LOBBYING.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 C.F.R. § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 C.F.R. Part 20.

3.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

3.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CATEGORY 4. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 C.F.R. § 604.4.

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 C.F.R. Part 604, the terms and conditions of which are incorporated herein by reference.

4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 C.F.R. § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 C.F.R. § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
 - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 C.F.R. § 605.11, the applicant agrees as follows:
 - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
 - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
 - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 5. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it has, or will develop, a transit asset management plan in compliance with 49 C.F.R. Part 625.

CATEGORY 6. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.

6.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 C.F.R. § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 C.F.R. Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 C.F.R. Part 663.

6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 C.F.R. § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 C.F.R. Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 7. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
 - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 8. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

CATEGORY 9. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

CATEGORY 10. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant, regardless of whether it is in an urbanized or rural area, will apply for an award under subsection (c) (low or no emission vehicle grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(c)(3).

Making this certification will incorporate by reference the applicable certifications in Category 7 or Category 8.

CATEGORY 11. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 7, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 7 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 7, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 12. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, this certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4).

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 C.F.R. Part 625.

CATEGORY 13. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks ("SIB") Program (23 U.S.C. § 610), it must make the certifications in Category 7 for the Urbanized Area Formula Grants Program, Category 9 for the Fixed Guideway Capital Investment Grants program, and Category 12 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 7, 9, and 12 by reference.

CATEGORY 14. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA's Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 C.F.R. § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 C.F.R. Part 655.

CATEGORY 15. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 C.F.R. §§ 659.43, 672.31, and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 C.F.R. part 659, "Rail Fixed Guideway Systems; State Safety Oversight";
- (b) Compliant with the requirements of 49 C.F.R. part 672, "Public Transportation Safety Certification Training Program"; and
- (c) Compliant with the requirements of 49 C.F.R. part 674, "State Safety Oversight".

CATEGORY 16. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 C.F.R. Part 37, it must make the following certification. This certification is required by 49 C.F.R. § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;

- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 17. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 18. CONSTRUCTION HIRING PREFERENCES.

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. G, title I, § 191.

The applicant certifies the following:

- (a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;
- (b) That the applicant will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and

- (c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

FTA FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES

FEDERAL FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: _____

The Applicant certifies to the applicable provisions of categories 01–18. _____

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Tax Liability and Felony Convictions	_____
03 Lobbying	_____
04 Private Sector Protections	_____
05 Transit Asset Management Plan	_____
06 Rolling Stock Buy America Reviews and Bus Testing	_____
07 Urbanized Area Formula Grants Program	_____
08 Formula Grants for Rural Areas	_____
09 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
10 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____
11 Enhanced Mobility of Seniors and Individuals with Disabilities Programs	_____
12 State of Good Repair Grants	_____
13 Infrastructure Finance Programs	_____
14 Alcohol and Controlled Substances Testing	_____
15 Rail Safety Training and Oversight	_____
16 Demand Responsive Service	_____
17 Interest and Financing Costs	_____
18 Construction Hiring Preferences	_____

FEDERAL FISCAL YEAR 2019 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE

PAGE

(Required of all Applicants for federal assistance to be awarded by FTA in FY 2019)

AFFIRMATION OF APPLICANT

Name of the Applicant: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in federal fiscal year 2019, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Award for which it now seeks, or may later seek federal assistance to be awarded during federal fiscal year 2019.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____ Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature _____ Date: _____

Name _____ Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.

Attachment A3-3. CDOT Standard Subaward Agreement

STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number/PO Number XX-HTR-ZL-XXXXXX/491XXXXXX		
Subrecipient XXXXXXXXXXXX	Agreement Performance Beginning Date The Effective Date		
Subaward Agreement Amount Federal Funds Maximum Amount (80%) \$XX,XXX.XX Local Funds Local Match Amount (20%) \$XX,XXX.XX Agreement Total \$XX,XXX.XX	Initial Agreement Expiration Date December 31, 2021 Fund Expenditure End Date December 31, 2021		
Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.			
Agreement Purpose XXXXXXXXXXXX			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Required Federal Contract/Agreement Clauses. 5. Exhibit E – Verification of Payment. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit C – Federal Provisions. 2. Exhibit D – Required Federal Contract/Agreement Clauses. 3. Colorado Special Provisions in §18 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A – Statement of Work and Budget. 6. Exhibit B – Sample Option Letter 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: To Be Determined Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 TBD </td> <td style="width: 50%; border: none;"> For Subrecipient: XXXXXXXX XXXXXXXX XXXXXXXX XXXXXX, XX XXXXXX-XXXX XXXXXXXX@XXXXXXXX.org </td> </tr> </table>		For the State: To Be Determined Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 TBD	For Subrecipient: XXXXXXXX XXXXXXXX XXXXXXXX XXXXXX, XX XXXXXX-XXXX XXXXXXXX@XXXXXXXX.org
For the State: To Be Determined Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 TBD	For Subrecipient: XXXXXXXX XXXXXXXX XXXXXXXX XXXXXX, XX XXXXXX-XXXX XXXXXXXX@XXXXXXXX.org		

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p style="text-align: center;">SUBRECIPIENT XXXXXXX</p> <hr/> <p>By: Print Name of Authorized Individual _____</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p>By: _____</p> <p>Date: _____</p>
<p>2nd State or Subrecipient Signature if needed</p> <hr/> <p>By: Print Name of Authorized Individual _____</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p>By: Assistant Attorney General _____</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <hr/> <p style="text-align: center;">By: Colorado Department of Transportation</p> <p style="text-align: center;">Effective Date: _____</p>	

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1. PARTIES

This Agreement is entered into by and between Subrecipient named on the Cover Page for this Agreement (the “Subrecipient”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Subrecipient and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Subrecipient, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Subrecipient of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Subrecipient shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- H. **"End of Term Extension"** means the time period defined in §2.D.

- I. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- L. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. Federal Transit Administration (FTA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- M. **“FTA”** means Federal Transit Administration.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- O. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et. seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. **“Initial Term”** means the time period defined in §2.B.
- R. **“Master Agreement”** means the FTA Master Agreement document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.
- S. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- T. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- U. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- V. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- W. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- BB. **“Subcontractor”** means third-parties, if any, engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of grant funds.
- CC. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Contractor is a Subrecipient.
- DD. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- EE. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- FF. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK AND BUDGET

Subrecipient shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Subrecipient for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO SUBRECIPIENT

A. Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Agreement Maximum shown on Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on

delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Subrecipient shall provide Matching Funds as provided in §5.A. and Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's treasury or bank account. Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies

D. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of §5, this Agreement, and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.
- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the maximum total amount described in Exhibit A and §5 for all allowable costs described in this Subaward and shown in Exhibit A, except that Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change,

the change does not modify the total maximum amount of this Agreement or the maximum amount for any state or federal fiscal year, and the change does not modify any requirements of the Work.

- iii. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within 1 year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Agreement having a term longer than 3 months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §14.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Subrecipient shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final

expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Subrecipient or any of its Subcontractors will or may receive the following types of data, Subrecipient or its Subcontractors shall provide for the security of such data. Subrecipient shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Subrecipient shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure

environment that ensures confidentiality of all State Confidential Information wherever located. Subrecipient shall provide the State with access, subject to Subrecipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subrecipient shall return State Records provided to Subrecipient or destroy such State Records and certify to the State that it has done so, as directed by the State. If Subrecipient is prevented by law or regulation from returning or destroying State Confidential Information, Subrecipient warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that none of Subrecipient or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent subrecipients, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or self-insurance program carried by Subrecipient or the State.

F. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and Subrecipient shall forward such notice to the State in accordance with §14 within 7 days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All commercial insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each commercial insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall

deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Subrecipient is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Government and State purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Subrecipient under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Subrecipient agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Subrecipient's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in §17.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Subrecipient shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Subrecipient, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Subrecipient in violation of §8 may be cause for legal action by third parties against Subrecipient, the State, or their respective agents. Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation

to any act or omission by Subrecipient, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Subrecipient shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

U. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibit D at all times during the term of this Agreement.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Subrecipient's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Contract and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Subrecipient has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subrecipient's services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Subrecipient (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political

subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount	Option Agreement Number Insert CMS number or Other Contract Number of this Option
Federal Funds Maximum Amount (%) \$0.00	Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year
Local Funds Local Match Amount (%) \$0.00	
Agreement Total \$0.00	Current Agreement Expiration Date Month, Day, Year

1. **OPTIONS:**

A. Option to extend for an Extension Term.

2. **REQUIRED PROVISIONS:**

A. **For use with Option 1(A):** In accordance with Section(s) 2.B of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

B. **For use with Options 1(A):** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. **OPTION EFFECTIVE DATE:**

A. The effective date of this Option Letter is upon approval of the State Controller or, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD
By: <u>Name & Title of Person Signing for Agency or IHE</u>	By: <u>Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</u>
Date: _____	Option Effective Date: _____

EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award *does not* include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Contract or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION.

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §0 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §0 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §0 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D - Required FEDERAL Contract/Agreement Clauses

All FTA-Assisted Third-Party Contracts and Subawards from the Current FTA Master Agreement [FTA MA(25)]

Section 3.I. – No Federal government obligations to third-parties by use of a disclaimer

No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4.e. – Program fraud and false or fraudulent statements and related acts

False or Fraudulent Statements or Claims.

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- (a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying

Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.

- (e) *Closeout*. Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

3.G – Federal Changes

Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.

12 – Civil Rights

- (c) *Nondiscrimination – Title VI of the Civil Rights Act*. The Recipient agrees to, and assures that each Third Party Participant will:

- (1) Prohibit discrimination based on race, color, or national origin,
- (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
 - (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.

- (d) *Equal Employment Opportunity*.

- (1) *Federal Requirements and Guidance*. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - (ii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
 - (iv) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.
- (2) *Specifics*. The Recipient agrees to, and assures that each Third Party Participant will:
 - (i) *Affirmative Action*. If required to do so by U.S. DOT regulations (49 C.F.R. part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) *Indian Tribe*. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
- (3) *Equal Employment Opportunity Requirements for Construction Activities*. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and

- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (h) *Nondiscrimination on the Basis of Disability*. The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
- (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
 - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
 - (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
 - (xi) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- (a) *Federal Laws, Regulations, Requirements, and Guidance*. The Recipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

- (i) *Energy Conservation*. The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

Applicable to Awards exceeding \$10,000

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 16. Procurement

- (a) *Debarment and Suspension.* The Recipient agrees to the following:
- (1) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
 - (2) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:
 - (i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
 - (ii) U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto;
 - (iii) Executive Order No. 12549, “Debarment and Suspension of Participants in Federal Programs,” February 18, 1986, 31 U.S.C. § 6101 note, as amended by Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989 31 U.S.C. § 6101 note; and
 - (iv) Other applicable federal laws, regulations, requirements, or guidance regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - (4) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
 - (iii) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);

- (b) *Cargo Preference–Use of United States-Flag Vessels.* The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. part 381; and
- (c) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

Section 39. Disputes, Breaches, Defaults, or Other Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics, Political Activity, and Certain Criminal Activity.

- (a) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and

- (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

Clean Air and Clean Water - From 16(e.):

- (7) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- (a) Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) Cargo Preference—Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 C.F.R. part 381; and
- (c) Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),
 - (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
 - (c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (2) Wage and Hour Requirements of:
 - (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (3) "Anti-Kickback" Prohibitions of:
 - (a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,
 - (b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and
 - (c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 C.F.R. part 3.
 - (4) Construction Site Safety of:
 - (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

From Section 16

- (e) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (4) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708).* Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (o) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
- (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

From Section 23

- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117.

Section 12 Civil Rights d.3

- (3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour

protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Applicable to Transit Operations

From Section 24. Employee Protections

- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
- a. *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.
 - b. *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
 - c. *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.
- (b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)- type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.
- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 C.F.R. part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 32. Public Transportation Safety.

- (a) *Public Transportation Agency Safety Program.* The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.
- (b) *State Safety Oversight of Rail Fixed Guideway Public Transportation Systems.* For a Recipient that is a state with a rail fixed guideway public transportation system, the Recipient agrees as follows:
 - (1) *Laws.* It will comply with State Safety Oversight requirements under 49 U.S.C. § 5329(e) and implementing regulations at 49 C.F.R. part 674, or 49 U.S.C. § 5330 and implementing regulations at 49 C.F.R. part 659.
 - (2) *State Safety Oversight Program.* A Recipient must have a State Safety Oversight Program certified under 49 C.F.R. part 674 no later than April 15, 2019.
 - (3) *Regulations.* The Recipient will comply with FTA regulations, “State Safety Oversight,” 49 C.F.R. part 659, until the Recipient has a certified State Safety Oversight Program under 49 C.F.R. part 674. A Recipient that has a certified State Safety Oversight Program will comply with the regulations at 49 C.F.R. part 674.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 C.F.R. part 605, and any other applicable federal “School Bus Operations” laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
 - (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 et seq.;
 - (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 C.F.R. part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
 - (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
 - (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or

- (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights*. The Recipient agrees that:
 - (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and 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.
- (c) *License Fees and Royalties*. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions*. The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - (1) Prohibitions. The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) Exceptions. The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights*. The Recipient agrees that:
 - (1) General. It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - (2) U.S. DOT Public Access Plan – Copyright License. The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs*. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
 - (1) *Publicly Available Report*. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports*. It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data*. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.

- (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
- (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
- (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.
- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- a. Disadvantaged Business Enterprise (and Prompt Payment and Return of Retainage).
 - (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
 - a. *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - i. Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note;
 - ii. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26; and
 - iii. Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.

- b. *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 C.F.R. part 26.
- c. *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - i. *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26; and
 - ii. *Reporting TVM Awards.* Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- d. *Assurance.* As required by 49 C.F.R. § 26.13(a):
 - i. *Recipient Assurance.* The Recipient agrees and assures that:
 - 1. It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - 3. Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - 4. Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - ii. *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - 1. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26;
 - 2. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - 3. Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- e. *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- (h) *Nondiscrimination on the Basis of Disability.* The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
 - a. Federal laws, including:
 - i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - ii. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - A. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but

- B. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - iii. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - iv. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - v. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- b. Federal regulations and guidance, including:
- i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
 - ii. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
 - iii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
 - iv. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
 - v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
 - vi. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
 - vii. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
 - viii. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
 - ix. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
 - x. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
 - xi. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - xii. Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement. For Assignability

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:
- a. To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - b. To comply with the applicable U.S. DOT Common Rules; and
 - c. To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

EXHIBIT E, VERIFICATION OF PAYMENT

This checklist is to assist the Subrecipient in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change by CDOT. CDOT shall provide notice of any such changes to Subrecipient. All items may not apply to your particular entity. CDOT's goal is to reimburse Subrecipients as quickly as possible and a well organized and complete billing packet helps to expedite payment.

Verification of Payment –

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger
 - In-Kind (must be pre-approved by CDOT) and/or cash match
 - Date of the report
 - Accounting period
 - Current period transactions
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable
 - copies of checks
 - check registers
 - paycheck stub showing payment number and:
 - showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
- ✓ CDOT needs to ensure that expenditures incurred by the local agencies have been paid by Party ***before*** CDOT is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by CDOT prior to any work taking place.

- ✓ If in-kind or cash match is being used for the local match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the agreement or purchase order. FTA does not require pre-approval of in-kind or cash match, but CDOT does.
- ✓ General ledger must also show the in-kind and/or cash match.

Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by CDOT prior to applying it to the reimbursements.

- ✓ If indirect costs are being requested, an approved indirect letter from CDOT or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit or
- ✓ Submit the following fringe benefit rate proposal package to CDOT Audit Division:
 - Copy of Financial Statement
 - Personnel Cost Worksheet
 - State of Employee Benefits
 - Cost Policy Statement.

Attachment A3-4. Sample Personal Services RFP



SOLICITATION AND RESPONSE COVER SHEET
HAA (BID NUMBER), TITLE

Per the attached specifications, terms and conditions.

INSTRUCTIONS: Offeror (bidder) must complete this cover sheet, and attach it with their proposal. **Offerors are urged to read the solicitation document thoroughly before submitting a proposal.**

Submit Proposal to:	CDOT Supplier Self Service (SuSS) Portal SuSS Portal Help Desk 303-757-9848	Purchasing Agent:	Name, Phone, Email
Due Date:	mm/dd/yyyy, Xxxday	Time Due:	2:00 PM Mountain Time

OFFEROR INFORMATION

Offeror F.E.I.N.:	_____	
DUNS Number	_____	
Delivery Date:	_____	Payment Terms: (Minimum of Net 30) _____
Authorized Signature:	_____	
<small>Signature acknowledges acceptance of all terms and conditions of the solicitation.</small>		
Typed/Printed Name and Title:	_____	
Legal Company Name:	_____	
Doing Business As:	_____	
Address:	_____	
City:	State: _____	Zip: _____
Phone Number:	Fax Number: _____	
Contact for Clarifications:	_____	
Title:	_____	
Phone Number:	Fax Number: _____	
E-mail Address:	_____	

CDOT Supplier Self Service (SuSS) Portal and Registration: This solicitation is published using the SuSS Portal. Suppliers must be registered on the SuSS Portal in order to download solicitation documents and information (including any amendments or modifications) and to be considered responsive at the time of submission of the response. **Interested suppliers who have not registered in SuSS Portal must initiate registration immediately to ensure a responsive bid response.** Information may be accessed through the CDOT public web link: www.codot.gov/business/procurement-and-contract-services Registration assistance is provided by our Help Desk at 303-757-9848 or by email: dot_hq_srm_help@state.co.us

Offeror to answer and acknowledges by its signature above:

- Confirm that you are aware that the award notice will be published on [CDOT website](#): ____ Yes
- My company is registered on CDOT's SuSS Portal: ____ Yes / ____ No
- Proprietary Information: is in my response and as segregated pages: ____ Yes / ____ No
- Registered with the Colorado Secretary of State ____ No / ____ Yes, and # _____
- Offeror proposes using Subcontractors for this project: ____ Yes / ____ No
- Offeror has reviewed Modifications made to this RFP – list the Modification # last reviewed: _____
- If claiming SDVOSB (Service Disabled Veteran Owned Small Business) attach proof of certification: ____ Yes / ____ NA
- Offeror has reviewed Section 1.19, Protested Solicitations and Awards: ____ Yes

Colorado Revised Statutes Title 24, Article 109, Entitlement to Cost, in part states: "When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but, due to defect in the solicitation, was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs. No other costs shall be permitted and reasonable costs shall not include attorney fees."

Please read this Request for Proposal (RFP) thoroughly before responding. Illegible responses may be rejected as non-responsive.

The Colorado Department of Transportation (CDOT) reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, proposer agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid and/or quote, proposer agrees as follows:

- Except as replaced, modified, or supplemented by CDOT for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of, and are incorporated by reference into this document.
- Proposer testifies that bid prices were arrived at independently and there was no collusion involved.
- The Bidder/Proposer/Vendor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Proposers shall seek clarification from CDOT of any specifications, terms and/or conditions that they determine to be unclear. The failure of a proposer to seek clarification may be deemed a waiver of any such clarification.
- If applicable, low tie bids/proposals shall be decided in accordance with the provision of C.R.S. Section 24-103-202.5, as it currently exists or is hereafter amended, which gives a preference to resident bidders. Any bidder who wishes to be considered a "resident bidder" for purposes of the tie bid procedure provided in C.R.S. Section 24-103-202.5 shall include with their bid, proof that they meet the definition of resident bidder as set forth in either C.R.S. Section 24-103-101(6)(a) or C.R.S. Section 24-103-101(6)(b).
- Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the Colorado Division of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

NOTE: Results will be posted on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> or sent via postal system but will not be discussed by phone except as noted in the RFP document.

REQUEST FOR PROPOSAL THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE AND INQUIRIES:

This request for proposal is issued for the State of Colorado, the Colorado Department of Transportation, Center for Procurement and Contract Services.

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time specified in the Schedule of Activities, Prospective proposer's inquiry deadline. All contacts regarding this RFP is to be directed to:

(name),
 Purchasing Agent & Contract Administrator
 Colorado Department of Transportation
 Center for Procurement and Contract Services
 4201 East Arkansas Avenue, Room 200
 Denver, CO 80222
 (email)

Phone: Fax:

Subject line of the e-mail shall clearly state "Questions for RFP [number]" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9669). An addendum responding to questions submitted regarding the RFP will be published on the Supplier Self Service (SuSS) portal.

1.2 PURPOSE:

The purpose of this Request for Proposal (RFP) is to obtain competitive bid proposals from qualified firms interested in providing _____.

This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by CDOT to satisfy the needs as outlined in this RFP's Statement of Work.

1.3 SCHEDULE OF ACTIVITIES:	DATE:	TIME (MST)
1. RFP published on SuSS	_____	N/A
2. Prospective proposer's inquiry deadline (No questions accepted after this date)	Date _____	5:00 P.M.
3. Response to proposer questions	Date _____	5:00 P.M.
4. Proposal submission deadline	Date _____	2:00 P.M.
5. Top consultants selected and notified of interview (<u>estimate</u>), if appropriate	Date _____	TBD
6. Oral interviews with a short list of consultants (<u>estimate</u>), if required – week of	Date _____	TBD
7. Firms selected (<u>estimate</u>)	Date _____	N/A
8. <i>Desired</i> date of executed contract	Date _____	N/A

1.4 ELECTRONIC PROPOSAL SUBMISSION THROUGH SuSS:

Suppliers must upload their proposal to SuSS. CDOT procurement will distribute your uploaded proposal and any attachments to the evaluation panel.

1.5 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the SuSS. It is the proposer's responsibility to monitor the SuSS at the Internet site www.codot.gov/business/procurement-and-contract-services , and comply with all addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted regarding this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP will become public record and open to inspection after the Notice of Intent to Award notice is issued. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from the rest of the proposal, *i.e.*, uploaded to SuSS in a separate file. Such a request must include the proposer's justification for the material to be treated as proprietary or confidential. The request will be reviewed and either approved or denied by the CDOT Purchasing Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. **NEITHER COST NOR PRICING INFORMATION NOR A TOTAL PROPOSAL WILL BE CONSIDERED PROPRIETARY.** If any of the materials submitted by the Vendor to CDOT are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, CDOT will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will CDOT be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of CDOT. CDOT will inform Vendor if a request for the information is made by a third party and will give Vendor a chance to defend against any action seeking the materials.

1.9 REJECTION OF PROPOSALS:

CDOT reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format requested in this RFP may disqualify the proposal. Any exceptions to the Statement of Work must be clearly identified in the proposal. Inclusion of exceptions does not guarantee acceptance by the State of such variation, and may instead lead to rejection of the proposal as non-responsive. (See further Section 1.12 of this RFP.)

1.10 INCURRING COSTS:

Notwithstanding the statute, CDOT is not liable for any costs incurred by proposers prior to issuance of a legally executed contract. All costs to prepare and submit a response to this solicitation shall be borne solely by the proposer.

1.11 EVALUATION CRITERIA:

An evaluation will be made by a committee selected to evaluate the merits of all proposals received according to the evaluation criteria defined herein (Section 3). The recommendations of this group will be forwarded to the Purchasing Director for approval.

1.11.1 Failure of the proposer to provide in his/her proposal any information requested in this RFP may result in disqualification of the proposal. It is the sole responsibility of the proposing individual or firm to ensure all information requested in the RFP is included.

1.11.2 During the evaluation process, discussions/interviews may be scheduled with proposers who submit proposals determined to be reasonably competitive for selection for award. It will be upon the recommendation of the evaluation committee if discussions/interviews for clarification are needed.

1.11.3 The sole objective of the evaluation committee will be to recommend the proposer(s) whose proposal(s) is/are most responsive to CDOT's needs within the available resources. The specifications within this RFP represent the minimum performance necessary for response.

1.11.4 Specific evaluation criteria are outlined in Section 3 of this RFP, entitled Evaluation Criteria.

1.12 ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the autographic signature of the proposer, or an officer of the proposer, legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Any exceptions and/or variations to the terms and conditions presented in the RFP may be submitted as part of the proposal, with each such exception and/or variation identified clearly and thoroughly. Failure to identify any exceptions and/or variations in the submitted proposal shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP, and may result in cancellation of the award and such vendor may be removed from future solicitations. Submission of a proposal containing exceptions and/or variations does not guarantee of acceptance of such variations by CDOT, and may instead lead to the rejection of the proposal as non-responsive if the requested variations are determined to be extensive or unreasonable, by the evaluation committee assigned to this RFP solicitation.

1.13 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the sample contract, **Attachment B**.

1.14 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form, CDOT Form #637, with their proposal, **Attachment A** to this RFP.

1.15 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. Any firm affiliated or related to an employee of CDOT shall be ineligible to submit a proposal for the required services.

1.16 REQUEST FOR PROPOSAL:

The Request for Proposal Form - the cover page for this RFP - must be signed, by a person authorized to bind the proposer, and returned with the proposal.

1.17 AUDIT OF THE SELECTED PROPOSER:

Prior to final contract award, an audit may be conducted by the CDOT's External Audit Branch of the selected proposer. This audit will be for the purpose of ensuring that the selected firm is financially capable of performing the contract, that the cost information and prices quoted are reasonable, and that the selected proposer has adequate accounting practices to assure accurate tracking of contract costs.

Prior to final acceptance of the contract work, a closing audit of the proposer may be performed by the CDOT External Audit Branch. This final closeout audit will be performed upon completion of the contract to verify the accuracy of the billings and compliance with the contract provisions.

1.18 BUDGETED FUNDS:

The funds available for this solicitation are \$_____. OR CDOT is not disclosing the funds available for this solicitation at this time.

1.19 INTENT TO AWARD:

After a proposer is selected, an "Intent to Award" on <https://www.codot.gov/business/procurement-and-contract-services/awards-1> . After intent to award has been issued, interested parties may review any/all the proposals by making an appointment with:

(name),

HAA (BID NUMBER), TITLE

Purchasing Agent & Contract Administrator
Colorado Department of Transportation
Center for Procurement and Contract Services
4201 East Arkansas Avenue, Room 200
Denver, CO 80222
[\(email\)](#)
Phone: Fax:

1.20 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to a Procurement Official at dot_procurement@state.co.us. The protest shall be submitted in writing within ten (10) business days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Protests received after the ten-business-day period shall not be considered.

The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement by bid, RFP, or award number;
- C. A statement of the reasons for the protest; and
- D. Any available exhibits, evidence or documents substantiating the protest.

1.21 CONTRACT:

CDOT has provided as **Attachment B a Sample Contract** that it expects to enter into with the successful proposer. **Although submittal of a proposal is agreement to the entire contract without exception, under certain circumstances CDOT may be agreeable to negotiating minor modifications to the Sample Contract. Any modifications requested must be submitted concurrently and clearly labeled as *Suggested Contract Exceptions* in the bid response. CDOT makes no guarantees that the proposed exceptions will be accepted or negotiated.** If the Bidder is awarded a contract and refuses to sign the contract as provided in this solicitation, CDOT may reject the Bidder proposal for this work. Under no circumstances shall the Bidder submit its own boilerplate of terms and conditions.

The initial term of the Contract shall be 1 year. Initial term of the Contract shall be from date of execution through the initial term of the award. If a contract, at its sole discretion, the State, upon written notice to the Contractor, may unilaterally renew the term of the Contract for **four (4)** additional terms of 1 year, including, but not limited to prices, rates and service delivery requirements. Bidder agrees to deliver under this solicitation for the full initial term and any renewals.

CDOT may elect to renew services annually contingent upon: (1) the results and recommendations generated through this contract; (2) the State's satisfaction and acceptance of the selected vendor's services and deliverables upon completion of each anticipated contract year; and (3) availability of funding to continue services.

1.22 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP evaluation. Upon review and approval of the evaluation committee's recommendation for award(s), the CDOT Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer(s). Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. A contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer(s) that receive a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer(s) shall not take any actions(s) to prepare for or start the performance of the RFP work/services until a contract is so negotiated and executed. In addition, a contract must be completed and signed by all parties concerned on or before the date indicated in the Schedule of Activities.

1.23 AWARD OF CONTRACT:

The award will be made to that proposer(s) whose proposal conforms to the RFP, and is/are judged to be the most advantageous to the State of Colorado and CDOT, price and other factors considered, subject to negotiation and execution of an acceptable contract as described above.

CDOT will award this solicitation and enter into a contract with the winning Proposer(s) through an executed State of Colorado, Department of Transportation Contract. CDOT intends to award to Offerors capable of fulfilling CDOT's current anticipated volume needs. However, should CDOT determine, at any time during the term of the resulting contract(s), that the number of awarded contractors is not adequate to properly fill CDOT's needs, CDOT reserves the right to make awards to Offerors who submitted responses to the original solicitation but were not awarded, or to re-issue the solicitation and make additional awards as necessary. If the solicitation is re-issued, current contractors in good standing will not be required to respond.

1.24 It is the intent of CDOT to select a vendor within 30 days of the deadline for receipt of proposals. However, bid proposals must be firm and valid for award for at least 120 days after the deadline for receipt of proposals.

1.25 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then will be made only with the approval of CDOT.

1.26 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.26.1. By submission of this proposal each proposer thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor; and
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.26.2 Each person signing the Invitation for Bid form of this RFP certifies that:
He/she is the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

or
He/she is not the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.26.1 (a) through (c) above.

1.26.3 A proposal will not be considered for award where 1.26.1 (a) and (c), and 1.26.2 above, have been deleted or modified. Where 1.26.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the CDOT's Purchasing Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.27 TAXES

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K), and from all State and Local Government Use Taxes (Ref.

Colorado Revised Statutes Chapter 39-26.114[a]). Proposer is hereby notified that when materials are purchased in certain political subdivisions the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.28 FUNDS AND COMPENSATION:

The funds payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado or CDOT.

1.29 BACKGROUND, OVERVIEW, GOALS:

Project Purpose

1.30 STATEMENT OF WORK:

See attached Statement of Work – Attachment C. **CDOT is not guaranteeing the award of any work.**

1.31 RESPONSIBILITIES

Responsibilities

1.32 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CDOT Purchasing Official, provided that the submission must be in STRICT accordance with the following procedures. The submission of information in strict accordance with such procedures shall be the SOLE RESPONSIBILITY of the proposer.

PROCEDURE FOR SUBMISSION:

- A. A written request for confidentiality shall be submitted, by the proposer with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY, AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED/PACKAGED from the rest of the proposal. Co-mingling of confidential/proprietary information and other information is NOT acceptable.
- E. The CDOT Purchasing Official will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Purchasing Official will be sent to the proposer.
- E. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Purchasing Official, and not given further consideration.

1.33 ORAL PRESENTATION/SITE VISITS:

Proposers may be asked to make oral presentations or to make their facilities available for a site inspection by the evaluation committee. Such presentations and/or site visits will be at the proposer's expense and for the total evaluation committee and the Purchasing Agent.

1.34 PROPOSAL PRICES:

Estimated proposal prices/amounts are not acceptable. Best and final offers may be considered in determining the apparent successful proposer, if requested, by the evaluation committee after oral presentations.

1.35 RFP CANCELLATION:

The State reserves the right to cancel this Request for Proposal at any time, without penalty.

1.36 PARENT COMPANY:

If a proposer is owned or controlled by a parent company, the name, main office address and parent company's tax identification number shall be provided in the proposal.

1.37 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

1.38 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract. Further, Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement the statutes govern this procurement.

1.39 COOPERATIVE PURCHASING AGREEMENT:

In accordance with 24-110-201 CRS, this solicitation may be issued to establish a cooperative purchasing agreement. The prices and rates from the awarded vendor's bid/proposal resulting from the solicitation may be used by the issuing entity, other state agencies, institutions of higher education, political subdivisions (i.e., cities, counties, schools) and eligible non-profit agencies. Each entity will be responsible for costs incurred by their entity and may use a commercial card or issue a purchase order/contract as appropriate by the ordering agency or entity.

1.40 COLORADO PROCUREMENT MODERNIZATION ACT:

As of August 9, 2017 the Colorado Procurement Modernization Act is in effect. As a result the following terms for all existing and future contracts will be void as a matter of law under Colorado Revised Statute 24-106-109:

- A. Any term that requires the State to indemnify or hold harmless the vendor or a 3rd party.
- B. Any term that requires the State to agree to binding arbitration or any other binding extra-judicial dispute resolution process.
- C. Any limitation of liability that includes bodily injury, death or damage to tangible property.
- D. Any term that requires legal disputes to be handled by any laws other than those of the state of Colorado. All contracts shall be governed by Colorado law.

All contracts containing terms 1.40 A-D above shall otherwise be enforceable as if they did not contain such terms.

1.41 EQUAL OPPORTUNITY AND NON-DISCRIMINATION:

CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.42 SUBCONTRACTING :

CDOT may award a single contract or multiple contracts. Subcontracting will be allowed under the Resulting award(s). Awarded vendors will be the Prime Contractor and will be fully accountable to CDOT for assuring that its subcontractors comply with all terms of the contract between CDOT and the Prime Contractor. All Subcontractors will be subject to the same State and Federal Laws,

Assurances and Certifications as the Prime Consultant.

1.43 COMPLIANCE WITH FEDERAL REQUIREMENTS

When a procurement involves the expenditure of federal assistance or federal contract funds, the Procurement Official shall comply with the appropriate federal law and the rules and regulations promulgated pursuant to such laws which are mandatorily applicable.

FEDERAL CLAUSES AND CERTIFICATIONS

1.44 Awarded Vendor(s) will be required to complete Federal Clauses and Certifications attached as Exhibit D prior to final award and execution of the contract.

1.45 RESPONSIBILITY OF VENDORS AND CONTRACTORS :

A determination of responsibility or non-responsibility shall be governed by these rules (R-24-103-401).

Standards of Responsibility

- (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor:
 - (i) has or can obtain the appropriate financial, material, equipment, facility, personnel resources and expertise to indicate the capability to meet all contractual requirements;
 - (ii) has a satisfactory record of performance;
 - (iii) has a satisfactory record of integrity;
 - (iv) does not appear on any debarred lists;
 - (v) is qualified legally to contract with the state; and
 - (vi) has supplied all necessary information in connection with the inquiry concerning responsibility.
- (b) The prospective contractor or vendor shall supply information requested by the procurement official concerning the responsibility of such contractor. If such contractor or vendor fails to supply the requested information, the chief procurement officer or procurement official shall base the determination of responsibility upon any available information.

Ability to Meet Standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) Evidence that such contractor possesses such necessary items;
- (b) Acceptable plans to subcontract for such necessary items; or
- (c) A documented commitment from, or explicit arrangement with a satisfactory source to provide the necessary items.

Written Determination of Non-Responsibility Required

If a prospective contractor or vendor who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the procurement official. A copy of the determination shall be sent promptly to the non-responsible prospective contractor or vendor. The determination shall be made part of the procurement record.

SECTION 2.0
INFORMATION REQUIRED FROM PROPOSERS
General Proposer Response Format

2.1 BACKGROUND:

This section of the proposal, should demonstrate the proposer's understanding of, and approach to, the described services, specifically addressing how *each element* of the Statement of Work will be accomplished using the _____ as an example. The proposal should include details of the following:

2.2 CONFLICT IDENTIFICATION:

Proposals must identify all current and former contract activity with any existing State agency or transportation authority, reasonably related to the work described in this RFP. Indicate when involvement occurred and length such involvement, the specific type of activity with identified agency and/or transportation authority, and indicate the extent of involvement with such entities.

2.3 WORK EXPERIENCE:

Using the _____ as an example of how expertise will be applied, the proposal should list and describe all relevant work experience and qualifications, including but not limited to:

- a. Describe why your firm is well qualified to provide the services that have been described in this RFP.
- b. Describe your firms experience and capabilities in _____
- c. Other

2.4 FORMAT FOR PROPOSALS – Submissions must be electronic and submitted through the CDOT SUSS vendor portal in one file. If file size does not permit one file, then clearly mark the sections of your submittal. Firms responding to this RFP should address the following items in no more than 16 pages, double sided (excluding appendices: resumes, sample reports, charts, graphs, or other supporting documentation), 11 pt. font, 8.5 x 11 letter size paper, 1.5 inch margins per submission. Do not leave pages blank. All pages must be clearly numbered and sections labeled. 11x17 formatting can be used if it's necessary to properly display charts, maps, or similar information and will be counted as a single page. Text should not be presented in 11x17 format. The Cover Letter will be included towards the page count.

COVER LETTER

A cover letter (separate from the RFP signature form) must be included that generally introduces the Project Team and the approach to completing various work items outlined in the statement of work under sections 1.30 & 1.31. It must be signed by a person with full authority to enter into a contract between the Contractor and CDOT.

2.5 FEES AND EXPENSES

Cost Proposal

Contractor shall complete the work identified in this **Exhibit C – Scope of Work** based on the following Cost Proposal:

A. Labor Costs

Employee Classification	Labor Rate	Total Hours	Total Cost
1.			
2.			
3.			

Total Labor Costs: \$ _____

B. Materials, Equipment, and Other Costs

Item Description	Quantity	Total Cost
1.		
2.		
3.		

Total Materials/Equip/Other Costs: \$ _____

C. Total Project Cost

The total project cost and Task Order Maximum Amount Payable is \$ _____.

The above project budget includes all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses.

OR

PRICES AND RATES

The total price of a Project shall be determined based on the following prices and rates:

A. Labor Rates

Employee Classification	Rate/Hour
1.	
2.	
3.	

B. Materials, Equipment, and Other Costs

Item Description	Unit Cost
1.	
2.	
3.	

The above rates shall include all fees, costs, and expenses, including, but not limited to, labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses. The State is not required to execute any minimum number of Task Orders under the Contract. Only one price/rate increase will be considered during any Renewal Term following the Initial Term.

2.6 VETERANS PREFERENCE:

A. Pursuant to C.R.S. 24-50-511, the State shall give consideration to proposers utilizing a preference for hiring veterans of military service *only* in the following manner:

- To break a tie between proposals following review, scoring and ranking by the evaluation committee. Such tie shall be broken by awarding the resulting contract to the proposer utilizing the greatest quantitative (numerical) preference for veterans in the hiring of its employees.

Veterans' preference will not be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

B. Proposers should be aware of the provisions of the recently enacted House Bill 14-1224 which sets Service Disabled Veteran Owned Small Business(SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the **Center for Veteran Enterprise within the U.S. Department of Veteran Affairs**.(www.vip.vetbiz.gov)

Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-211; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

SDVOSB preference will be used as a scored criterion in the evaluation and ranking of proposals received in response to this RFP solicitation.

2.7 MBE/WBE PARTICIPATION:

The State encourages its agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposer's are reminded of the illegality of discrimination, and the provisions of Procurement Code Section 24-111-102.

In accordance with 49 CFR Parts 23 and 26 and 14 CFR Part 152, the Colorado Department of Transportation and the contractors, subcontractors, cities, counties and other local entities with whom it does business will take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and participate in contracts and subcontracts financed with state and federal funds. This policy specifically upholds the Transportation Commission's commitment to fair and equitable business practices and is supported by CDOT's DBE program.

SECTION 3 EVALUATION CRITERIA

3.1 AWARD OF BID:

This section will outline the evaluation criteria to be used by the evaluation committee in the review, rating, and selection of submitted proposals. After evaluation of the written proposals, CDOT *may* request oral presentations from top-ranked proposers. The highest ranked proposals will be given fair and equal treatment during the second (optional) phase of the evaluation. Oral presentations will not be scored separately as part of this solicitation. Oral presentations will only be used to adjust the proposal scores accordingly (per the same evaluation criteria), based upon the information discussed at the presentation. The top-ranked proposal(s) (following conclusion of all phases of the evaluation) shall be recommended, by the evaluation committee, to enter into contract negotiations. The contract(s) will be awarded to those proposer(s) whose proposal (conforming to the RFP) is/are deemed to be the most advantageous to the State of Colorado, price and other factors considered.

3.2 EVALUATION PROCESS:

- 3.2.1 Each member of the evaluation committee will first independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP, followed by panel discussion and final scores ranking. The recommendations of this committee will then be forwarded by the purchasing agent, to the CDOT Procurement Director for review and final approval.
- 3.2.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as nonresponsive. It is the responsibility of the proposer to provide all information required by this RFP.
- 3.2.3 The sole objective of the evaluation committee will be to recommend the proposal most responsive to the State of Colorado's needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.
- 3.2.4 The top ranked proposal(s) (highest score(s)), following independent review and panel discussion, will be recommended either for award or, if the evaluators deem in appropriate, to make an oral presentation.
- 3.2.5 Proposal Scoring: The sole objective of the evaluation committee will be to score the responses and recommend the proposer(s) whose proposal is/are most advantageous to the State of Colorado, taking into consideration all evaluation factors set forth herein. Following independent review and panel discussion, the successful proposer(s) will be the one(s) accumulating the highest number of points (of a maximum 100) at the conclusion of the final stage of the selection process and whose proposal(s) is/are deemed most advantageous to the State, and who successfully negotiates the ensuing contract.

3.3 EVALUATION CRITERIA:

The complete proposal package will include, *but not be limited to*, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items presented in Section 1.30 and Section 2 of this RFP.

As stated in Section 2.1, proposals should not simply repeat what is written in Section 1.30 of this RFP – the Statement of Work, but rather evidence the proposer's understanding of the State's requirements and its ability to provide the services needed within a clearly defined and cost-effective budget. (Refer to Section 2 of this RFP).

1. **Understanding and Project Approach - describes clear understanding of CDOT goals and proposal and contains all required information including certifications and specific information about task in Scope of Work: (40%)**

- a.
- b.

c. .

2. **Overall Experience & Capabilities - describes relevant experience of the firm, proposed staff and team experience and clearly demonstrate expertise for this contract: (30%)**
 - a. .
 - b. .
 - c. .
3. **Qualifications and Ability to Provide Services - Sufficient staff/availability to perform in a timely manner, clear description of ability to respond and complete projects in a timely manner: (15%)**
 - a. Qualification and commitment of personnel.
4. **Budget and Narrative - describes cost effective and efficient staffing/procedures that demonstrate quality value of final product: (10%) (can be more, but not less)**
 - a. Information is provided as requested in Section 2.5 and no unacceptable modifications to the terms and conditions outlined in this RFP are proposed.
5. **Feasibility and Completeness: (5%)**
 - a. The proposal is both adequate and complete, as defined through the RFP.
 - b. The proposal inspires confidence in production of a quality-required product, solicited under the RFP.
6. **Service Disabled Veteran Owned Small Business (SDVOSB) Certification: (5% preference if applicable)**
 - a. Proposers should be aware that there is a Service Disabled Veteran Owned Small Business (SDVOSB) goal of at least 3% of all contracts by dollar value be awarded to SDVOSBs, who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and who are officially registered and verified as a SDVOSB by the *Center for Veteran Enterprise within the U.S. Department of Veteran Affairs*. (www.vip.vetbiz.gov)
 - b. Service Disabled Veteran Owned Small Business (SDVOSB), In accordance with Procurement Code C.R.S. 24-103-905; An Offeror claiming status as a service disabled veteran owned small business must identify itself as such in its proposal and provide documentation of its certification from the United States Department of Veteran Affairs with its bid response.

Attachment A

**COLORADO DEPARTMENT OF TRANSPORTATION
CONSULTANT CERTIFICATION**

CDOT Form #637

Consultant firm name	
Consultant firm complete address	
Authorized representative name (print)	Title
<p>I certify that neither I nor the above firm I represent has:</p> <ul style="list-style-type: none">- employed or retained for a commission, percentage, brokerage, gift, contingent fee or other consideration, any firm or person (other than a bonafide employee working solely for me or the above consultant) contingent upon or resulting from the award or making of this contract, or to solicit or secure this contract;- agreed as a known or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or- paid, or agreed to pay, to any firm, organization or person (other than a bonafide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; <p>I further certify that:</p> <ul style="list-style-type: none">- any exceptions to the conditions listed above are: <p>- wage rates and other factual unit costs supporting the compensation to be paid under this contract are accurate, complete and current.</p> <p>I acknowledge that this certificate is to be furnished to the Colorado Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.</p> <p>I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p>	
Firm representative signature	Date

CERTIFICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION

<p>I certify that I am the duly authorized representative of the Colorado Department of Transportation and, that the above Consulting firm or its representative has not been required, directly or indirectly as a known or implied condition in connection with obtaining or carrying out this contract to:</p> <ul style="list-style-type: none">- employ or retain, or agree to employ or retain, any firm or person; or- pay, or agree to pay, any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; <p>I further certify that:</p> <ul style="list-style-type: none">- any exception to the conditions listed above are: <p>I acknowledge that this certificate is to be furnished the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.</p>	
CDOT representative signature and title	Date

Attachment A3-5. DTR Quick Procurement Guide



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL QUICK PROCUREMENT GUIDE 2019





This guide includes tools and guidelines for a subrecipient conducting a third-party procurement.

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BASIC REQUIREMENT

Organizations use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR Part 200 (specifically Sections 200.317-200.326), and FTA Circular 4220.1F, "Third Party Contracting Guidance."

LIST OF ABBREVIATIONS

A&E	Architectural and Engineering
ADA	Americans with Disabilities Act
CASTA	Colorado Association of Transit Agencies
CDOT	Colorado Department of Transportation
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FMVSS	Federal Motor Vehicle Safety Standards
FTA	Federal Transit Administration
ICE	Independent Cost Estimate
IFB	Invitation for Bid
ITS	Information Technology Solutions
NA	Notice of Acceptance
PA	Purchase Authorization
PCR	Procurement Concurrence Request
RFP	Request for Proposals
RFQ	Request for Quotation
SA	Security Agreement
TVM	Transit Vehicle Manufacturer



PROCUREMENT THRESHOLDS



STATE

\$0 to \$4,999	Micro- Purchase
\$5,000 to \$24,999	Documented Quote
\$25,000 to \$150,000	Quick Bid
≥ \$150,000	IFB/RFP/QBS



FEDERAL

\$0 to \$10,000	Micro-Purchase
\$10,001 to \$250,000	Small Purchase (Documented Quotes)
> \$250,000	Above Small Purchase (RFP)

METHOD OF PROCUREMENT DECISION MATRIX

To determine which method of procurement is best suited, classify the situation by checking off the applicable boxes in each of the procurement methods below. All elements must apply to justify use of the method.

I. Micro-purchase

- Amount is under the Micro-purchase threshold
- Three or more vendor quotes available

II. Small Purchase (Documented Quote)

- Amount is within the Documented Quote Threshold
- Two or more vendor quotes available (Competitive Procurement)

III. Competitive Procurement

- Amount is above the Documented Quote Threshold
- Multiple sources available
- Not an Emergency Procurement



IV. Sole Source (not all elements need to apply for this category)

- Emergency Procurement (Subset of Sole Source)
- Original Equipment Manufacturer, Custom Item
- Only one source available
- Approved by CDOT - Sole Source
- Public exigency issue/emergency
- Competition is inadequate after public solicitation
(If all elements apply, continue to Emergency Procurement below)
- This is a health and safety issue that prohibits delay

V. Sealed Bid—Invitation For Bid (IFB)

- Complete & adequate specifications or purchase description
- Two or more responsible bidders willing to compete
- Selection can be made on basis of price
- Procurement suitable for firm, fixed price

VI. Informal Competitive Bidding—Request for Quotation (RFQ)

- Complete & adequate specifications or purchase description
- Does not require complicated solicitation evaluation

VII. Competitive Proposals—Request for Proposal (RFP)

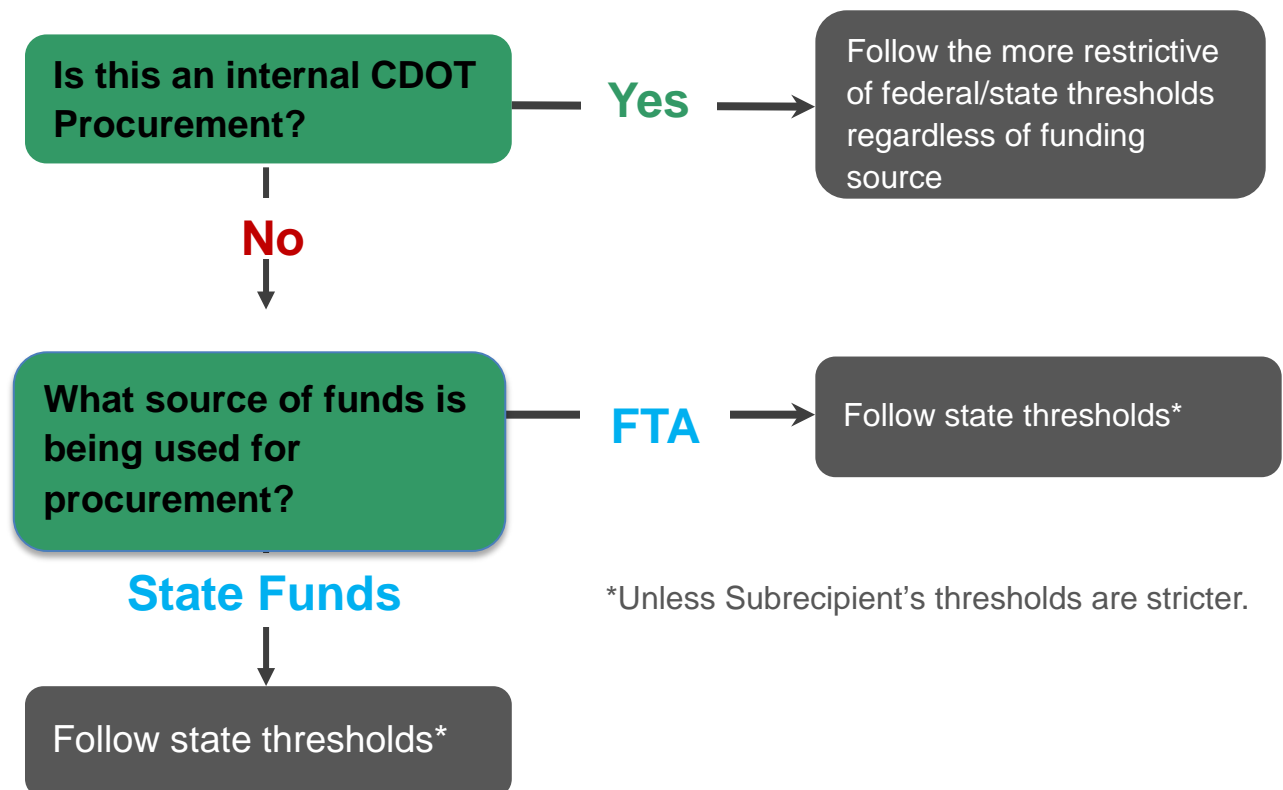
- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

VIII. Procurement for Architectural/Engineering Professional Services - Qualification Based Solicitation (QBS)

- Complete specification not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidder after receipt of proposals, prior to award

Note: You cannot divide or reduce the size of the procurement to avoid the additional procurement requirements. Avoid unreasonable qualifications, specifying brand names, or exhibiting geographic preference. The successful bidder can be selected on the basis of price only.

DETERMINATION OF STATE OR FEDERAL FUNDING





DEFINITIONS USED IN DTR's PROCUREMENT PROCESSES

1

PCR Procurement Concurrence Request

The PCR is made for the purpose of reviewing the request to ensure that it avoids duplicative or unnecessary purchases and considers opportunities for intergovernmental or inter-entity sharing of goods/services. The Project Coordinator reviews the rationale for the request and procurement method, and then approves or rejects the PCR in COTRAMS.

2

PA Purchase Authorization

Subrecipients must prepare this form and submit it for approval prior to finalizing its agreement with the vendor for goods or services purchased with federal/state funding. The Project Coordinator reviews the required documentation (as seen in Procurement Documentation Requirement chart) and approves or rejects the PA in COTRAMS.

3

NA Notice of Acceptance

Subrecipients submit the NA after they have accepted any equipment or rolling stock. The NA also includes a Vehicle Inspection Checklist and allows for the Post Delivery Audit to be reported to the Project Coordinator. Post Delivery Audit includes: Buy America Certification (as applicable), Purchaser's Requirements Certification, Federal Motor Vehicle Safety Standards Certification, and Altoona Testing as applicable.

4

SA Security Agreement

The SA is made for the purpose of securing the State or Federal interest in transit vehicles purchased with State or Federal funds awarded by CDOT to the subrecipient. This form is taken to the agency's county DMV to register and title the vehicle. In order to ensure proper use of vehicles throughout the useful life, CDOT holds a first lien on all vehicles in the amount of the Federal or State share of the vehicle cost.

FTA AND FASTER CERTIFICATIONS AND ASSURANCES

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air				Construction contracts over \$2,000	
Buy America			All	All	All			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, manufactured products)					
Charter Bus Service Operations		All					All							Construction contracts over \$2,000	
School Bus Operations		All					All							Construction contracts over \$2,000	
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel				Involving property that may be transported by ocean vessel	
Seismic Safety	A&E for new buildings and additions			New buildings and additions		A&E for new buildings and additions			New buildings and additions					Construction contracts over \$2,000	
Energy Conservation	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Clean Water	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Bus Testing (not minivans)			All					All							
Pre-Award and Post Delivery Audit Requirements			All					All							
Lobbying	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Access to Records and Reports	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Federal Changes	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase/ Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Bonding (not required of states)				All (including ferry vessels)											
Clean Air	All	All	All	All	All	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000					
Recycled Products		All		All	All		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year					
Davis-Bacon and Copeland Anti-Kickback Act				All (including ferry vessels)					All (including ferry vessels)					Section 1: All Section 2: >\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		All	All	All (including ferry vessels)			>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Termination Provisions	All	All	All	All	All	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000					
Gov't-wide Debarment and Suspension	All	All	All	All	All	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000					
Privacy Act	All	All	All	All	All	All	All	All	All	All					
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution	All	All	All	All	All	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000					
Patent Rights and Rights in Data (& Copyrights Requirements)	Research & development					Research & development					Research & development			Construction contracts over \$2,000	

FTA ANNUAL CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	Above Small Purchase (Greater than \$250,000)					Small Purchase (\$10,001 - \$250,000)					Micro-Purchase (\$0 - \$10,000)				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies	Professional Services/A&E	Operations/Management	Rolling Stock Purchase/Refurbishments	Construction	Equipment, Materials and Supplies
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity															
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311, 5316 funds					Transit operations funded with Section 5307, 5309, 5311, 5316 funds							Construction contracts over \$2,000	
Disadvantaged Business Enterprises (DBE)	All	All	All	All	All	All	All	All	All	All	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met				All if threshold for DBE program met	
Incorporation of FTA Terms	All	All	All	All	All	All	All	All	All	All				Construction contracts over \$2,000	
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds					Transit operations funded with Section 5307, 5309, 5311 funds		Construction contracts over \$2,000	

FASTER CERTIFICATIONS AND ASSURANCES CLAUSES

CLAUSE	IFB/RFP/QBS (>\$100,000)		Quick Bid (\$25,000 - \$99,999)		Documented Quote (\$5,000 - \$24,999)		Micro-Purchase (\$0 - \$4,999)	
	FASTER		FASTER		FASTER		FASTER	
	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)	Rolling Stock	Other (Operating, Planning/Professional Services, Equipment Purchases, ITS)
A&E = Architectural and Engineering; ADA = Americans with Disabilities Act; DBE = Disadvantaged Business Enterprise; EEO = Equal Employment Opportunity								
Fly America								
Buy America								
Charter Bus Service Operations								
School Bus Operations								
Cargo Preference								
Seismic Safety								
Energy Conservation								
Clean Water								
Bus Testing (not minivans)	All		All		All		All	
Pre-Award and Post Delivery Audit Requirements								
Lobbying	>\$150,000	>\$150,000						
Access to Records and Reports	All	All	All	All	All	All	All	All
Federal Changes								
Bonding (not required of states)								
Clean Air								
Recycled Products								
Davis-Bacon and Copeland Anti-Kickback Act								
Contract Work Hours and Safety Standards Act		>\$150,000 (Construction)						
No Government Obligations to Third Parties	All	All	All	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts								
Termination Provisions	All	All	All	All	>\$10,000	>\$10,000		
Gov't-wide Debarment and Suspension (#22)	All	All	All	All				
Privacy Act (#23)								
Civil Rights (Title VI, Equal Employment Opportunity (EEO), Americans with Disability Act (ADA))	All	All	All	All	All	All	All	All
Breaches and Dispute Resolution								
Patent and Rights in Data								
Transit Employee Protective Arrangements								
Prompt Payment								
Incorporation of FTA Terms								
Drug and Alcohol Testing								



PROCUREMENT DOCUMENTATION REQUIREMENTS

Subrecipients must maintain sufficient records that detail the significant history of a procurement. At a minimum, such records must include:



Rationale for the method of procurement (i.e., Request for Proposals, Invitation for Bids, sole source)



Selection of contract type (i.e., fixed price, cost reimbursement)



Reason for contractor selection or rejection



Basis for the contract price (i.e., cost/price analysis)



The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
CDOT Price Agreements	Procurement using CDOT/DTR's negotiated price agreements for commonly purchased buses and transit vehicles.	X	X	X	X	<ul style="list-style-type: none"> Independent Cost Estimate (ICE) 	<ul style="list-style-type: none"> Cost and Price Analysis* Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed Transit Vehicle Manufacturer (TVM) Certification* Bus Testing Certification* Federal Motor Vehicle Safety Standards (FMVSS) Certification* Purchasers Requirement Certification* More than \$100k Lobby Certification* More than \$150k Buy America Certification* Price Agreement Vendor Quotes* *Obtained from CDOT Price Agreement Contractor for vehicle procurement Additional: TVM Survey Monkey - CDOT Staff	<ul style="list-style-type: none"> Independent Cost Estimate Procurement Concurrence Request Purchase Authorization Notice of Acceptance Security Agreement Application for Title or Title Invoice Proof of Payment Post Delivery Certifications
State Price Agreements (State funds only)	Procurements using State of Colorado State Commodity & Service Agreements. Agreements generally run for a year, with the option for renewal. The State's current contracts can be found at https://www.colorado.gov/pacific/osc/price-agreements .	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> Cost and Price Analysis Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* Signed TVM Certification (vehicles only) Bus Testing Certification (vehicles only) FMVSS Certification (vehicles only) Purchasers Requirement Certification (vehicles only) More than \$100k Lobby Certification More than \$150k Buy America Certification Price Agreement Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Piggybacking (Non-federal funds)	A post award practice that allows a party that was not included in the original procurement to purchase supplies or equipment through the contract. Piggybacking is only allowed under certain circumstances.	X	X	X	X	<ul style="list-style-type: none"> ICE 	<ul style="list-style-type: none"> All official correspondence related to the procurement Written approval from original agency Supporting documentation for Piggybacking Worksheet Self-certifications for Buy America and Purchaser's Requirements Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
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Micro-Purchases	Purchases under \$10,000. Do not require competitive quotes.	--	--	--	--	<ul style="list-style-type: none"> • ICE 	<ul style="list-style-type: none"> • Documentation that the price is reasonable 	
Documented Quotes	Purchases between \$10,000 and \$250,000. Require a minimum two quotes.	X	X	X	X	<ul style="list-style-type: none"> • ICE 	<ul style="list-style-type: none"> • Cost and Price Analysis • Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* • Signed TVM Certification (vehicles only) • Bus Testing Certification (vehicles only) • FMVSS Certification (vehicles only) • Purchasers Requirement Certification (vehicles only) • More than \$100k Lobby Certification • More than \$150k Buy America Certification • Vendor Quotes Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Invitation for Bid (IFB)/ Request for Proposal (RFP)	Purchases over \$250,000. Competitive procurement with defined rules and procedures.	X	X	X	X	<ul style="list-style-type: none"> • ICE • RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> • Cost and Price Analysis • Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* • Signed TVM Certification (vehicles only) • Bus Testing Certification (vehicles only) • FMVSS Certification (vehicles only) • Purchasers Requirement Certification (vehicles only) • More than \$100k Lobby Certification • More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	
Qualification-based (Brooks Act)	Used for procuring architectural/engineering professional services.	X	X	--	X	<ul style="list-style-type: none"> • ICE • RFP with applicable clauses* *To be downloaded from Procurement Pro 2.0	<ul style="list-style-type: none"> • Cost and Price Analysis • Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* • More than \$100k Lobby Certification • More than \$150k Buy America Certification Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff	

PROCUREMENT DOCUMENTATION REQUIREMENTS

Procurement Type	Description	PCR (see additional required documentation)	PA (see additional required documentation)	NA & Post Delivery Audit (Altoona Testing, Purchasers Requirements, FMVSS, \$150K or More [Buy America])	SA (for rolling stock, property and buildings only)	PCR Required Documentation (to be submitted in COTRAMS)	PA Required Documentation (Certifications in COTRAMS to be completed by Subrecipients)	Reimbursement Documentation
FMVSS = Federal Motor Vehicle Safety Standards; ICE = Independent Cost Estimate; IFB = Invitation for Bid; NA = Notice of Acceptance; PA = Purchase Authorization; PCR = Procurement Concurrence Request; RFP = Request for Proposals; SA = Security Agreement; TVM = Transit Vehicle Manufacturer								
Sole Source	Procurements soliciting proposal from one source. Also used for a contract change not within scope of the original contract.	X	X	X	X	<ul style="list-style-type: none"> • ICE 	<ul style="list-style-type: none"> • Cost and Price Analysis • Check SAM.GOV for vendor registration and eligibility - Screenshot or Print out* • Signed TVM Certification (vehicles only) • Bus Testing Certification (vehicles only) • FMVSS Certification (vehicles only) • Purchasers Requirement Certification (vehicles only) • More than \$100k Lobby Certification • More than \$150k Buy America Certification • Sole Source Justification • Proposed contract with applicable clauses <p>Additional: TVM Survey Monkey (FTA funds only) - CDOT Staff</p>	



LINKS & TIPS

FTA Procurement Website

<https://www.transit.dot.gov/funding/procurement/procurement>

FTA Circular C 4220.1F: Third Party Contracting Guidance provides contracting guidance for recipients of federal assistance awarded by the FTA when using that federal assistance to finance its procurements (third-party contracts)

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

FTA Best Practices Procurement Manual includes procedures, methods, and examples of procurement practices covering the entire procurement cycle

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

Federal Title 49 – Part 18 Subpart C, Section 18.36 Procurement

<https://www.gpo.gov/fdsys/pkg/CFR-1999-title49-vol1/pdf/CFR-1999-title49-vol1-sec18-36.pdf>

National RTAP ProcurementPRO website—especially helpful for managing RFP's

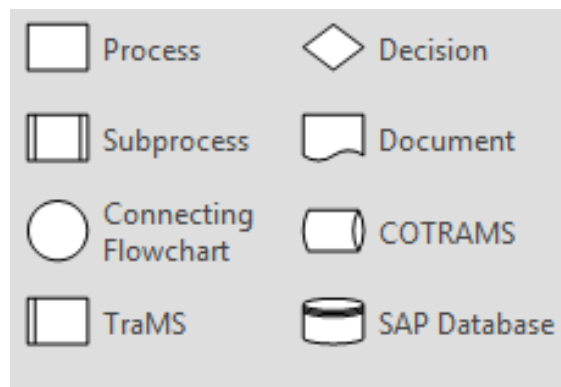
<http://www.nationalrtap.org/Web-Apps/ProcurementPRO-20>

RTAP Procurement Assistance is available to rural agencies by contacting Colorado Association of Transit Agencies (CASTA)

<https://coloradotransit.com/>

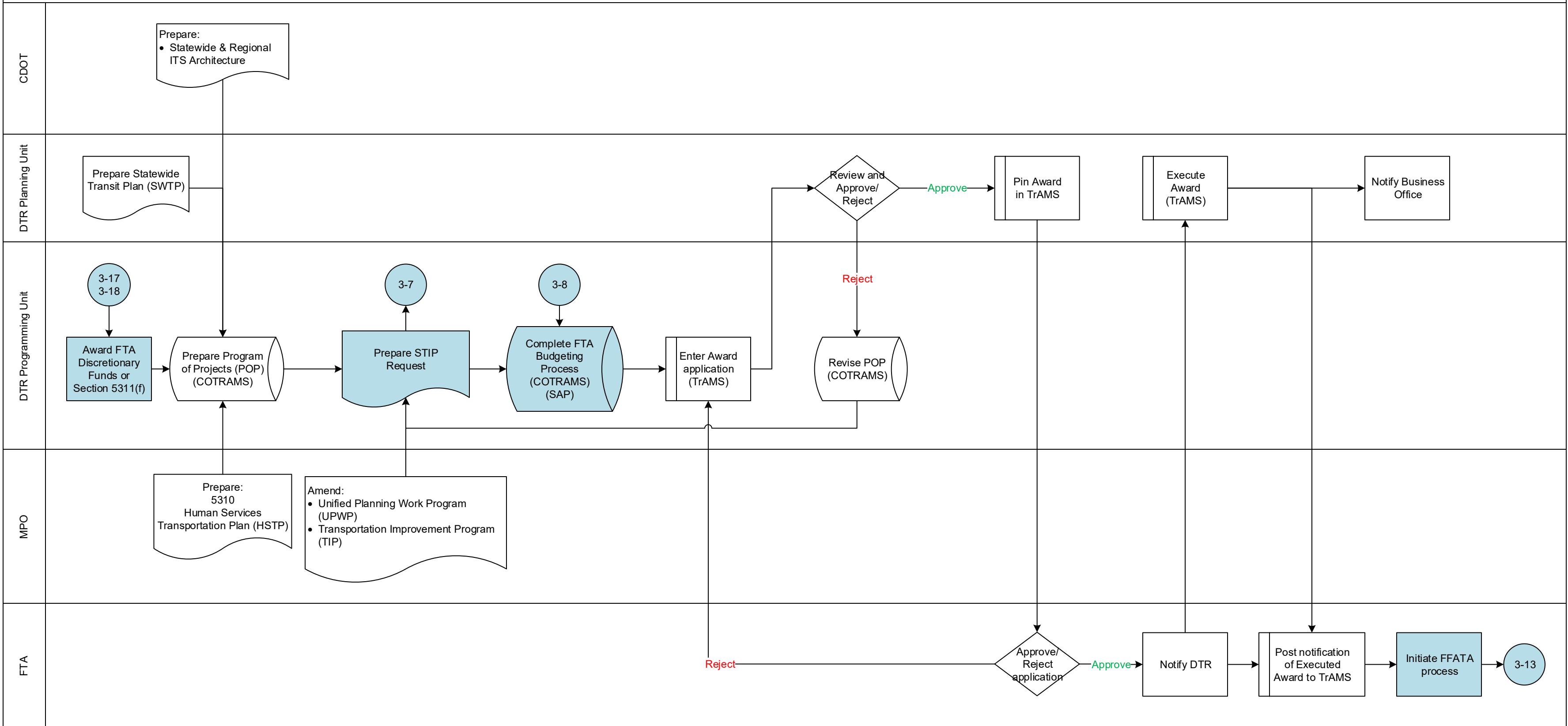
FLOWCHARTS

Flowchart Shapes/Key



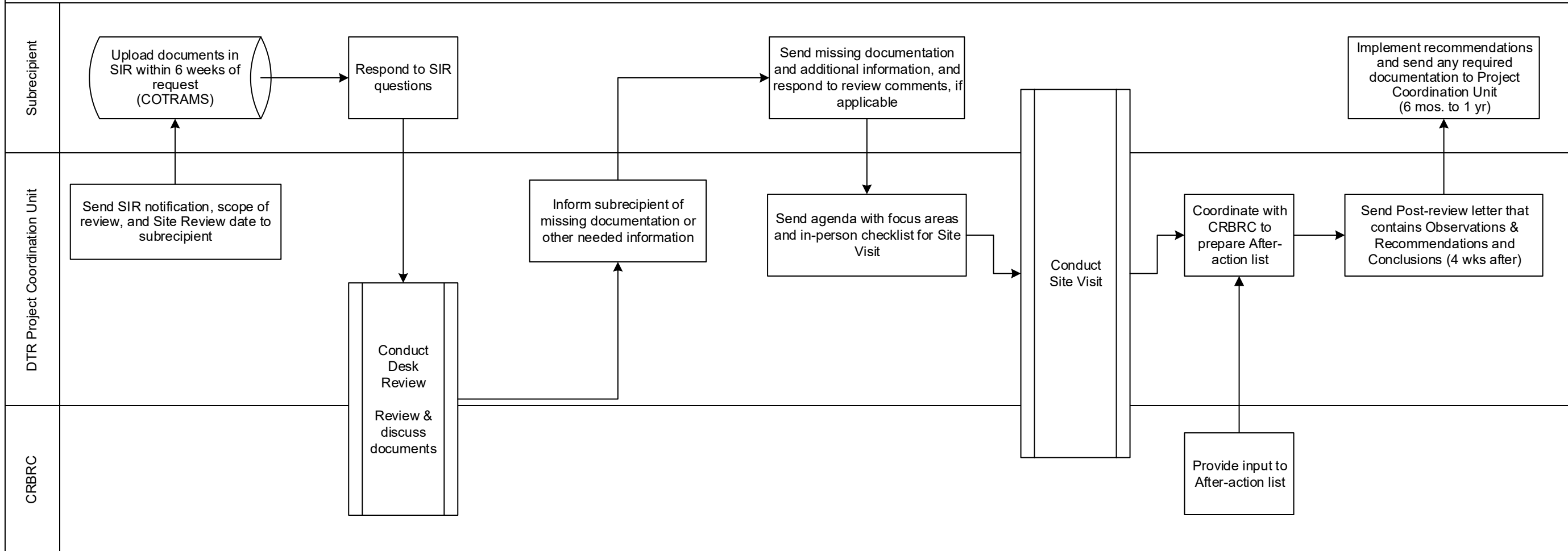
Flowchart A3-1. FTA Award Application

A3-1 FTA Award Application



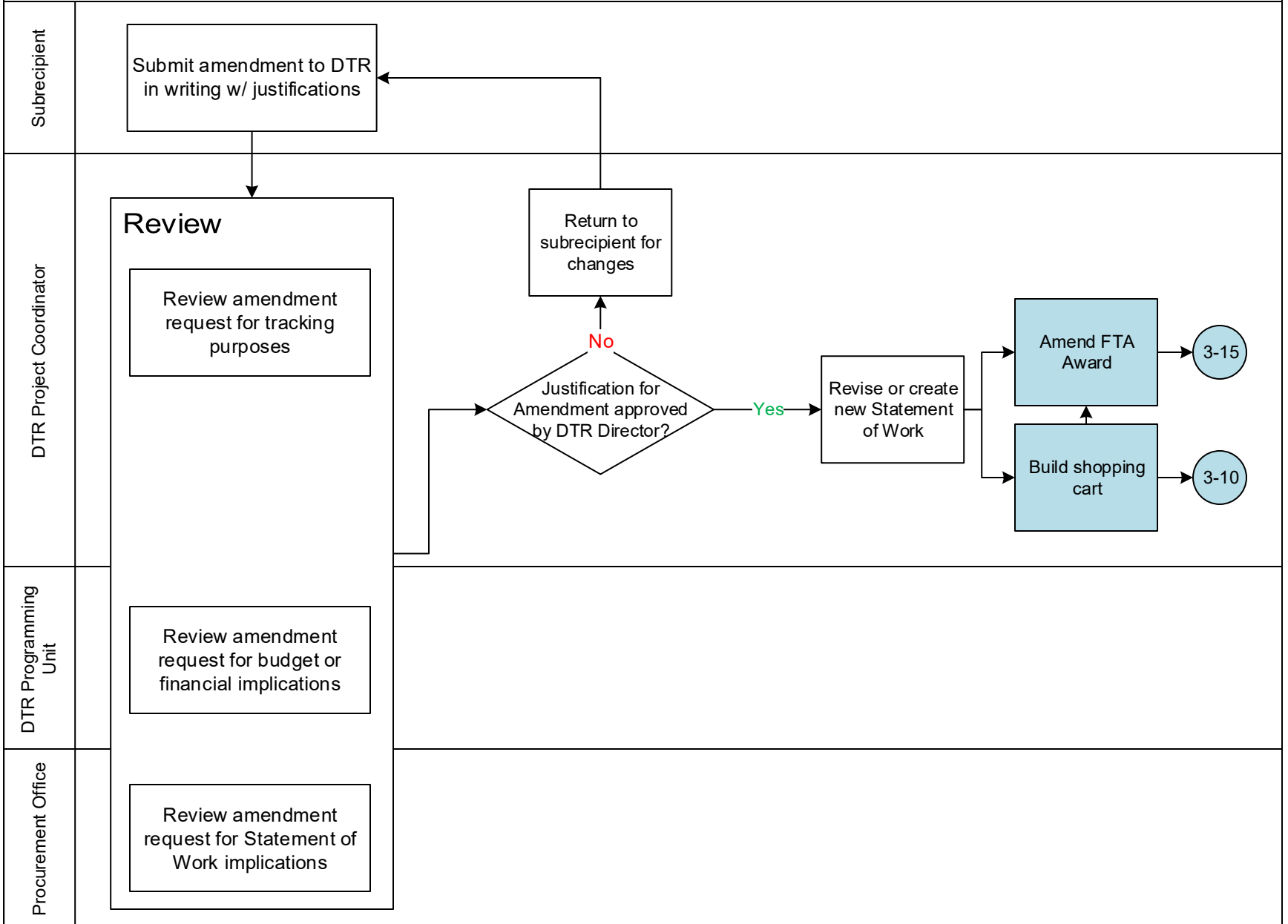
Flowchart A3-2. Subrecipient Information Request (SIR) and Site Review Process

A3-2 Subrecipient Information Request (SIR) and Site Review Process



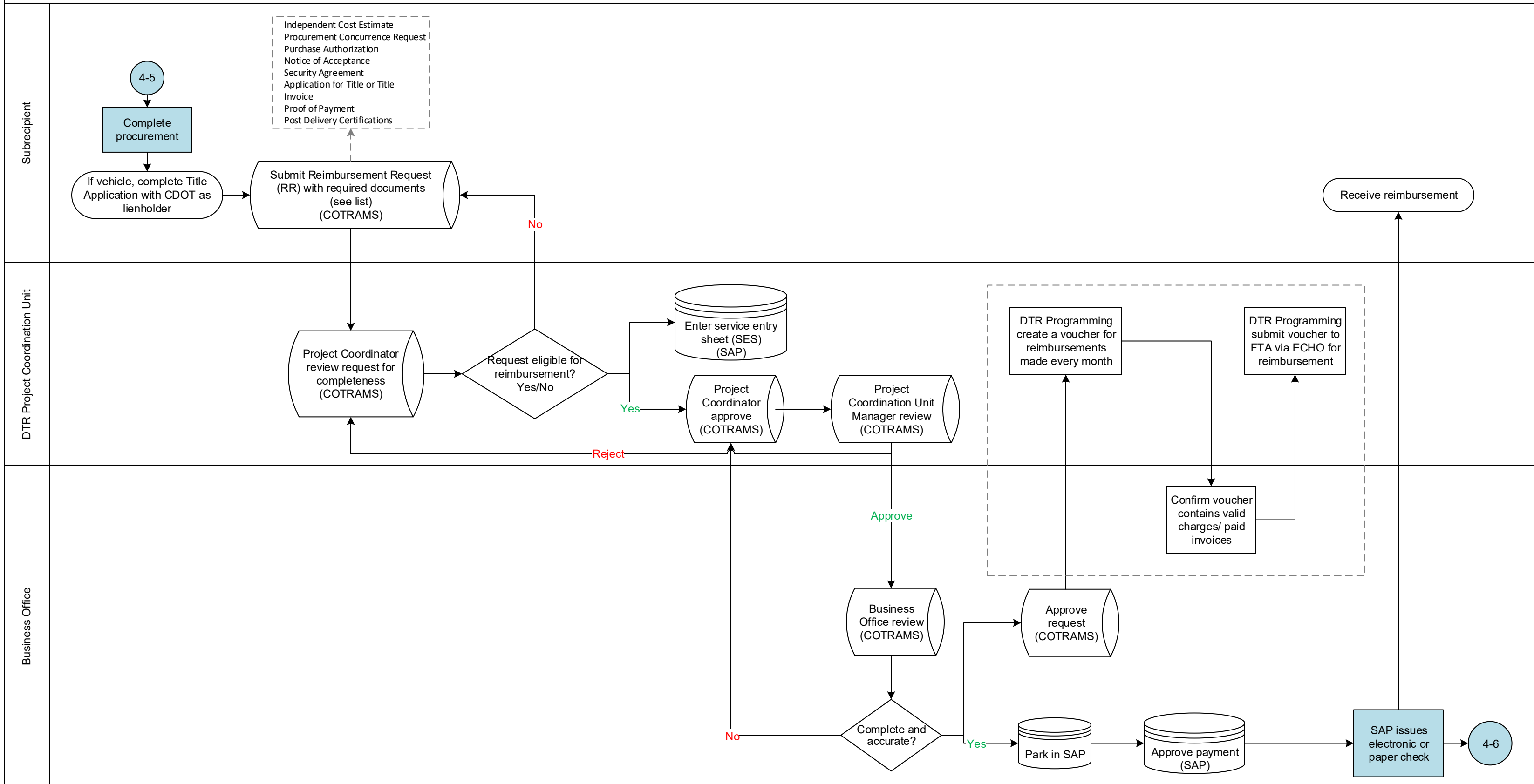
Flowchart A3-3. Amendment for Capital Project

A3-3 Amendment for Capital Project



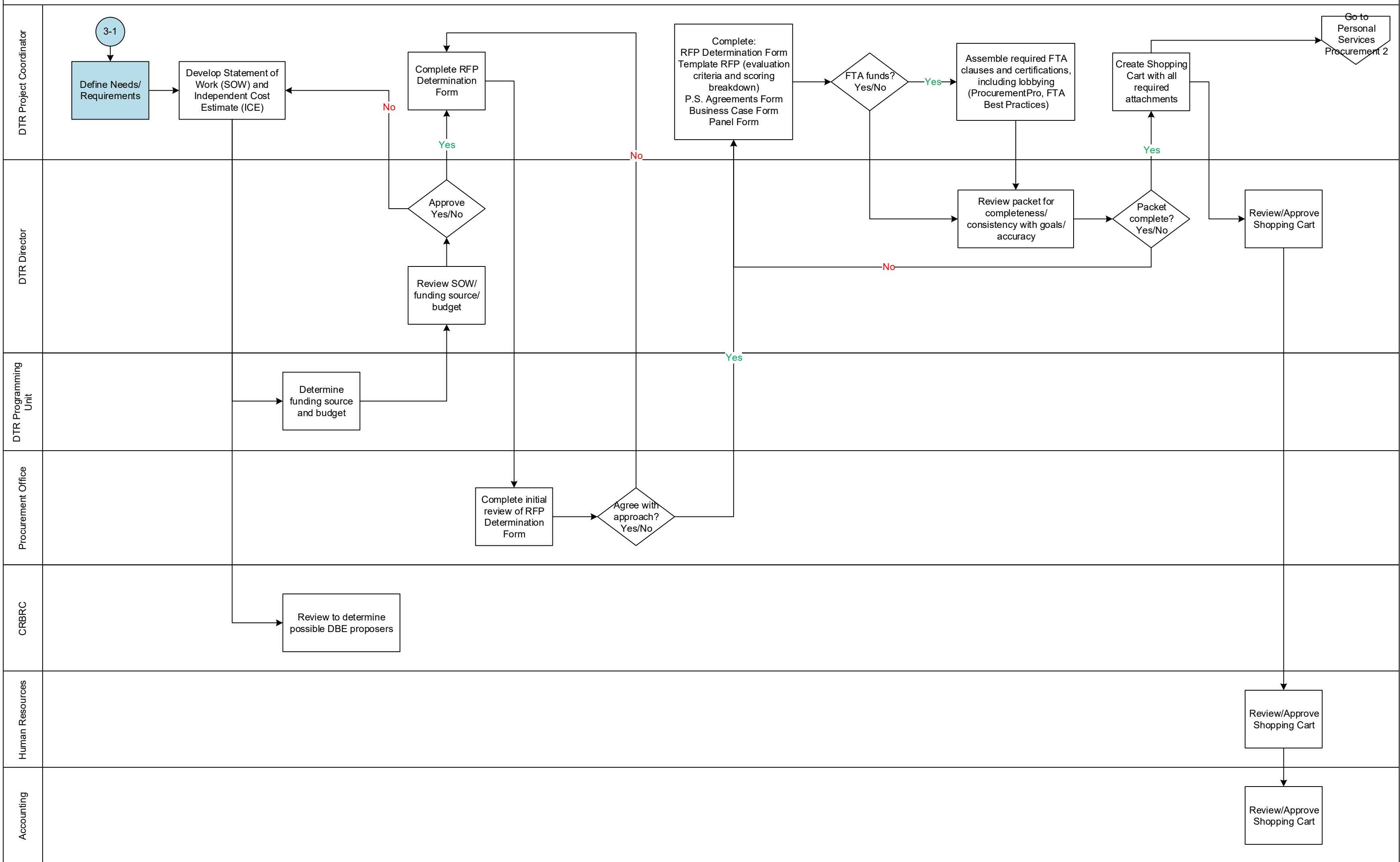
Flowchart A3-4. Capital Project Reimbursement Request

A3-4 Capital Project Reimbursement Request

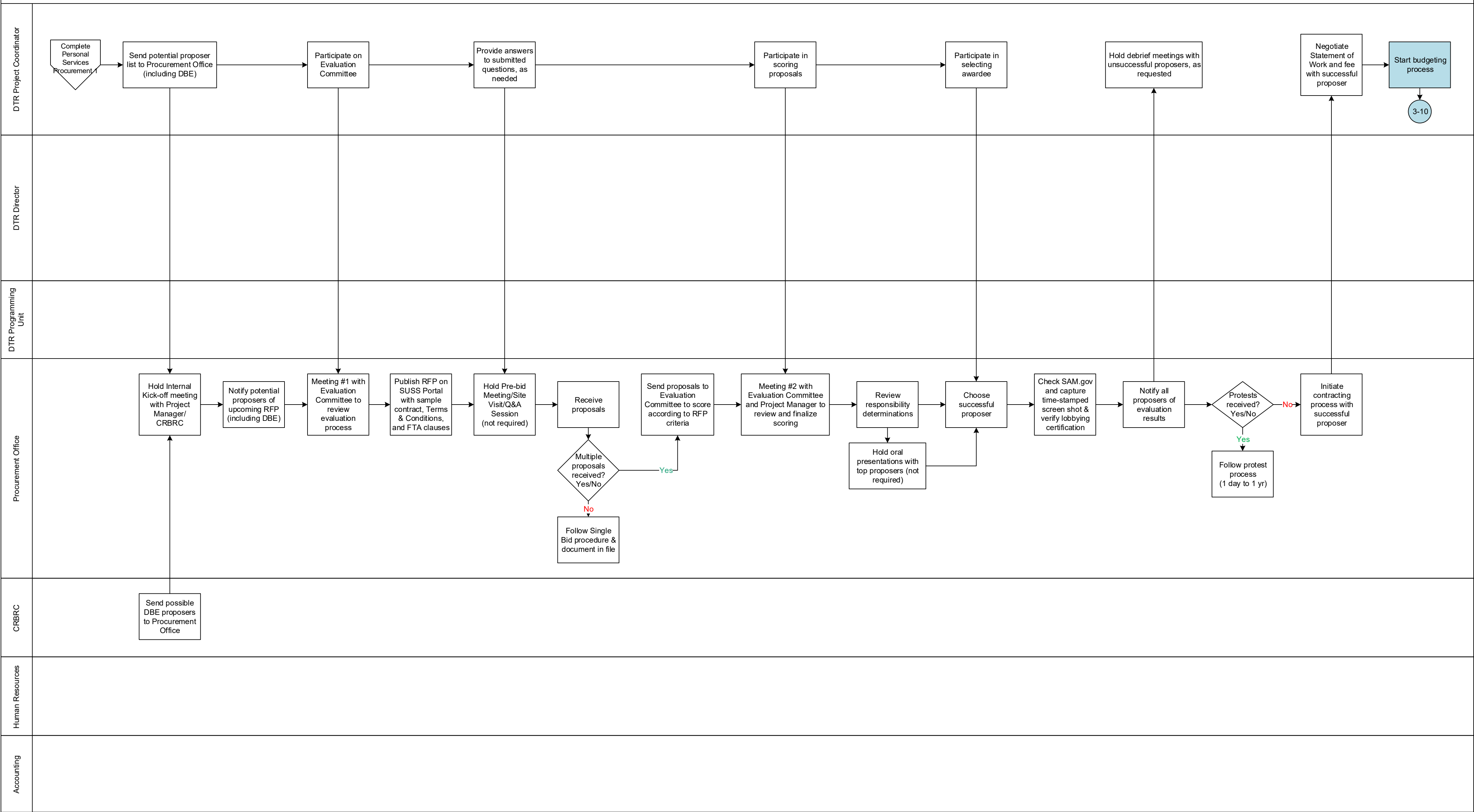


Flowchart A3-5. Personal Services Procurement

A3-5 DTR Personal Services Procurement - 1

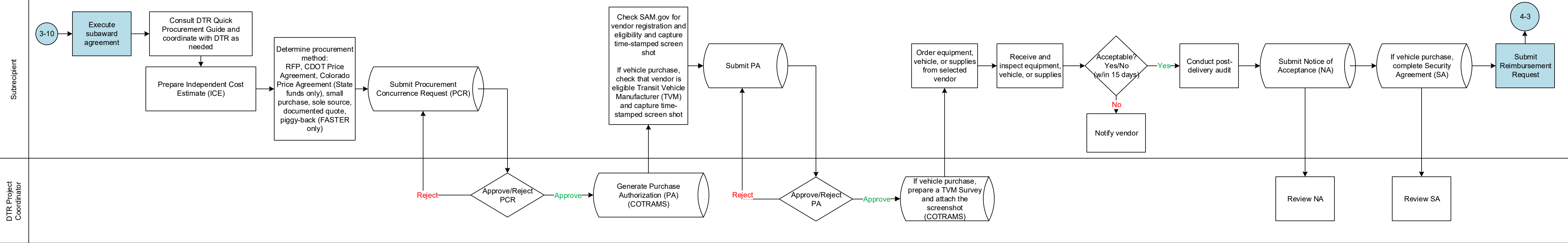


A3-5 DTR Personal Services Procurement - 2



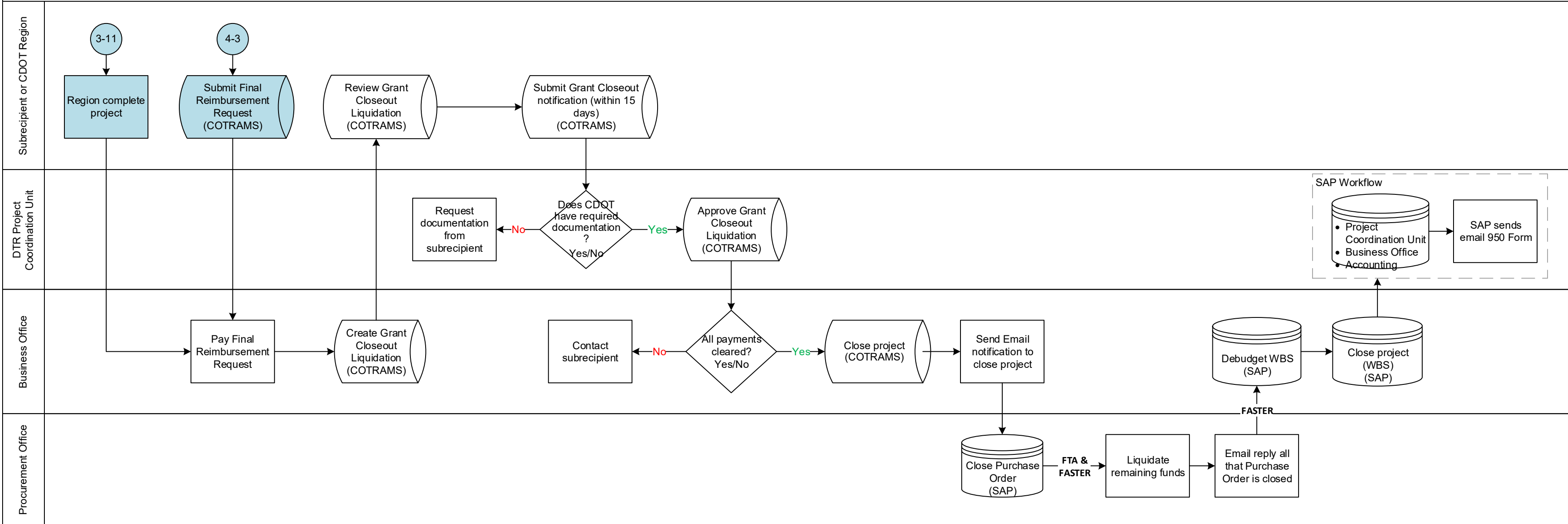
Flowchart A3-6. Third-Party Procurement

A3-6 Third-Party Procurement



Flowchart A3-7. Project Closeout

A3-7 Project Closeout



ADDITIONAL ATTACHMENTS

FTA Circular: FTA C 9030.1E: Urbanized Area Formula Program: Program Guidance and Application Instructions



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 5100.1

May 18, 2015

Subject: BUS AND BUS FACILITIES FORMULA PROGRAM: GUIDANCE AND APPLICATION INSTRUCTIONS

1. PURPOSE. This circular is an issuance of guidance on the Bus and Bus Facilities Formula Program administered by the Federal Transit Administration (FTA) under 49 U.S.C. § 5339. This circular provides guidance for applying for grants under the Bus and Bus Facilities Program and addresses the requirements that must be met in the application for Section 5339 program assistance. This circular incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141), signed into law on July 6, 2012, and includes the most current available guidance on statutory and programmatic requirements for the federal public transportation program as of the date of publication.
2. CANCELLATION. This is a new circular. It does not cancel any existing directive.
3. AUTHORITY.
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. WAIVER. Federal Transportation Authority (FTA) reserves the right to waive any provision of this circular to the extent permitted by federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on 04-16-2015, addressing comments received during the development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website: www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on “sign up for e-mail updates” for additional information.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA’s Administrative Services Help Desk, at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

Therese W. McMillian
Acting Administrator

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FTA CIRCULAR 5100.1
BUS AND BUS FACILITIES FORMULA PROGRAM: GUIDANCE AND APPLICATION
INSTRUCTIONS

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT). FTA is headed by an administrator who is appointed by the president of the United States, and FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, as well as federally recognized Indian Tribes.

Public transportation means regular, continuing, shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes, but is not limited to, transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferry boats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses and intraterminal or intrafacility shuttle services. The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. Most federal transit laws are codified at title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law due to MAP-21 as well as changes required by other laws that have become effective since the former Bus and Bus Facilities program was included in a circular that was published in August 2012.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial and technical assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix D of this circular for specific regional and metropolitan office contact information.

For further information, visit the FTA website, <http://www.fta.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE.
East Building, Fifth Floor
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. **DEFINITIONS.** All definitions in 49 U.S.C. 5302 and 49 U.S.C. 5339 apply to this circular as well as the following definitions:
- a. **Applicant:** In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.”
 - b. **Associated Capital Maintenance:** A category of capital project activities that is defined as equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.
 - c. **Bus Rapid Transit System (BRT):** A bus system that meets all of the following criteria:
 - (1) Over 50 percent of the route must operate in a separated right-of-way dedicated for transit use during peak periods. Other traffic can make turning movements through the separated right-of-way.
 - (2) The route must have defined stations that are accessible for persons with disabilities, offer shelter from the weather, and provide information on schedules and routes.
 - (3) The route must provide faster passenger travel times through congested intersections by using active signal priority in separated guideway, and either queue-jump lanes or active signal priority in nonseparated guideway.
 - (4) The route must provide short headway, bidirectional service for at least a fourteen-hour span of service on weekdays and a ten-hour span of service on weekends. Short headway service on weekdays consists of either (a) fifteen-minute maximum headways throughout the day, or (b) ten-minute maximum headways during peak periods and twenty-minute maximum headways at all other times. Short headway service on weekends consists of thirty-minute maximum headways for at least ten hours a day.The provider must apply a separate and consistent brand identity to stations and vehicles.
 - d. **Capital Asset:** The term “capital asset” includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or

subrecipient of federal financial assistance.

- e. Capital Lease: Any transaction whereby the recipient acquires the right to use a capital asset without obtaining ownership.
- f. Capital Project: A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter III of this circular.
- g. Clean Fuel Bus: A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or other low or zero emissions technology that the administrator of the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions.
- h. Designated Recipient: The term “designated recipient” as defined at 49 U.S.C. 5302(4) means: (i) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- i. Direct Recipient: For purposes of this circular and this program, based on the statute, a direct recipient is a designated recipient that operates fixed route bus service or that allocates funding to fixed route bus operators. “Direct Recipient” is used interchangeably with “eligible recipient,” “recipient,” and “grantee” in this circular.
- j. Electronic Clearing House Operation (ECHO) System: ECHO is an FTA Web-based application system that processes payment requests from FTA grantees.
- k. Electronic Award Management System: A system that grantees and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by grantees to submit financial status reports and milestone progress reports and to submit grant modification requests. This term includes FTA’s Transportation Electronic Award and Management (TEAM) system and its successor.
- l. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.
- m. Fixed Guideway: The term “fixed guideway” means a public transportation facility (i) using and occupying a separate right-of-way for the exclusive use of public transportation; (ii) using rail; (iii) using a fixed catenary system; (iv) for a passenger ferry system; or (v) for a bus rapid transit system.

- n. Fixed-Route System: Public transportation service provided in vehicles operated along predetermined routes according to a fixed schedule.
- o. Fleet Status Report: A report in FTA's Electronic Grants Management System that identifies rolling stock to be replaced, retired, or disposed. Appendix D of this circular contains a sample Fleet Status Report.
- p. Fleet Management Plan: The management plan includes an inventory of all buses and other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- q. Force Account: The use of a grantee's own labor force to accomplish a capital project.
- r. Governor: The term "governor" means the governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- s. Grant: An award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient. This term is used interchangeably with "Grant Agreement."
- t. Intelligent Transportation Systems (ITS): ITS refers to the use of electronics, communications, or information processing as a single component or in combination to improve efficiency or safety of a transit or highway system.
- u. Large Urbanized Area: Any urbanized area (UZA) with a population of at least 200,000 at the time of the most recent decennial census.
- v. Local Governmental Authority: The term "local governmental authority" includes a political subdivision of a state or an authority of at least one state or political subdivision of a state; an Indian tribe; or a public corporation, board, or commission established under the laws of a state.
- w. Master Agreement: The official FTA document containing FTA requirements and other cross-cutting federal requirements applicable to FTA recipients and their project(s). The Master Agreement is incorporated by reference and made part of each FTA grant and amendment thereto.
- x. Metropolitan Planning Area (MPA): The geographic area determined by agreement between the Metropolitan Planning Organization (MPO) for the metropolitan area and the governor, for which the metropolitan transportation planning process is carried out.
- y. Metropolitan Planning Organization (MPO): The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans

and transportation improvement programs for metropolitan planning areas of a state.

- z. National Transit Database (NTD): The NTD was established by Congress to be the nation's primary source for information and statistics on the transit systems of the United States. Over 800 transit providers in urbanized areas and over 1,300 transit providers in rural areas currently report to the NTD through the Internet-based reporting system, either directly or through their state's Department of Transportation. Recipients or beneficiaries of Urbanized Area Formula Program (Section 5307) grants and of Rural Area Formula Program (Section 5311) grants are already required to report to the NTD. Other NTD reporting requirements may be established by FTA as it implements the National Transit Asset Management System described in 49 U.S.C. 5326. Data from the National Transit Database is used by FTA for the apportionment of Urbanized Area Formula Program grants, Rural Area Formula Program grants, Tribal Transit Formula Grants (Section 5311(j)), State of Good Repair Grants (Section 5337), and Bus and Bus Facilities Grants (Section 5339). Data from the NTD is also used to inform Congress, states, and local governments on the condition and performance of public transportation in the United States. More information about the applicability to this program can be found in Chapter III and Chapter V.
- aa. Net Project Cost: The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302(12). Revenues, in this instance, means farebox revenues.
- bb. New Bus Model: The term "new bus model" means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been previously used in public transportation in the United States, but is now being produced with a major change in configuration or components.
- cc. Nonprofit Organization: A corporation or association determined by the secretary of the Treasury to be an organization qualifying under 26 U.S.C. 501(c) as exempt from taxation under 26 U.S.C. 501(a), or which has been determined under state law to be nonprofit and for which the designated state agency has received documentation certifying the status of the nonprofit organization.
- dd. Operating Expenses: Operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as salaries, benefits, fuel, and items having a useful life of less than one year.
- ee. Overhaul: Overhaul is an expense performed as a planned or concentrated preventive maintenance activity and intended to enable the rolling stock to perform to the end of the useful life. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.
- ff. Program of Projects (POP): A POP is a list of projects proposed by a designated recipient in cooperation with an MPO to be funded from the UZA's or state's Section 5339 apportionment. A POP may also be required under other FTA programs. The POP includes a brief description of the projects, including any suballocation among public transportation

providers or other eligible subrecipients, total project costs, and federal share for each project.

- gg. Public Transportation: The term “public transportation” means regular, continuing, shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter 243 (i.e., Amtrak—or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.
- hh. Rebuild: Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock’s useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- ii. Rehabilitate: To rebuild revenue vehicles to original specifications of the manufacture. Rehabilitating may include some new components but has less emphasis on structural restoration than would be the case in a remanufacturing operation, focusing on mechanical systems and vehicle interiors. For purposes of this circular and program eligibility, rehabilitating vehicles includes both rebuilding and overhaul activities. See the definitions of “Rebuild” and “Overhaul” above.
- jj. Recipient: For purposes of this circular, the term “recipient” means an entity that receives a grant of Section 5339 program funds directly from FTA. The word “recipient” is used interchangeably with “eligible recipient,” “direct recipient,” and “grantee.” Eligible recipients under Section 5339 are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators.
- kk. Rural Area: The term “rural area” means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an urbanized area by the secretary of Commerce.
- ll. Shared Use: Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- mm. Small Urbanized Areas: As used in the context of FTA formula grant programs, small urbanized areas are UZAs with a population of at least 50,000 but less than 200,000.
- nn. Spare Parts: See “Associated Capital Maintenance.”
- oo. State: The term “state” means a state of the United States of America.
- pp. Statewide Transportation Improvement Program (STIP): A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the Long-Range Statewide Transportation Plan, Metropolitan Transportation Plans (MTPs), and Transportation Improvement Program (TIP), and which

is required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- qq. Subrecipient: An entity that receives FTA funds via a pass-through agreement with a direct recipient or other grantee, whereby the original recipient remains responsible for compliance with all terms, conditions, and requirements associated with the grant. For the purposes of this circular, a designated recipient is the only eligible direct recipient that can receive a grant under Section 5339, and that designated recipient has the ability to allocate amounts of the grant to subrecipients that are public agencies or private nonprofit organizations engaged in public transportation.
 - rr. Territory: The term “territory” means the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands.
 - ss. Transit: The term “transit” means public transportation.
 - tt. Transportation Improvement Program (TIP): A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and which is required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
 - uu. Uniform System of Accounts (USOA): The USOA is a structure of categories and definitions used for NTD reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.
 - vv. Urbanized Area (UZA): A UZA means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of Commerce. A small UZA has a population of 50,000 to 199,999 and a large UZA has a population of 200,000 or more.
 - ww. Useful Life: The expected lifetime of project property, or the acceptable period of use in service. Useful life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service.
5. PROGRAM HISTORY. FTA’s Bus and Bus Facilities Program originated as part of the Section 3 discretionary grant program established by the original transit authorization in 1964. In 1974, with the establishment of the Section 5 formula grant program, discretionary Bus Program funds could only be used for extraordinary costs that could not be funded with Section 5 funds. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) provided that 10 percent of the total available for Section 3 would be allocated for buses. With 10 percent available for any Section 3 purpose, the budget process always allocated 20 percent to the discretionary Bus Program. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) officially changed the allocation so that 20 percent of available Section 3 funds would be allocated for bus purposes. The Section 3 program was codified as 49 U.S.C. Section 5309 in 1994 and remained discretionary. The allocation

percentages changed slightly with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act of 2005 (SAFETEA-LU). Otherwise, the program has remained essentially the same since 1987.

MAP-21 established a new Section 5339 Bus and Bus Facilities Formula Program (Bus Program), changing the program from discretionary to formula. Funding is allocated to states and territories and designated recipients in urbanized areas. The purpose of the new Bus Program is to assist eligible recipients in replacing, rehabilitating, and purchasing buses and related equipment; and to construct bus-related facilities, thus allowing grantees to address replacement and capital expansion needs.

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CHAPTER II

PROGRAM OVERVIEW

1. STATUTORY AUTHORITY. The Bus and Bus Facilities Program is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), signed into law on July 6, 2012, as codified at 49 U.S.C. 5339 (“Section 5339”). The secretary may make grants under this section to assist eligible recipients in financing capital projects to replace, rehabilitate, and purchase buses and related equipment, and to construct bus-related facilities.

The Catalog of Federal Domestic Assistance (CFDA) number used in the Bus and Bus Facilities Grants Program is 20.526.

2. PROGRAM GOALS. Pursuant to 49 U.S.C. 5339, Federal Transit Administration (FTA) awards grants under this section to the designated recipients in the large urbanized areas (UZAs) and states for the purpose of financing capital bus and bus-related projects that will support the continuation and expansion of public transportation services in the United States.

3. FTA ROLE IN PROGRAM ADMINISTRATION.

- a. FTA’s headquarters office in Washington, DC, serves a broad, program level role in the administration of the program. FTA headquarters:

- (1) provides overall policy and program guidance for the Bus Program;
- (2) apportions funds annually to states and designated recipients;
- (3) develops and implements financial management procedures;
- (4) initiates and manages program support activities; and
- (5) conducts national program reviews and evaluations.

- b. FTA’s regional offices are responsible for the day-to-day administration of the program. Regional offices:

- (1) review and approve grant applications for designated recipients;
- (2) obligate funds for approved grant applications;
- (3) work with recipients to implement the annual program;
- (4) provide technical assistance;
- (5) receive recipient certifications and amendments to the program of projects;
- (6) monitor and close grants; and

(7) conduct triennial reviews and management reviews every three years or as circumstances warrant, and other reviews as necessary.

4. DESIGNATED RECIPIENT AND STATE ROLE IN PROGRAM ADMINISTRATION. FTA apportions Bus Program funds for urbanized areas to the state and designated recipients, which are responsible for receiving and apportioning FTA funds to eligible projects, and applying for funds on behalf of all eligible subrecipients within the applicable urbanized area or rural areas. FTA will apportion the funds to existing Section 5307 or new 5339 designated recipients for large urbanized areas and to the states for all areas under 200,000.

The state or designated recipient has the principle authority and responsibility for administering Bus Program funds. There are no other eligible direct recipients for the Bus Program under MAP-21. Refer to the current version of Circular 9030.1 for information about the recipient designation process. The state or designated recipient's responsibilities include:

- a. The designated recipient allocates the relevant apportionment among subrecipients in the large urbanized area based on local needs and arrangements, and in coordination with the MPO(s). In UZAs with more than one designated recipient or other recipients, FTA expects local officials, operating through the MPO, and designated recipients to determine the allocation of Section 5339 funds together. The designated recipient(s) and the MPO(s) should determine the subarea allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A suballocation that is based on predetermined fixed percentages, for example, may not adequately represent the needs of transit systems in the UZA.
- b. Designated recipients must provide documentation to FTA showing how the 5339 allocation will be split among the recipients. FTA may request a written agreement signed by a representative of each designated recipient or entity involved.
- c. To assist in making such subarea allocations, any UZA may request the appropriate FTA regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Urbanized Area Formula Program resource.
- d. The state allocates the relevant apportionment among subrecipients in the small urbanized areas or rural areas based on local needs and arrangements;
- e. Identifying and selecting the projects that the MPO or state Department of Transportation (state DOT) will include in a metropolitan transportation plan, Transportation Improvement Program (TIP), Long-range Statewide Transportation Plan, and Statewide Transportation Improvement Program (STIP).
- f. Submitting a grant application to FTA for the Section 5339 Program of Projects (POP).
- g. Reporting on behalf of subrecipients contained in the POP.

- h. Ensuring that subrecipients and projects are in compliance with all applicable federal requirements.

5. DESIGNATED RECIPIENTS, STATES, AND SUBRECIPIENT ELIGIBILITY.

- a. Eligible Recipients. Eligible recipients under this section are designated recipients and states that allocate funds to fixed route bus operators or state or local government agencies that operate fixed route bus service. A designated recipient that receives a grant under this section may allocate amounts of the grant to subrecipients that are public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. Please note: Eligible projects as authorized in Section 5339(a)(1) and (2) are not limited to projects that support fixed route only. For the complete list of eligible capital projects, please see Chapter III of this circular.

- b. Pass-through Arrangements.

- (1) A Section 5339 designated recipient or state may choose to pass its grant funds through to another entity (subrecipient) to carry out the purposes of the recipient's agreement with FTA. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income.
- (2) To establish a pass-through agreement, the recipient must enter into a written agreement with the subrecipient that assures FTA that the subrecipient will comply with its obligation to satisfy the requirements of the grant agreement.
- (3) A recipient choosing to pass-through funds must inform the FTA regional office of the arrangement in its grant application or through other documentation.
- (4) The recipient must also inform FTA of any changes in that arrangement during the life of the project.
- (5) Unlike supplemental agreements between the designated recipient (actual recipient) and FTA, a pass-through arrangement to a subrecipient does not relieve the recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

- 6. FTA OVERSIGHT. Congress has charged FTA with conducting reviews of recipients or requiring that recipients have independent audits conducted on their programs to determine whether the recipients have met the program's requirements and certifications.

Recipients may be subject to a triennial, state management, or other regularly scheduled comprehensive review to evaluate their performance. FTA must ensure that the recipient is carrying out its program in compliance with federal statutory and administrative requirements. These comprehensive reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made.

FTA may also conduct/determine technical capability and capacity, procurement, financial, management, civil rights, drug and alcohol, safety, security, and other compliance reviews and audits, in addition to the triennial review. When FTA evaluations or independent audits identify compliance deficiencies, FTA provides technical assistance to the recipient to facilitate compliance with federal requirements. FTA may reduce or withdraw financial assistance as a result of review findings or withhold further grants until the grantee comes into compliance.

The Single Audit Act, as amended (31 U.S.C. 7501 *et seq.*), implemented by OMB Circular A-133, also requires recipients of federal awards resulting in expenditures of \$750,000 or more to have independent audits conducted annually.

7. RELATIONSHIP TO OTHER PROGRAMS. Other public transportation-related federal programs may provide support for Section 5339 projects, and Section 5339 projects may in turn enhance the effectiveness of these other programs. The following is a brief discussion of existing programs, including programs that were repealed but for which funding remains available, and those programs newly authorized under MAP-21.
 - a. Repealed Programs: MAP-21 repealed a number of public transportation programs that had existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant under the preexisting terms and requirements until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of applicable repealed programs to the Bus Program is described below.

- (1) Clean Fuels Grant Program (formerly 49 U.S.C. 5308)

The Clean Fuels Grant Program was a former discretionary grant program that assisted in financing the acquisition of clean fuel rolling stock and clean fuel-related facilities for agencies providing public transportation and operating in an urbanized area designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act, (42 U.S.C. 7407(d)), or a maintenance area for ozone or carbon monoxide.

The program was established under the Transportation Equity Act for the 21st Century (TEA-21) and was repealed under MAP-21. Funds allocated under this program in fiscal year 2012 and prior years will remain available for obligation until they lapse or are expended. Funds apportioned for this program are subject to the program rules and requirements at the time they were apportioned.

Eligible recipients were designated recipients as defined in 49 U.S.C. 5307(a)(2), in UZAs over 200,000 in population, and states for UZAs with populations of less than 200,000, for areas that are designated as nonattainment or maintenance areas for ozone or carbon monoxide. Nonurbanized areas are not eligible recipients under this program.

FTA has implemented this program through a regulation, at 49 CFR part 624. In addition, guidance for the Clean Fuels Program is located in Chapter III of FTA Circular 9300.1, "Capital Investment Program Guidance and Application Instructions."

FTA does not foresee any future allocations of funding under this program. Grants under this program are subject to the applicable requirements of 49 U.S.C. 5307. To be eligible for funding under this program, projects must be included in the TIP and/or STIP.

(2) Discretionary Bus and Bus Facilities Program (formerly 49 U.S.C. 5309)

The Section 5309 Bus and Bus Facilities Program was a former discretionary grant program for bus transit projects. Allocations of funding under this program were made either through congressional direction (“earmarks”) or through a competitive discretionary solicitation of proposals. This program was repealed under MAP-21 and replaced with the Section 5339 Bus and Bus Facilities Formula Program.

From 2010 through 2012, FTA allocated discretionary funding under this program to proposals solicited through several notices of funding availability (NOFAs). The NOFAs identified eligible project types and discretionary selection criteria and were based on specific policy initiatives, including:

- (a) State of Good Repair Initiative;
- (b) Bus Livability Initiative; and
- (c) Veterans Transportation and Community Living Initiative.

Funds awarded in response to these NOFAs are available for obligation until they lapse, and are subject to the program terms and requirements at the time of allocation. Section 5309 Bus and Bus Facilities funds cannot be combined with Section 5339 Bus and Bus Facilities funds in a grant application. Additional information on the Section 5309 Bus and Bus Facilities Program is available in FTA Circular 9300.1.

b. New and Revised Programs Under MAP-21.

(1) Urbanized Area Formula Program (49 U.S.C. 5307)

The Urbanized Area Formula Program (49 U.S.C. 5307) provides funding for capital assistance, planning, and operating assistance for public transportation in urbanized areas as defined by the U.S. Census Bureau. FTA apportions Urbanized Area Formula Program funds to designated recipients for urbanized areas with populations of 200,000 or more. FTA apportions funds to states for urbanized areas with populations between 50,000 and 199,999. Funds are allocated to eligible projects by the state or designated recipient in coordination with the metropolitan and statewide planning processes. FTA has provided guidance for Section 5307 in the most recent version of FTA Circular 9030. Section 5339 funds may be transferred to 5307 but must still meet 5339 eligibility requirements. See Chapter III for more information on transfer provisions.

(2) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (49 U.S.C. 5309)

The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that funds the construction of new fixed guideway systems or extensions to existing fixed guideway systems and, as amended by MAP-21, projects that will expand the core capacity of existing fixed guideway corridors. States and local governmental authorities are eligible applicants for Section 5309 funds.

Eligible projects include rapid rail (heavy rail), commuter rail, light rail, trolleybus (using overhead catenary), cable car, passenger ferries, and bus rapid transit systems. The Small Starts program also includes corridor-based bus rapid transit systems that do not operate on a separate fixed guideway but include features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority, and short headway bidirectional services for a substantial part of weekdays and weekend days. The Core Capacity Improvement program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent, and must not be state of good repair projects.

Projects become candidates for funding under Capital Investment Grant program by successfully completing steps in the process defined in Section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects, the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the 5309 program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multiyear federal commitment to the project. Small Starts projects receive construction funds through either a single-year grant or a multiyear grant agreement (Small Starts Grant Agreement) that defines the scope of the project and specifies the federal commitment to the project.

Section 5339 funds may be used to complement funding awarded under the Fixed Guideway Capital Investment Program, as well as to support the continued capital investment needs of completed projects.

Additional information about the Fixed Guideway Capital Investment program is available at <http://www.fta.dot.gov/12304.html> or the final rule on Major Capital Investment Projects at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf>.

(3) State of Good Repair Formula Program (49 U.S.C. 5337)

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to urbanized areas with High Intensity Fixed Guideway systems and High Intensity Motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and

rehabilitation projects for existing High Intensity Fixed Guideway systems and High Intensity Motorbus systems that have been in operation for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization Formula Program.

The State of Good Repair funds must be used for capital projects intended to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions State of Good Repair funds to designated recipients in the UZAs according to a statutory formula. The formula for High Intensity Fixed Guideway comprises: (1) a modified version of the formula used under SAFETEA-LU, reflecting the new definition of fixed guideway; and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High Intensity Motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program will be available in Circular 5300.1.

(4) Rural Area Formula Program (49 U.S.C. 5311)

The Rural Area Formula Program is a formula grant program that provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000. FTA apportions these funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible subrecipients include nonprofit organizations, operators of public transportation, or intercity bus service that receive funds indirectly through a recipient. Section 5339 Bus and Bus Facilities funds may be transferred to 5311 but must still abide by 5339 eligibility guidelines.

The Tribal Transit Program is a takedown from the Section 5311 program, and funds are allocated by formula and on a discretionary or competitive basis. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are allocated based on criteria established for the program. Eligible direct recipients are federally recognized Indian tribes in rural areas. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transit services and rural intercity bus service.

The Appalachian Development Public Transportation Assistance Formula Program is

also a takedown from the Section 5311 program. This program provides formula funds to support public transportation for states in the Appalachian region. Funds are allocated for any purpose eligible under Section 5311.

Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(5) Transit-Oriented Development Planning Pilot Program

The Transit-Oriented Development Planning Pilot Program was established by Section 20005(b) of MAP-21. This program provides funding to advance planning efforts that support transit-oriented development (TOD) associated with new fixed guideway and core capacity improvement projects. TOD focuses growth around transit stations to promote ridership, affordable housing near transit, revitalized downtown centers and neighborhoods, and encourage local economic development. Funds from Section 5307 may be used to support planning projects that receive funding under this program, or may be used for capital projects relating to TOD projects.

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CHAPTER III

GENERAL PROGRAM INFORMATION

1. APPORTIONMENT OF PROGRAM FUNDS. MAP-21 authorizes funding for the Bus and Bus Facilities formula program. FTA apportions Bus Program funds to states and designated recipients according to a statutory formula. In addition, states and territories (including the District of Columbia and Puerto Rico) receive a fixed allocation, referred to as the National Distribution, before FTA applies the formula. The funds made available for Section 5339 for a given fiscal year are apportioned as follows:
 - a. Of the total made available, a percentage identified within the apportionment notice in the *Federal Register* is set aside for National Distribution for each state, territory and the District of Columbia.
 - b. Of the remaining funds made available, 86.65 percent is allocated to designated recipients for use in urbanized areas (UZAs) of at least 200,000 in population and further subdivided into the categories as follows:
 - (1) 9.2 percent of the funds under (b) are for the incentive tier and are allocated on the basis of bus passenger miles traveled squared, divided by operating costs.
 - (2) 90.8 percent of the funds under (b) are for the nonincentive tier, with 73.39 percent apportioned to UZAs of one million or more in population and 26.61 percent apportioned to UZAs under one million in population.
 - c. Of the remaining funds made available, 13.35 percent is allocated to states for use in UZAs of less than 200,00 in population and further subdivided into the categories as follows:
 - (1) 50 percent of the funds under (c) are allocated to UZAs on the basis of the population of the UZAs; and
 - (2) 50 percent of the funds under (c) are allocated to UZAs on the basis of population multiplied by the population densities of the UZAs.

FTA is required to apportion funds appropriated for the Bus Program for any fiscal year (FY) no later than the tenth day after the date the amounts are appropriated or October 1st of the fiscal year for which the amounts are appropriated, whichever is later. Apportionments are published in the *Federal Register*.

2. APPORTIONMENT DATA. For UZAs with less than 200,000 in population, the formula is based on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, as well as population and population density.

FTA obtains population and population density data from the most recent decennial census. FTA obtains all other data used for formula apportionments from the latest report year of

validated data reported in the National Transit Database (NTD). For purposes of the formula, FTA may not use data that is submitted late or data that FTA cannot validate. Transit providers making data submissions should refer to the current editions of the NTD Reporting Manuals and Uniform System of Accounts in reporting to the NTD. Copies of these publications and other NTD policy statements and reporting guidance can be found on the NTD website at <http://www.ntdprogram.gov/> and can be requested from the following address: FTA Office of Budget and Policy, Office of Strategic Planning and Analysis, 1200 New Jersey Avenue SE, Washington, DC 20590; or by telephone at 202-366-4050. The National Transit Institute provides annual workshops on the NTD for persons reporting to the database on behalf of recipients.

3. AVAILABILITY OF FUNDS. Section 5339 funds are available for obligation during the federal fiscal year for which they were apportioned plus three additional years. For example, funds appropriated in fiscal year 2013 are available until September 30, 2016. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all states and designated recipients together with funds made available for the next fiscal year.
4. TRANSFER OF APPORTIONMENTS.
 - a. From the State's National Distribution Allocation: Consistent with 49 U.S.C. 5339(e)(1), the governor of the state may transfer any part of the state's apportionment, specifically the National Distribution allocation, to supplement amounts apportioned to the state under Section 5311(c) or amounts apportioned to the state for areas under 200,000 in population under Section 5307. Transferred funds must be used for eligible Bus Program activities, even if combined in a grant with other Section 5307 or 5311 funding. This transfer is for administrative purposes only and allows 5307 direct recipients to apply directly to FTA for their allocation.
 - b. Notification to FTA. Federal requirements do not mandate FTA approval prior to transfer of an apportionment, but the governor must provide notification to FTA of a transfer for each transaction so that FTA can accurately reflect this transfer decision in overall program budget levels and apportionment records. In addition, the grant application project budget must show the amount of transferred funds.
 - c. Insular Areas. First enacted in 1978, 48 U.S.C. 1469a authorizes federal agencies that make grants to specified insular areas, including the Virgin Islands, to consolidate any and all grants made to an insular area making the new consolidated funds available for programs and purposes authorized for any of the grants that are being consolidated.
5. ELIGIBLE CAPITAL PROJECTS. Eligible capital projects include projects to replace, rehabilitate, and purchase buses and related equipment, and projects to construct bus-related facilities. This includes but is not limited to:
 - a. The acquisition of buses for fleet and service expansion;

- b. Bus maintenance and administrative facilities;
- c. The acquisition of vans for fleet and service expansion, including specialized vans and related facilities used to provide ADA complementary paratransit service:
- d. Transfer facilities;
- e. Bus malls;
- f. Transportation centers;
- g. Intermodal terminals;
- h. Intercity facilities which are part of a joint development project;
- i. Park-and-ride stations;
- j. Acquisition of replacement vehicles;
- k. Bus rebuilds;
- l. Bus overhauls;
- m. Passenger amenities such as passenger shelters and bus stop signs;
- n. Accessory and miscellaneous equipment such as:
 - (1) mobile radio units;
 - (2) supervisory vehicles;
 - (3) fare boxes;
 - (4) computers; and
 - (5) shop and garage equipment.
- o. Clean Fuels Projects. Purchases under this category are passenger vehicles used to provide public transportation and powered by compressed natural gas (CNG), liquefied natural gas (LNG), biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel (ultra low sulfur content), or other low or zero emissions technology. Eligible activities also include constructing or leasing clean fuel buses, constructing electrical recharging facilities for such buses, and constructing new or improving existing public transportation facilities to accommodate clean fuel buses.
- p. Introduction of New Technology. Section 5339 funds may be used for transit-related technology, such as innovative and improved products that provide benefits to transit, including Intelligent Transportation Systems (ITS). ITS refers to the use of electronics,

communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system. Examples of transit-related ITS projects include:

- (1) real-time bus arrival information available to passengers through electronic displays at bus stops;
 - (2) automatic vehicle locators;
 - (3) automated passenger counters;
 - (4) vehicle component monitoring (diagnostics)
 - (5) advanced fare payment methods
 - (6) computer-aided dispatching and real-time ridesharing; and
 - (7) automated information for travelers using more than one mode of transportation.
- q. Costs associated with environmental compliance including engineering and design activities are eligible capital expenses. This includes the preparation of environmental documents.

NOTE: Planning activities, preventive maintenance activities (other than bus overhauls), and mobility management activities are not eligible under the section 5339 Bus Program.

- r. Design and Art in Transit. Under MAP-21 federal transit funds are no longer available to support public art in transit facilities. Art can be incorporated into facility design, landscaping, and historic preservation; for example, through the use of floor or wall tiles that contain artistic designs or patterns, use of color, use of materials, lighting, and the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses.
- s. Leasing of Capital Assets. When a recipient leases capital assets from another party, leasing costs are eligible for capital assistance, provided leasing is more cost effective than purchase or construction. Leasing costs eligible for capital assistance include finance charges and ancillary costs such as delivery and installation charges. Leasing of capital assets requires compliance with 49 CFR part 639, "Capital Leases," and Office of Management and Budget (OMB) Circular A-94 which prescribes the discount rates.
- t. Capital Cost of Contracting. Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor providing vehicles for public transportation service, the capital consumed is

equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.”

Only the costs attributable to the privately owned assets are eligible under this policy. FTA does not provide assistance for any preventive maintenance activities under the Section 5339 Bus Program. With one exception, items purchased with federal, state, or local government assistance are not eligible.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. EXHIBIT III-1 shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the National Transit Database (NTD). Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, paratransit, or demand-responsive service.

**EXHIBIT III-1
PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE WITHOUT
FURTHER JUSTIFICATION**

Bus and Paratransit-Related Contract Services	Percent of Contract Eligible for 80 Percent Federal Share
Type of Contract	
1. Service Contract (contractor provides maintenance and transit service; recipient provides vehicles)	40 percent
2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance)	0 percent
3. Vehicle Maintenance Contract (contractor provides maintenance; recipient provides vehicles and transit service)	100 percent
4. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service)	100 percent
5. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent

- u. Project Administration. Administrative activities of an organization pertaining to the immediate accomplishment or oversight of a project are eligible. Project administration costs must be directly associated with administering the capital project. While there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable federal costs principles and properly supported. For further guidance on costs principles see 2 CFR part 225 for states and local governments, and 2 CFR part 230 for nonprofit organizations. Eligible project administration costs must be identified in a grant application. General administrative expenses that a designated recipient or state incurs to implement the program (as contrasted with the eligible costs directly related to administering a capital project) are not eligible as a direct cost under the 5339 program.
 - v. Innovative Financing. When integral to a capital investment project, Section 5339 funds may be used to pay for costs incurred to secure or initiate an innovative financing technique except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available at the time of borrowing.
 - w. Bicycle Facilities. When integral to a capital investment project, Section 5339 funds may be used for bicycle facilities as described in 49 U.S.C. 5319. Bicycle infrastructure is eligible, but bicycles are not eligible. For more information on bicycle facilities, please see Section 8 of this chapter.
6. JOINT DEVELOPMENT IMPROVEMENTS. A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-use, or other nontransit development. Joint development may include partnerships for public or private development associated with any mode of transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities (including outfitting), transit malls, or historic transportation facilities. “Joint development improvements” are an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315. Joint development improvements may include intercity bus stations and terminals, including the outfitting of those stations and terminals.
- FTA’s joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See FTA Circular 7050.1 “Federal Transit Administration Guidance on Joint Development” for more information on FTA’s joint development requirements.
7. INTEREST AND DEBT FINANCING AS AN ELIGIBLE PROJECT COST. There are several areas in which interest is an eligible project cost for FTA’s Section 5339 program assistance, with certain limitations.

- a. Bond Interest in Advance Project Authority: This applies to a situation in which a recipient has obligated all of its urbanized area formula funds for capital or planning projects and would like to carry out any part of a project with local funds which FTA may later reimburse under advance project authority. This authority, which is set forth in Section 5307(e), permits FTA to participate in the project costs, including any interest payable by the recipient and earned by the bondholder on bonds issued by the recipient to the extent the recipient has actually expended the proceeds of the bonds in carrying out the portion of the project. The recipient must certify that it has shown reasonable diligence in seeking the most favorable financing terms available in order for interest to be an eligible reimbursable cost.
- b. Buildings and Equipment: Title 2 CFR part 225, formerly Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," allows financing costs (including interest) associated with otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction, or remodeling finished after October 1, 1980, subject to conditions identified below. The term "building" includes the associated real property (land) and fixtures.

Title 2 CFR part 225 allows financing costs (including interest) paid or incurred on or after September 1, 1995, associated with otherwise allowable costs of equipment subject to the conditions cited below. The regulation defines equipment as, "an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5,000."

Conditions associated with the allowable financial costs for buildings and equipment are as follows:

- (1) A bona fide third party external to the governmental unit provides the financing (from other than tax or user fee sources).
 - (2) The assets are used in support of federal awards.
 - (3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.
 - (4) For debt arrangements over \$1 million, the governmental unit must reduce claims for interest cost by an amount equal to interest earnings on excess cash flow unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more. Interest attributable to fully depreciated assets is unallowable.
- c. FTA will consider other proposals concerning the eligibility of interest case-by-case. FTA will use the guidelines provided in 2 CFR part 225, formerly, OMB Circular A-87, Attachment B, "Selected Items of Cost," in such considerations.

8. FEDERAL SHARE OF PROJECT COSTS.

- a. Capital Projects. The federal share for capital projects that receive funding under the Section 5339 program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the grantee's revenues.
- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA, CAA, and certain bicycle projects as follows:
 - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*).
 - (2) Vehicle-related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or for meeting the requirements of the ADA, is 90 percent.

FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.

The grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with the ADA or CAA. The federal share is 90 percent of the cost for these itemized elements.

- (3) Bicycle Facilities. As provided by 49 U.S.C. 5319, the federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:
 - (a) provide access for bicycles to public transportation facilities;
 - (b) provide shelters and parking facilities for bicycles in or around public transportation facilities; or
 - (c) install equipment for transporting bicycles on public transportation vehicles.

NOTE: Bicycles themselves are not an eligible capital expense under the Bus and Bus Facilities program, only bicycle access related infrastructure.

9. LOCAL SHARE OF PROJECT COSTS. After the appropriate federal share is established, the applicant must provide the local share of the net project cost in cash (or in-kind) and must document in its grant application the source of the local match:

Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," (the common grant rule) at Section 18.24, "Matching

or Cost Sharing,” describes detailed rules for eligibility, valuation, and accounting for the local matching share.

The local match may include:

- a. Cash from nongovernmental sources other than revenues from providing public transportation services;
- b. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue;
- c. Amounts received under a service agreement with a state or local social service agency or private social service organization;
- d. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital.

10. ADDITIONAL LOCAL SHARE INFORMATION.

- a. Revenue Bond Proceeds as Local Share. A recipient of Section 5339 funds may use the proceeds from the issuance of revenue bonds as part of the local match for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Use of the proceeds of revenue bonds as local share will be approved only if FTA finds that the aggregate amount of financial support for public transportation in the UZA provided by the state and affected local governmental authorities during the next three fiscal years, as programmed in the STIP, is not less than the aggregate amount provided by the state and affected local governmental authorities in the UZA during the preceding three fiscal years.
- b. Transportation Development Credits (formerly referred to as Toll Revenue Credits). A state may use, as a credit toward a project’s local share, certain expenditures it has made with toll revenues. The amount of credit toward local share to be earned by a state is based on revenues generated by toll authorities within the state that are used by the authorities to build, improve, or maintain highways, bridges, or tunnels that serve interstate commerce. A recipient wishing to apply the provisions of 23 U.S.C. 120(j) should discuss with its state Department of Transportation (state DOT) the availability of transportation development credits for use as local share in matching FTA grants, and should obtain a letter from the state DOT indicating that TDCs are available for a project prior to submitting a grant application in FTA’s electronic grants management system. FHWA oversees the determination of transportation development credits within each state, and FTA follows the FHWA methodology for calculating these credits as match. FTA will not approve a retroactive application of transportation development credits.

The effect of utilizing transportation development credits means that FTA, in essence, provides 100 percent of the total net project cost. For example, if the actual cost of the asset

the applicant will purchase is \$500,000, FTA's share at 80 percent equals \$400,000. The remaining \$100,000 match is transportation development credits, so additional federal funds are needed to equal \$500,000 or 100 percent of the net project cost.

FTA calculates a project using transportation development credits as shown in the example below:

Actual cost of the asset	\$500,000
	=====
Federal share (80%)	\$400,000
Local share (20%)	<u>\$100,000</u> (from toll revenue credits)
	\$500,000
	=====

In FTA electronic award management system, the recipient will enter the following:

Total project cost	\$500,000
Federal share	\$500,000

FTA requires the recipient to state within the comment section of the FTA electronic award management system that transportation development credits provide, in this example, \$100,000 for the local share and to attach supporting documentation to the grant from the state approving the use and specific amount of transportation development credits.

- c. Use of Program Income as Local Share. Recipients may use program income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use program income as the local share for the grant that generated the income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations, program income does not include interest on grant funds; nor does program income include rebates, credits, discounts, refunds, and interest earned on any of them. FTA Circular 5010, *Grant Management Requirements*, discusses program income in some depth, as does 49 C.F.R 18.25. FTA Circular 5010.1 notes that recipients may retain program income so long as they use it for public transportation purposes, that is, for allowable capital, and operating expenses.

The recipient's accounting system must be capable of identifying program income and the purpose for which the recipient used it. The recipient must account for program income in its accounting system, which FTA subjects to audit. The Federal Financial Report requires the reporting of program income.

- d. Providers of Public Transportation by Vanpool. Section 5323(i)(2) permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. This excludes any amounts received from federal, state, or local governments for the purchase of the rolling stock.

A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient that are in excess of the provider's operating costs to acquire rolling stock, provided that the recipient and provider have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area.

The effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted toward a recipient's local match requirement under a capital cost of contracting grant agreement. If an applicant intends to utilize this provision in a grant, the applicant must inform FTA in advance of submitting the grant and must attach the required agreement to the application in FTA's electronic award management system. The agreement must specify the amount intended to be counted as local match and must identify any amounts under that agreement that have already been applied as local match on any other previous grants. FTA reserves the right to request any additional information necessary to justify the use of this provision in a grant application.

The term "private provider of public transportation" means a private entity providing vanpool service in the service area of a recipient of Section 5339 funds using a commuter highway or vanpool vehicle. These types of vehicles must have the seating capacity of at least six adults (not including the driver) and at least 80 percent of the vehicle's mileage can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

- e. Other Federal Funds. In addition to funds from Section 403 of the Social Security Act, in a very limited number of situations, other federal funds may be eligible for inclusion in the local match. Such use is dependent upon agreement by the federal agency. As an example, Community Development Block Grant funds administered by the Department of Housing and Urban Development (HUD) may be used to provide the local share of federal public transportation projects so long as the public transportation activities are:

- (1) Eligible for assistance under the Community Development Block Grant Program; and
- (2) In compliance with HUD regulations, "Community Development Block Grants," 24 CFR part 570. See 42 U.S.C. 5305(a)(9) and 24 CFR 570.201(g).

Please contact the applicable federal agency to see if their funds can be used as match for FTA funds.

- f. Public-Private Partnerships. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the

scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office. FTA must review and concur on in-kind contributions of any value before federal funds are expended or the value is used as local match. In-kind contributions must also be documented in the grant application.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match and the remaining subparcel is intended to be used at a future date for future match, the grantee is cautioned to clearly indicate the limits of the subparcel to be used as local match and the appraised amount associated with the subparcel. The remnant subparcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess subparcel as overmatch, eligibility of the over-match subparcel may be lost. If federal funds were used to purchase the property, only the nonfederal share of such property may be counted as the value of the in-kind contribution, see 49 CFR 18.24(f). Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," (otherwise known as the Common Grant Rule) at Section 18.24, "Matching or Cost Sharing," describes detailed rules for eligibility, valuation, and accounting for the local matching share.

11. ALTERNATIVE FINANCING. Section 5339 recipients, especially those wishing to undertake major capital projects, are encouraged to explore alternative methods of financing transit projects, in addition to grant funding. Alternative financing can involve combining multiple, nontraditional sources of funding as well as federal, state, local, and private funding, in support of transit capital needs.
 - a. Approaches recipients might investigate include:
 - (1) capital leasing arrangements;
 - (2) joint development;
 - (3) state economic development or revolving loan funds;
 - (4) state infrastructure bank loans;
 - (5) state and federal tax credit programs;
 - (6) special tax districts, such as transportation development districts, special benefit districts, and tax increment financing;
 - (7) exchanges of real property; and
 - (8) in-kind contributions.

- b. Recipients with a dedicated funding source (e.g., sales tax proceeds, transportation development district proceeds, tax increment financing proceeds, and other revenue sources including user fees) may wish to consider a direct loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 2002 of MAP-21 (23 U.S.C. 601 *et seq.*). Eligible projects include any transit capital project that is anticipated to meet the threshold size. Threshold sizes for projects are:

- (1) \$50 million; or
- (2) \$25 million for rural projects and those in cities of 250,000 or less in population; or
- (3) \$15 million for intelligent transportation system (ITS) projects; or
- (4) 33 ⅓ percent of the most recently completed fiscal year's FHWA formula apportionment for the state in which the project is located.

TIFIA direct loans or loan guarantees must be repaid with nonfederal funds. Multiple related projects constituting a program of projects may be grouped in order to meet the cost threshold as long as the credit assistance is secured by a common pledge of revenues.

Implementation of the TIFIA program is the responsibility of the secretary of Transportation. The FTA provides staff support for eligible transit loans, transit loan guarantees, and transit standby lines of credit. On July 31, 2012, the DOT issued a Notice of Funding Availability (NOFA), which announced the availability of funding and the revised TIFIA application process under MAP-21. Each potential applicant must submit a detailed Letter of Interest (LOI). The DOT will review submissions, on a rolling basis, to determine whether the project meets the requirements for TIFIA participation. DOT Credit Council provides policy directions and makes recommendations to the secretary regarding the selection of projects for credit assistance with final approval by the secretary.

Contact:

Innovative Program Delivery Office
TIFIA Joint Program Office (HITJ)
US Department of Transportation
1200 New Jersey Avenue, SE
Room E64-462
Washington, DC 20590
Fax: 202-366-0828
TIFIAcredit@dot.gov

<http://www.fhwa.dot.gov/ipd/tifia/index.htm>

12. **DEFERRED LOCAL SHARE.** A recipient may request, on a case-by-case basis, that all or a portion of the local share for a project be deferred until 100 percent of the federal funds have been drawn down or other period. A request for the deferral must accompany the grant

application. A recipient that intends to use deferred local share must receive FTA approval prior to the obligation of the grant. FTA will specify the terms and schedule for the deferral.

Approval is contingent upon the deferral resulting in benefits to transit and upon the recipient demonstrating that it has the financial capacity to complete the project. Local share cannot be deferred indefinitely. When FTA approves the use of deferred local share, the local funds must be available and used to match drawn-down federal funds in the time period specified by FTA's approval.

Generally, FTA will not approve retroactive deferral of local share. In exceptional circumstances, FTA may approve retroactive deferral of local share; for example, in response to a catastrophic event such as a hurricane or flood where sources of local funds are temporarily disrupted.

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CHAPTER IV

PLANNING AND PROGRAM DEVELOPMENT

1. METROPOLITAN AND STATEWIDE PLANNING REQUIREMENTS. A grant applicant requesting Section 5339 assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304, and 5306. Before Federal Transit Administration (FTA) may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide and nonmetropolitan transportation planning process specified in 49 CFR part 613 and 23 CFR part 450. All transit projects for which federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a Metropolitan Transportation Plan and transportation improvement plan (TIP) developed and approved by the metropolitan planning organization (MPO) and the chief executive officer of a state and in a statewide transportation improvement plan (STIP) that has been approved by FTA and Federal Highway Administration (FHWA).

Projects not within metropolitan planning boundaries are required only to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers or other identifying numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s) within the appropriate section of the FTA electronic award management system. Projects listed in the TIP and STIP must be derived from and consistent with the state's long-range plan and MPO metropolitan plan.

Each project in the TIP/STIP must include sufficient descriptive material to identify the project or phase of the project. In addition, each project in the TIP/STIP must indicate reasonably expected resources to carry out the project.

FTA and FHWA are responsible for issuing joint planning regulations implementing Sections 5303, 5304, and 5305. More information on the planning process can be found in:

- a. "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500, and 49 CFR part 613. The regulations outline the requirements for state Departments of Transportation (state DOTs), MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states; and
 - b. FTA Circular 8100.1C (http://www.fta.dot.gov/documents/FTA_C_8100.1C.pdf), Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.
2. TRANSPORTATION MANAGEMENT AREAS. Title 49 U.S.C 5303(k) identifies all urbanized areas (UZAs) with a population of over 200,000 individuals as transportation management areas (TMA). The secretary of Transportation shall designate any additional area as a TMA on the request of the governor and the metropolitan planning organization designated for the area.

Joint FTA/FHWA transportation planning regulations contained in 23 CFR part 450 include guidelines for setting the metropolitan planning area boundaries of MPOs, including those that are in, or comprise, TMAs. In some cases, the MPO-established metropolitan planning area boundaries for MPOs that are in, or comprise, TMAs may also include one or more UZAs with populations under 200,000. The governor of a state may allocate formula fund apportionments to small UZAs located within or designated as Transportation Management Areas (TMAs) that are different from the allocations FTA publishes.

Before the enactment of MAP-21, a “designated recipient” was defined as an entity designated, in accordance with the planning process under Sections 5303, 5304, and 5306, by the chief executive officer of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 that are attributable to transportation management areas identified under Section 5303; or a state or regional authority if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation. The reference to TMAs was directed at areas with 200,000 or more in population (large UZAs) identified by the Census Bureau. FTA did not interpret the reference to include areas under 200,000 in population, which the secretary designated as TMAs at the request of the governor and the MPO. Such designations are for planning purposes only.

3. PERFORMANCE-BASED PLANNING. MAP-21 established a broad performance management program that significantly impacts the metropolitan and statewide transportation planning process. The performance management approach presents a transparent, accountable decision-making process for MPOs, states, and providers of public transportation to identify multimodal capital investments and project priorities. MAP-21 includes a number of provisions that attempt to integrate a new performance management approach into the existing metropolitan and statewide planning process described below.

MAP-21 requires MPOs and states to develop their long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for the metropolitan and nonmetropolitan areas of the state.

- a. The metropolitan and statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in Section 150(b) and the general purposes described in Section 5301. In development of their metropolitan transportation plan and long-range statewide transportation plan, MPOs and states must include a description of the transportation system performance measures and respective performance targets that address the performance measures established by the U.S. Department of Transportation (USDOT) under 23 U.S.C. 150(c).
- b. The MPO’s transportation plan and state’s long-range statewide transportation plan should include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.

- c. The MPO's TIP and state's STIP must demonstrate the linkage between investment priorities and the performance targets by including a discussion of the anticipated effect of the STIP/TIP toward achieving the performance targets established in the transportation plan.

FTA and FHWA issued revised joint planning regulations implementing Sections 5303 and 5304 that address performance-based planning. More information on the planning process can be found in "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500, and 49 CFR part 613. The regulations outline the requirements for state DOTs, MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states.

4. ROLE OF DESIGNATED RECIPIENT AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING PROGRAM FUNDS. Under the Section 5339 program, the state or designated recipient is the entity responsible for "receiving and allocating" the amounts made available by Congress and apportioned by FTA to an UZA. Eligible recipients under Section 5339 are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators.

Pursuant to 49 U.S.C. 5303(d), an MPO, which in some cases may also serve as the designated recipient of Section 5339 funding, is the forum for cooperative decision making to carry out the transportation planning process.

Both the planning requirements and the statutory provisions of 49 U.S.C. Chapter 53 specify the roles of the MPO and of the designated recipient. While the MPO develops and adopts the TIP, the designated recipient, which may in some cases also be the MPO, has the primary responsibility to develop the program of projects (POP) for the Section 5339 funds apportioned to its large UZA for inclusion in the TIP. In the case of multiple designated recipients or multiple MPOs, the designated recipient or designated recipients must work with the MPO to ensure that the POP requirements are met by inclusion of all projects in the TIP or TIPs. The MPO and the designated recipient have to work cooperatively to develop the TIP and agree on how to spend Section 5339 funds.

5. MULTIPLE DESIGNATED RECIPIENTS IN LARGE UZAS. In those UZAs with more than one designated recipient, FTA expects local officials, operating in consultation with the MPO, to determine the allocation of Section 5339 funds together. The designated recipient(s) and the MPO(s) should determine the subarea allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A subarea allocation that is based on predetermined fixed percentages, for example, is not considered satisfactory in reflecting local needs.

Designated recipients must provide documentation to FTA showing how the Section 5339 allocation will be split among the designated recipients. FTA may request a written agreement signed by a representative of each designated recipient involved.

To assist in making such subarea allocations, any UZA may request the appropriate FTA

regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Bus and Bus Facilities Program resource.

6. PROGRAM OF PROJECTS AND PUBLIC PARTICIPATION REQUIREMENTS. Since Section 5339 recipients must comply with certain Section 5307 grant requirements and since the program has limited direct recipients, FTA expects designated recipients to develop a POP. A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5339 apportionment. If more than one designated recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP included in that grant. The POP includes a description of the projects, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. Recognizing that states and designated recipients are required to have a POP under other programs such as Section 5307, Section 5339 projects may be included in other program POPs for administrative purposes.
- a. Programming in TIP. Eligibility for FTA Section 5339 requires the MPO to list capital assistance projects in the approved TIP or STIP, or both. The designated recipient is responsible for developing the POP, while the MPO is responsible for placing the projects in the TIP.

Projects included in an FTA grant application must be derived from that part of a metropolitan area's TIP (approved by the MPO, found to be consistent with the metropolitan area's long-range plan by FTA, and approved by the governor) that is within an approved STIP. The first-year program of the approved TIP constitutes a list of "agreed to" projects for FTA grant application purposes. The TIP/STIP public participation and approval processes can serve to satisfy the requirements for public participation under Section 5339. The list of projects the designated recipient proposes for funding from the UZA's Section 5339 apportionment constitutes the POP. Where there are multiple designated recipients or MPOs the UZA's POP may be in several separate parts for the purpose of programming and public participation.

- b. Public Participation Requirements. To receive a grant under Section 5339, a recipient must meet Section 5307(b) requirements concerning public participation in development of a POP and must certify to compliance with these requirements. The requirements are listed in 49 U.S.C. 5307(b)(1) through (7) and are discussed in the paragraphs below. The recipient may satisfy these requirements in whole or in part through the development of the metropolitan TIP and the local coordinated public transit-human service transportation plan.

The state or the designated recipient for a UZA must:

- (1) Make available to the public information concerning the amount of funds available under the Section 5339 program and the POP that the recipient proposes to undertake with such funds;

- (2) Develop a proposed POP for activities the designated recipient will finance, in consultation with interested parties, including private transportation providers and human services organizations representing the employment-related transportation needs of welfare recipients and low income individuals;
 - (3) Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, representatives of welfare recipients and low income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient;
 - (4) Only states are allowed to program the “national distribution” funding pot under Category A and/or B under the new 5339 Bus and Bus Facilities Program. Category A includes projects that are ready to go now and Category B includes projects that are almost ready to go;
 - (5) Provide an opportunity for a public hearing to obtain the views of citizens on the proposed POP;
 - (6) Ensure that the proposed POP provides for the coordination of Section 5339 public transportation services with transportation services assisted with other federal sources;
 - (7) Consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and
 - (8) Make the final POP available to the public (note: where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate processes for the different areas involved).
- c. Budget Constraints, Additional Information. The total federal share for the final POP may not exceed the amount apportioned to the UZA or the amount allocated to the designated recipient from these amounts, plus any Section 5339 carryover funds from previous years.
- d. Required Grantee Information. Grant recipient must provide FTA with the following information for any subrecipient:
- (1) the name of the entity receiving the award;
 - (2) the amount of the award;
 - (3) the location of the entity receiving the award; and
 - (4) the primary location of performance under the award, including the city, state, and congressional district.
- Please refer to further FFATA reporting requirement details in Chapter V.
- e. Revisions to Program of Projects. Prior FTA approval is not required to reallocate funds

among projects included in the approved POP, so long as the single change does not exceed 20 percent of the affected project. Any other changes to the POP require prior approval by FTA.

If appropriate, revisions to the POP should be accompanied by a budget revision to the grant in the electronic grant management system (TEAM or a successor thereto). The recipient should attach the revised POP (after approval if required) to the project management milestones section in the electronic grant management system. In the grantee's milestone progress report, the recipient should reference the date that a new POP was attached. The most recently updated program of projects submitted by the recipient to FTA in its quarterly or annual report or in the course of making revisions will be considered the current approved program of projects, incorporated by reference in the grant agreement.

Below are examples of project and funding revisions that do not change the scope of the approved POP. Unless FTA notifies the designated recipient otherwise, the following levels of notification and FTA approval apply to revisions:

- (1) Revisions Not Requiring Prior FTA Notification or FTA Approval. The recipient may make the following revisions without prior notification to FTA, so long as the original reservation of funds is not impacted:
 - (a) Delete a project from the POP, if the project cost is less than 20 percent of the total of the affected POP;
 - (b) Reallocate funds within an approved POP among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in vehicle or equipment requirements; and
 - (c) Add equipment or property transferred from one subrecipient to another subrecipient listed in the POP, regardless of whether the items were originally funded from a different grant.
- (2) Revisions Requiring Notification to FTA, but Not FTA Approval. The recipient may make the following revisions after notifying FTA:
 - (a) Create new projects that are less than 20 percent of the total of the POP, so long as the designated recipient has confirmed eligibility and confirms the project is consistent with the TIP;
 - (b) Delete or reduce a project by more than 20 percent of the total POP.
- (3) Revisions Requiring FTA Approval. The designated recipient may make the following revisions to an approved POP, and relevant project listing in the TIP and STIP, only after obtaining approval from FTA:
 - (a) Prior FTA approval is required when the federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions since the last one specifically approved by FTA) exceeds 20 percent;

(b) Prior FTA approval is required if the budget revision would:

1. Change the size or physical characteristics of the activities specified in the grant;
2. Increase or reduce the number or revenue rolling stock vehicles to be purchased by more than two units.

(4) Update of Program of Projects. The most recently updated POP submitted by the recipient to FTA in its annual milestone progress report or in the course of making revisions will be considered the approved POP, incorporated by reference in the grant agreement. Only the addition of federal funds or a change in the scope of the approved POP requires amendment of the grant agreement.

7. TRANSFER OF FTA FUNDS FOR HIGHWAY PROJECTS. Section 5339 funds are not available to be transferred between FHWA and FTA for transit or highway projects.

8. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT.

a. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office must “make the case” by identifying a useful life period for all equipment, rolling stock, and facilities with an acquisition value greater than \$5,000 to be procured with federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the federal interest for the disposition of the project property in later years.

(1) Determining Useful Life for Project Property. The grantee should identify the method used to determine the useful life. Acceptable methods to determine useful life include but are not limited to:

- (a) Generally accepted accounting principles.
- (b) Independent evaluation.
- (c) Manufacturer’s estimated useful life.
- (d) Internal Revenue Service guidelines.
- (e) Industry standards.
- (f) Grantee experience.
- (g) The grantee’s independent auditor who needs to concur that the useful life is reasonable for depreciation purposes.
- (h) Proven useful life developed at a federal test facility.

- (2) Rolling Stock Useful Life Policy. Useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. The useful life in years refers to total time in revenue transit service, not time spent stockpiled or otherwise unavailable for regular transit use. Minimum useful life for buses and vans is determined by years in service or accumulation of miles, whichever comes first, as follows:
- (a) Large, heavy-duty transit buses including over the road buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
 - (b) Small, heavy-duty transit buses (approximately 30'): at least 10 years of service or an accumulation of at least 350,000 miles.
 - (c) Medium, medium-duty transit buses (approximately 25'-35'): at least seven years of service or an accumulation of at least 200,000 miles.
 - (d) Medium, light-duty transit buses (approximately 25'-35'): at least five years of service or an accumulation of at least 150,000 miles.
 - (e) Medium, light-duty transit buses (approximately 25'-35'): at least five years of service or an accumulation of at least 150,000 miles.
 - (f) Other light-duty vehicles used as equipment and in transport of passengers (revenue service) such as regular and specialized vans, sedans, demo models, light-duty buses, and all bus models exempt from testing in the current 49 CFR part 665: at least four years of service or an accumulation of at least 100,000 miles.
- b. Early Disposition. FTA calculates the value of vehicles before the end of their minimum useful life on the basis of a formula using straight-line depreciation. Straight-line depreciation is a term most often used to indicate that personal property has declined in service potential. Removal of an FTA-funded vehicle from revenue service before the end of its minimum useful life, except for reasons of fire, collision, or natural disaster, leaves the recipient liable to FTA for the federal share of the vehicle's remaining value. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value must be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Consistent with this policy, the suggested vehicle useful life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty. Please see FTA's Grant Management Requirements Circular 5010.1 for more information on disposition.
- c. Rolling Stock Spare Ratio Policies. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage (50 vehicles required and 20 spare vehicles results in a 20 percent spare ratio). Spare ratios will be taken into account during the review of grant applications proposing to replace, rehabilitate, or add vehicles to the applicant's fleet.

- (1) Bus Fleet. The basis for determining a reasonable spare ratio takes local circumstances into account, but generally, the number of spare vehicles in the active fleet for recipients operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service.

For purposes of the spare ratio calculation, “vehicles operated in maximum service” is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, and on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as “vehicles operated in maximum service.”

Buses delivered for future expansion and buses that have been replaced but are in the process of being disposed of should not be included in the calculation of spare ratio.

In each grant application to replace, rehabilitate, or add vehicles, the applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the recipient’s conformance with FTA’s spare ratio guidelines in the fleet status screen in the FTA electronic award management system. A recipient is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award.

- (2) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. Vehicles may be placed in an inactive contingency fleet, or “stored,” in preparation for emergencies. No vehicle may be placed in this inactive contingency fleet unless the vehicle has reached the end of its minimum useful life.

Vehicles held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA does request information about the contingency fleet when reviewing grant applications. Contingency plans are also subject to review during FTA’s oversight reviews, including the triennial reviews required for recipients of the Urbanized Area Formula Program (49 U.S.C. 5307). Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Since vehicles in the contingency fleet are not part of the active fleet, they do not count in the calculation of spare ratio.

- d. Requirements Related to the Purchase of Vehicles. Recipients requesting funds for the purchase of vehicles must meet certain FTA requirements.

- (1) Fleet Expansion. Recipients seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve. The application should address vehicle needs, fleet size, and spare ratio. FTA may request official property records (or a Rolling Stock Status Report), in which future needs (expansion and replacement) are discussed. The source of some of this information may include documentation developed during the metropolitan and statewide transportation planning processes, in

which case summary information and precise reference to the earlier material will be acceptable. Depending on the degree of expansion, the recipient may also include a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used to identify feasible opportunities for new or expanded routes. These criteria are often based on demographic measures and are used to identify geographic locations that are good candidates for new transit service. The recipient should explore all areas within the region, including areas that are currently served by transit, since they may have potential for different types of service.

In order to comply with FTA Circular 4702.1B (http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf) “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” recipients that operate 50 or more fixed-route vehicles in peak service and are located in an urbanized area of 200,000 or more in population must conduct, prior to implementation, service equity analyses for all major service changes in order to determine whether those changes have a discriminatory impact.

In addition, all providers of fixed-route public transportation are required to adopt systemwide service policies to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. One such policy is related to vehicle assignment. Vehicle assignment refers to the process by which transit vehicles are placed into service in bus depots and on routes throughout the transit provider’s system. Please see FTA Circular 4702.1B, chapter IV, section 4, for additional information.

- (2) Preaward and Post-Delivery Review of Buses. Procurements for revenue service vehicles to transport passengers, other than sedans or unmodified vans, must be reviewed in accordance with 49 CFR part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement” on FTA’s website: http://www.fta.dot.gov/legislation_law/12921_5424.html. Part 663 requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a preaward and post-delivery review to assure compliance with its bid specifications, Buy America requirements (see Chapter V), and federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than twenty vehicles for use in areas under 200,000 in population or more than ten for large UZAs with a population of greater than 200,000, other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than ten or more than twenty vehicles, depending on area size.
- (3) Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with the requirements in 49 CFR part 665 and must obtain a copy of

the resulting test report before FTA funds can be released. FTA provides a Bus Testing section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

MAP-21 amended the bus testing provisions under 49 U.S.C. 5318 to require that FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if it has received a passing score. This requirement will take effect after FTA has issued regulations establishing the standard.

- (4) Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR part 661). FTA's Buy America requirements at 49 CFR part 661 differ from federal Buy American regulations at 48 CFR part 25. The former applies to third party contracts funded by FTA, while the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as FTA Circular 4220.1 (http://www.fta.dot.gov/legislation_law/12349_8641.html), "Third Party Contracting Guidance," before undertaking any procurement. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.
- (5) Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid-opening, that the manufacturer likely to receive the contract is in compliance with part 26.

TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.
- (6) Vehicle Americans with Disabilities Act (ADA) Requirements. Recipients must ensure that each transit vehicle meets the accessibility requirements and standards for the vehicle type specified in 49 CFR parts 37 and 38, as applicable. Where a vehicle or component departs from the particular technical and scoping requirements, the recipient must obtain a determination of equivalent facilitation, as described in Section 38.2, from the FTA administrator under procedures set forth in Section 37.7(b). Where a specific vehicle type is not addressed by part 38, accessibility requirements must be determined by USDOT in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) as specified in Section 38.171(c).

- e. Replacing FTA-Funded Vehicles. FTA has established several policies to ensure that vehicles acquired with federal funds are maintained and remain in transit use for a minimum useful life.
- (1) Replacement at End of Minimum Useful Life. A vehicle proposed to be replaced must have achieved at least the minimum useful life. For purposes of bus replacement grant applications, the age of the bus to be replaced is determined by the number of years of service or mileage at the time the proposed replacement bus will be introduced into service, or when the bus was taken out of service.
 - (2) Replacement before the End of Minimum Useful Life. Early replacement of a vehicle prior to the end of its minimum useful life requires prior FTA approval. FTA is entitled to its share of the remaining federal interest. If a vehicle is replaced before it has achieved its minimum useful life, the recipient has the option of returning to FTA an amount equal to the remaining federal interest in the vehicle or applying the “Like-Kind Exchange” policy (discussed below) and placing an amount equal to the remaining federal interest in the vehicle into a newly purchased vehicle.

To determine the federal interest in a federally funded vehicle during its minimum useful life, a straight-line depreciation formula is used. For example, a bus with a twelve-year minimum useful life, or 500,000 miles, will decrease in value each year by one-twelfth of its original purchase price. Similarly, the federal interest in the bus decreases each year by one-twelfth of the amount of the federal grant that was awarded for its purchase. Alternatively, using straight-line depreciation based on mileage, the value decreases for each mile driven by 1/500,000 of the original purchase price, and the federal interest in the bus decreases by 1/500,000 for each mile driven. The unamortized value of the remaining useful life per unit is the greater value obtained by calculating the straight-line depreciation based on either miles or years, whichever is more advantageous to the grantee.

- (3) Use of Like-Kind Exchange Policy. With prior FTA approval, a vehicle may be traded in or sold before the end of its minimum useful life if a recipient so chooses. In lieu of returning the federal share to FTA, a recipient may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like-kind.

“Like-Kind” is defined as exchanging a bus for a bus with a similar service life. Under the like-kind exchange policy, proceeds from a vehicle’s sale are not returned to FTA; instead, all proceeds are reinvested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the federal interest in the vehicle at the time it is being replaced, the recipient is responsible for providing the difference, along with the recipient’s local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the federal interest of the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

See “Example of Like-Kind Exchange Example” in Appendix C of this circular for a

sample calculation for the like-kind replacement of a heavy-duty bus, illustrating the sale of a bus at the bus's mid-life.

- (4) Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. The vehicle to be rebuilt should be at the end of its minimum useful life, as previously described, and in need of major structural and/or mechanical rebuilding. The age of the bus is determined by its years or mileage in service at the time the rebuilding begins. The minimum extension of useful life for a bus is four years.

With few exceptions, a vehicle rebuilt with FTA funds must be brought into compliance with the Americans with Disabilities Act (ADA) if that vehicle is not already in compliance. For additional information, see 49 CFR 37.75 regarding remanufacture of nonrail vehicles.

- f. Rolling Stock Overhauls. Rolling stock overhauls are the only preventive maintenance capital expense in the section 5339 Bus program. This eligibility for capital assistance applies also to leasing and to contracted service. Overhauls are usually done to make sure rolling stock reaches its useful life. Overhaul does not extend the useful life of rolling stock. This eligibility is in addition to eligibility of rebuilding specifically discussed above in Chapter IV, subsection 8.e. (4) For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.
 - g. Requirements Related to Accessories and Miscellaneous Equipment. A grant application may include certain miscellaneous items separate from the costs of a bus procurement or facilities project. For example, a recipient may apply for mobile radios, bus stop signs or shelters, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The application must explain the rationale or need for each request. FTA does not require a separate justification if, for example, a farebox or radio is included in the cost of a new bus, or shop equipment is included in the cost of a new maintenance facility.
9. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded by Section 5339. A recipient may use FTA funds to construct, renovate, or improve an intercity bus or rail station or terminal provided the terminal meets the eligibility criteria of 49 U.S.C. 5302 (3)(G).
- a. General Philosophy. FTA generally assists in building two kinds of facilities:
 - (1) facilities that support transit operations, such as maintenance garages and administrative buildings; and
 - (2) facilities that provide passenger amenities and extend into the built environment, such as bus or rail terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus or rail services.
 - b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of forty-

fifty years for the minimum useful life of a facility. A railroad or highway structure has a minimum useful life of fifty years, and most other buildings and facilities (concrete, steel, and frame construction), forty years. For further information, see FTA Circular 5010.1 (http://www.fta.dot.gov/images/content_images/C_5010_1D_Grant_Management_Requirements_2012_Page_Changes_8-27-2012.pdf).

- c. Facility ADA Requirements. Recipients must ensure that transit facilities meet the accessibility standards and requirements specified in 49 CFR parts 37, 38, and 39, as applicable. Where any departure from the specific requirements is contemplated, as permitted under 36 CFR part 1191, the recipient must obtain a determination of equivalent facilitation from the FTA administrator under procedures set forth in section 37.9(d).
- d. Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to nontransit use for construction, maintenance, and operation costs.
- e. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a recipient currently operating twenty vehicles, a request for a bus maintenance garage that will accommodate twenty vehicles and have space for a 10 to 25 percent vehicle increase would be considered an acceptable grant request. For the same transit agency, a grant request for a garage accommodating forty vehicles would not be acceptable, unless the recipient could demonstrate its need, willingness, and ability to expand its fleet to forty vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and supporting facilities may be justifiable.
- f. Project Staging. When applying for a grant to build a facility, a recipient must be able to fully describe the project and estimate the cost of the facility. Although planning is not eligible these costs must be included. The next phase is engineering and design, which would include costs for development of an environmental document, and real estate appraisals. Once FTA has reviewed and approved the environmental documentation, funds may be requested for land acquisition and construction.
- g. Planning Justifications. There must be a planning basis for every project or for every group of projects. Accordingly, FTA requires recipients to include the planning justification in the grant application submitted in the FTA electronic award management system. Planning activities are not an eligible expense under the Section 5339 Bus and Bus Facilities Program, however, costs associated with environmental compliance including engineering and design are eligible capital expenses.

Feasibility studies at varying levels of detail as appropriate and proportionate should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a recipient may choose to reference and summarize pertinent parts of

documents in which results of project studies were reported (e.g., transportation plans, Unified Planning Work Programs [UPWPs], and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide additional guidance for various kinds of facilities projects.

- (1) Passenger Shelters and Bus Boarding and Alighting Areas. A program for bus shelters and bus boarding and alighting areas should be developed for the existing and proposed network based on the operator's shelter criteria and to the extent the construction specifications are within its control, and, in the case of significant increases, should be described in the grant application. Bus shelters and bus boarding and alighting areas must comply with standards for accessibility established by USDOT regulations implementing the transportation provisions of the ADA (49 CFR parts 27, 37 & 38, as amended). A map indicating the transit network and shelter and bus boarding and alighting area location should be developed and available upon request.
 - (2) Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning/feasibility study. Elements would include a determination of transit demand and other uses, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, an evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
 - (3) Park-and-Ride Facilities. The basis for a new park-and-ride lot should be documented in a feasibility study. Generally, activities would include an evaluation of demand and service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.
 - (4) Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a feasibility study. Activities would include an evaluation of the condition and adequacy of the existing facility, development of site evaluation criteria, identification and evaluation of alternative sites based upon site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.
10. ENVIRONMENTAL CONSIDERATIONS. Prior to projects receiving FTA funding, FTA is required to consider every project's potential impacts on the environment. These environmental reviews are conducted under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321) and related federal environmental laws, such as the National Historic Preservation Act, regulations, and executive orders. The amount of resources required to complete this process (time, documentation, consultant services, etc.) will vary depending on the type of project and its potential to impact the human and natural environment. The following list identifies and briefly describes each level of environmental review that may apply to a project:

- a. Categorical Exclusion (CE): Projects that historically do not result in significant environmental impacts may qualify as a CE and will require little to no documentation. Examples of this type of project are buying a bus or construction of transit facilities primarily within the transportation right-of-way.
- b. Documented Categorical Exclusion (DCE): Projects that historically do not result in significant environmental impacts but are slightly greater in scope than those qualifying as a CE may qualify as a DCE. Examples of this type of project may include real property acquisition or construction of transit facilities with features located outside of the transportation right-of-way.
- c. Environmental Assessment (EA) & Environmental Impact Statement (EIS): Projects that are complex in scope and/or are viewed as controversial by the public may require the preparation of an EA. This level of environmental review provides the public an opportunity to comment and will ultimately determine whether or not the project will result in any significant impacts. If the analysis in an EA concludes that the project will result in significant impacts, or if from the early planning stages it is determined the size and scope of the project will result in significant impacts, an EIS will be required. Most grantees typically need to enlist consultant services when preparing an EA or EIS.

Grantees should consult with FTA early in the grant application process, and prior to expending funds for a planned project for which federal funds are requested, to confirm the appropriate level of environmental review.

Further detail and explanation on the different levels of environmental review can be found in 23 CFR part 771, FTA's Environmental Impact and Related Procedures. Grantees must receive confirmation that their proposed FTA-funded project has complied with the policies and procedures provided in 23 CFR part 771 before the grant application can be approved by FTA and funds can be obligated.

11. AUTHORITY TO UNDERTAKE PROJECTS IN ADVANCE. There are three different authorities by which a recipient may incur costs on a project before grant approval and retain eligibility for reimbursement after grant approval. The first is automatic preaward authority. The second is a letter of no prejudice (LONP). The third is statutory advance construction authority. Certain terms and conditions apply equally to all three authorities; these are discussed below in subsection d.
 - a. Automatic Preaward Authority. FTA typically grants preaward authority in each fiscal year apportionments notice published in the *Federal Register*, and recipients should consult such notices for details of the preaward authority. For design and environmental review, costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For

property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that require a categorical exclusion pursuant to 23 CFR 771.118(d), an environmental assessment, or an environmental impact statement, costs may be incurred as of the date that FTA completes the environmental review process required by NEPA and its implementing regulations (i.e., through issuance of a Section 771.118(d) categorical exclusion determination, a Finding of No Significant Impact [FONSI], or a Record of Decision [ROD]). For preaward authority triggered by the completion of the NEPA process, the completion of planning and air quality requirements is a prerequisite, as those activities are completed prior to conclusion of the environmental review process. The authorization of State of Good Repair Grants funds triggers automatic preaward authority for design and environmental work on the project within the total amount authorized for the authorization period.

- b. If a grant applicant is concerned that a project may not clearly qualify as a CE, it is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary. A project must also be included in the STIP and TIP prior to incurring expenses under preaward authority.
- c. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Therefore, FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements before incurring expenses under automatic preaward authority with the hope of future reimbursement.
- d. Letter of No Prejudice. For a project not covered by the automatic preaward authority, including projects that will require Section 5339 funds not yet authorized and for which FTA has not extended preaward authority, a grant applicant that seeks to proceed with a transit project in advance of the availability of federal funds may request that FTA issue a Letter of No Prejudice (LONP) for that project. An LONP allows a recipient to incur costs on a project using nonfederal resources with the understanding that the costs incurred after the LONP is issued may be reimbursed for eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant at a later date. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Because project implementation activities may not be initiated prior to NEPA completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a ROD, FONSI, or CE determination. The project must be in a STIP before a LONP is issued.

Although FTA typically grants automatic preaward authority for Bus and Bus Facilities formula funds as discussed in subparagraph (a) under this section, a LONP is required if a recipient wishes to continue to incur costs after the life of the program's authorization. Each LONP has an expiration date, which is the date beyond which funding cannot be requested retroactively for the project. The standard expiration date of an LONP is five years, after which time the grantee may request a new LONP. In situations such as long-term leases or long-term financing, the LONP may be for an appropriately longer time period.

To obtain an LONP, a recipient must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office. FTA approval of an LONP is made in writing and determined on a case-by-case basis.

- e. Advanced Construction Authority. The statutory authority to undertake projects in advance, also referred to as Advanced Construction Authority (ACA), allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. ACA is slightly different than the policy-driven automatic preaward authority and LONP, which are discussed in subparagraphs (a) and (b) under this section. Under ACA, FTA has already approved the project for funding in the event funding becomes available. When utilizing this preaward authority, a recipient must comply with FTA and federal requirements prior to undertaking the project in order to retain eligibility for reimbursement after grant approval. Under automatic preaward authority or an LONP, FTA has not yet approved the project for funding.

ACA permits a grant applicant to incur project and financing costs such as bond interest before FTA awards a grant for the project. FTA may issue ACA under 49 U.S.C. 5339 of the Bus and Bus Facilities formula grant program provided:

- (1) The recipient has completed a grant application and it is on file with FTA.
- (2) The project has met all federal requirements, including the DOL certification under Section 5333(b).
- (3) FTA has approved the project as eligible for Bus and Bus Facilities formula funds, although the funding is not available.

While an ACA reserves the recipient's right to be reimbursed after FTA has approved the project, ACA does not constitute a commitment of federal funds until the project is converted to a regularly financed project. ACA expires on or before the expiration of the current authorization.

- f. Terms and Conditions Applicable to Automatic Preaward Authority, LONP, and ACA. In general, the terms, conditions, and procedures applicable to recipients having automatic preaward authority, an LONP, or ACA are as follows:
- (1) All federal grant requirements must be met at the appropriate time for a project having automatic preaward authority, an LONP, or ACA to remain eligible for federal funding.
 - (2) These authorities are not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds.
 - (3) These authorities are not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (4) The recipient assumes all the risk.

- (5) All FTA statutory, procedural, and contractual requirements must be met.
- (6) All applicable DOT statutory and regulatory requirements must be met.
- (7) The project must be included in the STIP.
- (8) The recipient must not take any action that prejudices the legal and administrative findings that the FTA administrator must make in order to approve a project.
- (9) Local funds expended by the recipient after the date of the automatic preaward authority, an LONP, or ACA will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).
- (10) Local funds expended by the recipient before the date of the authority will not be eligible for credit toward local match or reimbursement
- (11) The expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of preaward authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with federal environmental laws and may render the project ineligible for FTA funding.
- (12) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall cost scope of activities and the prevailing statutory provisions and congressional direction with respect to the federal/local match ratio at the time the funds are obligated.
- (13) When a grant for the project is subsequently awarded, the Federal Financial Report in the FTA electronic award management system must indicate the use of the automatic preaward authority, LONP, or ACA. More information and updates regarding automatic preaward authority and LONPs can be found in FTA's fiscal year apportionment notice published in the *Federal Register*.

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CHAPTER V

PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. CERTIFICATIONS REQUIRED BY 49 U.S.C. 5339. Federal Transit Administration (FTA) recipients must annually certify that they are in compliance with federal transit law as well as cross-cutting federal requirements. FTA advises recipients to review the annual list of Certifications and Assurances, located on FTA's website (www.fta.dot.gov), and on the FTA electronic award management system's website (<http://ftateamweb.fta.dot.gov>). Section 5307(d)(1) lists certain conditions to which Section 5339 recipients must certify as discussed below. The 1 percent takedown for security and transit improvements in 5307(c)(1)(J) and (K) does not apply to Section 5339 funds.
 - a. Consistent with 49 U.S.C. 5307(d)(1)(A), a recipient must certify that it has or will have the legal, financial, and technical capacity to carry out the program. New grantees must submit documentation of capacity prior to receiving a grant. Sample documents are available in Appendix C of this circular.
 - (1) Legal Capacity. Before FTA may award a grant for a Section 5339 project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding, FTA generally relies on the grant applicant's certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the applicant must have appropriate authority designated by state or local law or by the governing body of the applicant. Although FTA does not require recipients to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. (An Opinion of Counsel sample is available in Appendix C of this circular.) FTA also retains the discretion to require any recipient to submit a legal opinion and other supporting documentation.
 - (a) An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, state and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. While the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the recipient will certify its authority to apply for subsequent grants in the annual certification process. That affirmation appears on FTA's website at www.fta.dot.gov, on the page that lists the current year Certifications and Assurances.

FTA expects the recipient to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the recipient's ability to

carry out the project. Any significant change in status will require a new Opinion of Counsel.

- (b) The authority of those officials acting on behalf of a public body grant applicant generally must be demonstrated by a resolution from the governing body of the grant applicant, a statute, or an ordinance showing the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for all FTA recipients. A sample format of an authorizing resolution is provided in Appendix C of this circular. The authorizing resolution only has to be submitted prior to the grant applicant's first application. For subsequent grant applications, FTA will rely on the annual certifications and assurances. The Designated Signature Authority submitted in the FTA electronic award management system on the first application must agree with the Designated Signature Authority on subsequent applications.

- (2) Financial Capacity. Before FTA may award a grant for a Section 5339 project, FTA must make a finding that the grant applicant has or will have the financial capacity to carry out the project. Specifically, an applicant for Section 5339 funds must be able to match and manage those funds, to cover cost overruns, to cover operating deficits through long-term stable and reliable sources of revenue, and to maintain and operate federally funded facilities and equipment. Financial capacity and proposed project financing must be made evident. The source of local share must be identified and assurances must be provided that adequate local funds will be available at the time federal funds are drawn down. Financial capacity is also reviewed by FTA's Financial Management Oversight contractors as deemed necessary.

FTA Circular 7008.1, "Financial Capacity Policy," defines the basis upon which FTA will make determinations of a grant applicant's financial capacity to receive a Section 5339 grant. The circular refers to two aspects of financial capacity: general financial condition of the transit operator and financial capability. The general financial condition includes historical trends and current experience in financial factors affecting the ability of the grant applicant to operate and maintain the transit system at present levels of service. The information supporting an assessment of financial condition is usually available in audited annual financial statements and other financial reports which address working capital levels, cash balances, capital reserves, the presence and status of depreciation accounts, long-term debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

Financial capability addresses the sufficiency, stability, and reliability of the grant applicant's revenue sources to meet future operating deficits and to meet future annual capital and operating costs. Financial capability considers the nature of funds pledged to support operating deficits and capital programs, and changes in forecast in fare and nonfare revenues. Capital costs include replacement and rehabilitation of existing equipment and facilities and new investments. Operating and maintenance costs include

those for the present system and any increases caused by capital investment and service expansion.

In considering financial capacity of the grant applicant, FTA takes into account the fact that a financial analysis must be undertaken and a financial plan must be developed before programming a project into the transportation improvement plan (TIP). That analysis, plan, and subsequent inclusion of the project in the TIP reflect the two aspects FTA considers in determining the grant applicant's financial capacity: the financial plan must demonstrate that TIP projects can be carried out while the existing transportation system is being adequately operated and maintained (financial condition); and only projects for which funds can reasonably be expected to be available may be included in the TIP (financial capability).

FTA assesses financial capacity of a Section 5339 grant applicant when FTA approves the statewide transportation improvement plan (STIP) and again when FTA approves projects for Section 5339 funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending on the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, including: short-range transit plans, capital budgets, and reports on financial operations such as periodic financial statements or single audit reports.

- (3) Technical Capacity. According to 49 U.S.C. 5307(c)(1)(A) before FTA may award a Section 5339 grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Section 5339 grant must demonstrate that it can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws and regulations, using sound management practices. Thus, a certification that the recipient will comply with all requirements applicable to its grant application and to the grant agreement, when awarded, is required. Guidelines for management practices can be found in the current version of the FTA Circular 5010, "Grant Management Requirements."
- (4) Satisfactory Continuing Control. According to 49 U.S.C. 5307(c)(1)(B) a recipient must annually certify that it "has or will have satisfactory continuing control over the use of equipment and facilities" through operation, lease, or otherwise.

An FTA recipient must maintain control over federally funded property by ensuring the grantee uses it in public transportation service and disposes of it according to federal requirements. If the recipient leases federally funded property to another party, the lease must provide that the recipient maintains satisfactory continuing control over the use of that property. FTA determines control over FTA-funded facilities and equipment in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and nonrevenue). For more information regarding the disposing of

property, and for safeguards against loss, theft, or damage, see FTA Circular 5010.1, “Grant Management Requirements.”

- (5) Maintenance. According to 49 U.S.C. 5307(c)(1)(C), a recipient must certify it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5339 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. Additional guidance is available on FTA’s State of Good Repair and Asset Management website (<http://www.fta.dot.gov/13248.html>).

- (6) Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours. According to 49 U.S.C. 5307(c)(1)(D), a recipient must certify that the fares charged to elderly individuals and individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours for fixed-route transportation, are not more than 50 percent of the peak hour fare, regardless of whether the service is provided by the recipient or by another entity under contract, lease, or other arrangement. Because a Medicare card does not constitute proof of an individual’s identity, it is reasonable for a transit agency to request confirmation of the individual’s identity, either through secondary photo identification, or by using a photographic identification card issued by the transit agency. It is also reasonable for a transit agency to verify the validity of the Medicare card being presented, and to facilitate the half-fare application process, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented.

- (7) Use of Competitive Procurements. According to 49 U.S.C. 5307(c)(1)(E), a recipient must follow procurement requirements specified under 49 U.S.C. 5323 and 49 U.S.C. 5325. This includes the requirements that recipients utilize a competitive procurement process, comply with applicable Buy America laws, and do not use a procurement that uses exclusionary or discriminatory specifications.

Any recipient failing to provide this certification or that is found by FTA to have procurement practices and procurement systems that do not comply with federal laws, regulations, and directives governing federally financed procurements may be determined ineligible for award of federal assistance.

There is a link between a recipient’s certification that its procurement procedures follow federal requirements and a positive finding by FTA concerning the applicant or recipient’s technical capacity to administer and manage a grant properly. FTA Circular 4220.1, “Third Party Contracting Guidance,” sets forth the requirements and procedures applicable to third party contracts. A third party contract refers to any purchase order or

contract awarded by a recipient to a vendor or contractor using federal financial assistance awarded by FTA. FTA Circular 4220.1 contains guidelines for the general procurement requirements of the DOT Common Grant Rule, 49 CFR part 18, and also includes specific statutory procurement provisions required by FTA's enabling legislation and other special concerns to FTA. Note that both the Common Grant Rule and FTA Circular 4220.1 prohibit state or local preference provisions in procurements, except in certain restricted circumstances.

Section 5323(h)(2) prohibits the use of FTA grant funds to support exclusionary or discriminatory specifications, and Section 5323(m) provides specific preaward and post-delivery provisions for procuring rolling stock.

In addition to procurement and audit provisions that apply to architectural, engineering, and related services, 49 U.S.C. 5325 includes provisions affecting third party procurements, including the general requirements for competition and prohibitions on the use of exclusionary or discriminatory specifications, requirements for award to other than low bidders, requirements for awards to responsible contractors, special rolling stock limitations, contract term limited to five years, access of federal officials and the comptroller general to project records, authority for design-build projects, and an express federal preemption of any state law requiring bus purchases from in-state dealers.

FTA's Best Practices Procurement Manual at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html provides another useful source of procurement information.

- (8) Domestic Preference for U.S. Property—Buy America. Pursuant to 49 U.S.C. 5307(d)(1)(E), grant applicants and subrecipients must certify that they will comply with applicable Buy America laws as set forth under 49 U.S.C. 5323(j) in carrying out a procurement. FTA's Buy America requirements apply to all third party procurements funded by FTA. These requirements, published at 49 CFR part 661, are different from the federal "Buy American" regulations, published in the Federal Acquisition Regulation at 48 CFR 25.1 and 25.2, which apply to direct federal procurements. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any procurement to ensure compliance with the requirements applicable at the time the recipient will undertake the procurement. Additional information is available on the FTA Buy America website (<http://www.fta.dot.gov/buyamerica>).
- (a) General Requirement. In compliance with 49 U.S.C. 5323(j) and FTA's implementing regulation at 49 CFR part 661, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States. FTA may waive this requirement in certain circumstances, as discussed below.
- (b) Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel

additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

- (c) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin (49 CFR 661.5(d)).
- (d) Rolling Stock. All buses and rolling stock (including train control, communication, and traction equipment) acquired with FTA funds must consist of at least 60 percent domestic components by cost and final assembly must take place in the United States (49 CFR 661.11).
- (e) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
 - 1. if the FTA administrator determines a waiver is in the public interest;
 - 2. if no responsive or responsible bid offers a product manufactured in the United States;
 - 3. when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
 - 4. when including domestic material will increase the cost of the overall project by more than 25 percent (49 CFR 661.7).
- (f) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America regulations, which incorporated by reference a provision from DOT’s Common Grant Rule (49 CFR 18.36(d)) that set that threshold at \$100,000 or less. This threshold continues to apply for all grants obligated on or before December 25, 2014. On December 26, 2014, however, DOT’s Common Grant Rule in 49 CFR Part 18 was replaced with a new regulation, 2 CFR Part 1201, which incorporates by reference OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) (2 CFR Part 200), and contains a higher threshold for simplified acquisitions.

Therefore, for grants obligated on or after December 26, 2014, the threshold is raised to match the simplified acquisition threshold set by OMB’s Uniform Guidance at 2 CFR 200.88, which incorporates by reference the Federal Acquisition Regulation at 48 CFR subpart 2.1 (definitions), and currently is set at \$150,000. This amount will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the contract and not on the individual price of

items being purchased. For example, if a recipient purchases ten items costing \$20,000 each under a single purchase order, the \$200,000 contract would make the procurement subject to Buy America Requirements (49 CFR 661.7).

- (g) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (h) Responsibilities. Under 49 CFR 661.13, a recipient's responsibilities are:
1. to adhere to the Buy America clause in its grant agreement with FTA;
 2. to include in its bid specification for procurement within the scope of FTA's regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and
 3. to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- (i) Public Participation. According to 49 U.S.C. 5307(c)(1)(F), a recipient must certify that it has complied with the public participation requirements of 49 U.S.C. 5307(b). Chapter IV, Section 6, "Program of Projects and Public Participation Requirements" of this circular discusses this requirement.
- (j) Availability of Local Funds. According to 49 U.S.C. 5307(c)(1)(G), a recipient must certify that the required local funds are available to carry out the project. See Chapter III of this circular for additional information on local share.
- (k) Compliance with Planning Requirements. According to 49 U.S.C. 5307(c)(1)(H), a recipient requesting Section 5339 program assistance must certify that it will comply with the planning requirements of 49 U.S.C. 5303-5306. Further detail on planning requirements may be found in FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."
- (l) Public Comment on Fare and Service Changes. According to 49 U.S.C. 5307(c)(1)(I), the recipient must certify that it has a locally developed process to

solicit and consider public comments before raising a fare or implementing a major reduction of public transportation service.

The recipient is expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions. The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. During a triennial review, the recipient should be able to provide evidence that public comments were considered.

2. CERTIFICATION PROCEDURES. Before FTA may award federal funding, the applicant must provide to FTA all certifications and assurances required by federal laws and regulations. Near the beginning of each federal fiscal year, FTA publishes the certifications in the *Federal Register*, highlighting any changes or additions from the previous year. FTA sometimes publishes the certifications and assurances on the same date the formula apportionments are published.
 - a. Action Required. The authorized representative of the recipient and the recipient's attorney must make the requisite certifications in FTA's Electronic Grants Management System by:
 - (1) attesting to the certifications and assurances electronically with a personal identification number (PIN); and
 - (2) selecting electronically each assurance or certification category that will apply to the applicant's grants for the fiscal year; or
 - (3) selecting instead a "Select all" field that signifies the grant applicant will comply with all categories of certifications and assurances that apply to it or its projects.

FTA requires a current attorney's affirmation of the recipient's legal authority to certify compliance with that fiscal year's FTA funding assistance. FTA will not accept the attorney's affirmation from a previous year.

- b. Timing. FTA expects to receive the certifications and assurances electronically from each recipient that has an open grant:
 - (1) within ninety days from the date of publication of the certifications and assurances; or
 - (2) with the first grant application of the fiscal year, whichever comes first.

Absent information to the contrary, certifications and assurances, which remain valid for one year or until FTA publishes the next version, apply to all open grants.

FTA encourages grant applicants and recipients to contact the appropriate FTA regional office for more information about these requirements. Some requirements call for extensive planning that the applicant should address before submitting a grant application.

3. FTA ELECTRONIC AWARD MANAGEMENT SYSTEM. FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, grantees apply for grants, inquire about the status of grants, file the required federal financial report (FFR) and milestone progress reports (MPR), and submit annual Certifications and Assurances in this system. Note: States are required to report on an annual basis for milestone progress reports and federal financial reports with the exception of construction projects which require quarterly reports. Large urbanized areas (UZAs) are to submit quarterly FFR and MPR reports regardless of project type.

The User Guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants." The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the electronic management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO) system. ECHO is an FTA Web-based application that processes FTA recipients' requests for payment. To access the electronic management system, a new applicant must complete the Grantee/Recipient User Access Request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is: http://www.fta.dot.gov/funding/grants_financing_36.html.

4. SYSTEM FOR AWARD MANAGEMENT REQUIREMENTS. The System for Award Management (SAM) is a free website that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance (<https://www.uscontractorregistration.com/>). On July 30, 2012, the Central Contractor Registration (CCR), FedReg, and the Excluded Parties List System (EPLS) were migrated into SAM.

Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA or receives its final payment under the project, whichever is later. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance.

5. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENTS. Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in

the “Instructions on How to Obtain a DUNS Number.” As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

6. DUNS REQUIREMENTS FOR SUBRECIPIENTS. If it is authorized to make subawards under its agreement with FTA, the recipient must notify potential subrecipients that no entity may receive a subaward from the recipient unless the entity has provided its DUNS number to the recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.
7. ELECTRONIC CLEARING HOUSE OPERATION (ECHO) REQUIREMENTS. Grantees are required to establish an ECHO control number (ECN) before FTA is able to disburse funds to the grantee. Department of Treasury regulations, 31 CFR part 205, govern payment to recipients for financing operations under federal assistance and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA “ECHO-Web System Users Manual for Recipients” at: <http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENTS. FTA’s recipients must report the information about each first tier subaward over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the direct recipient makes any subaward or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign subrecipient agreements until February, the FTA grantee would have until March 31 to report the subaward into FSRS. Once the grantee submits an initial report, the grantee can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.
 - a. No report is required until the month after the grantee makes a subaward. For example, if a state DOT received a Section 5339 grant in November and listed sixteen subrecipients in the program of projects but does not consider the subawards to be made until each subrecipient signs a letter of agreement, the state would not have to report any subawards in December, but would report them by the end of the month after the subrecipient signs the agreement. On the other hand, if the state DOT has a standing agreement with subrecipients and considers the subawards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the DOT. If the state allowed subrecipients to use preaward authority, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept subaward reports before the federal obligation is recorded in the system.
 - b. The required data elements in FSRS for each first tier subaward over \$25,000 :
 - (1) Name of entity receiving subaward
 - (2) DBA name

- (3) DUNS of the entity and its parent and DUNS+4
 - (4) Amount of subaward
 - (5) Subaward number (Note: assigned by recipient)
 - (6) CFDA number (Note: The same CFDA associated with the FTA award)
 - (7) Place of performance (including congressional district)
 - (8) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds)
 - (9) Award title descriptive of the purpose of the funding action
 - (10) Location of the entity (including congressional district)
- c. The amount that is to be reported for each subrecipient is the amount of the total subaward, not payments to date. Payment/drawdown information is not included in the data fields requested.
 - d. After the recipient reports the subaward data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.
 - e. Information and training materials about FFATA subaward reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to [USASpending.gov](http://www.usaspending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” Section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Grantees should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff is available to help with FTA grant award information and requirements.
 - f. Subrecipients. So that FTA can comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109–282, enacted September 26, 2006, the grant recipient must provide FTA with the following information for any subrecipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award, and the primary location of performance under the award, including the city, state, and congressional district. The grant recipient may choose to submit this information as a separate attachment in the FTA electronic award management system or include the information in the program of projects (POP).
9. NATIONAL TRANSIT DATABASE (NTD) REPORTING. The NTD was established by Congress to be the nation’s primary source for information and statistics on the transit systems of the United States. NTD data is used to support numerous DOT programs and to “help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning” (49 U.S.C. 5335). Recipients (including subrecipients and contractors) of Section 5339 program funds are required by statute to submit data to the NTD.

FTA's implementing regulation for the NTD can be found at 49 CFR part 630. A recipient of FTA grants that is required to report to the NTD must provide a complete report to the NTD of all transit operations, regardless of whether or not those operations are funded in whole or part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD regulation, the USOA, and the most recent versions of the NTD Reporting Manuals can be found on the NTD website at <http://www.ntdprogram.gov/>.

- a. Annual Report. Recipients or beneficiaries of Section 5339 grants must annually report financial and nonfinancial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions and information on due dates, waivers, and extensions.
- b. Monthly Report. Recipients or beneficiaries of Section 5339 grants are required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- c. Waiver. Under certain circumstances, described in NTD Reporting Manuals, grant recipients may apply for reduced NTD reporting requirements. Under a Small Systems Waiver, grantees with fewer than thirty vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.

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CHAPTER VI

STATE AND PROGRAM MANAGEMENT PLANS

1. GENERAL. The State Management Plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5339 program. The Program Management Plan (PMP) is a document that describes the designated recipient's policies and procedures for administering Federal Transit Administration's (FTA) Section 5339 program in a large urbanized area (UZA). A PMP may not be necessary if there is only one designated recipient. The requirements for the PMP are the same as those for the SMP with exception that the PMP is developed by designated recipients in large UZAs whereas the SMP is developed by the state. All recipients may amend an existing or approved SMP/PMP or create a stand-alone section in order to meet the requirement for these documents.
 - a. Each recipient, whether a state or a designated recipient in a large UZA, is required to have an approved SMP/PMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. Certain contents of the SMP/PMP, such as project selection criteria, should be coordinated with the statewide transportation plan.
 - b. At the state level, the designated recipient may include the required SMP for the Section 5339 program in a single document. Where designated recipients have multiple population areas for which it serves (e.g., the state is the designated recipient for a large UZA[s] and areas under 200,000 in population), the designated recipient may choose to have a single management plan, provided it adequately addresses policies and procedures for each of the areas and subrecipients from the respective population areas know which policies and procedures are relevant to them.
 - c. All public documents developed under a grant from FTA must be prepared and submitted in electronic format.
2. PURPOSE. The SMP/PMP is intended to facilitate both recipient management and FTA oversight by documenting the state's and designated recipient's procedures and policies for administering the Section 5339 program. The SMP/PMP should be a document that is useful to the state, designated recipient, and subrecipients, as well as to FTA. At a minimum, this document must include the recipient's program objectives, policies, procedures, and administrative requirements, in a form readily accessible to potential subrecipients, recipient staff, FTA, and the public. The primary purposes of the SMP/PMP are to serve as the basis for FTA to perform recipient-level management reviews of the program, and to provide public information on the recipient's administration of the Section 5339 program. It may also be used internally by the recipient as a program guide for local project applicants. If the recipient has other relevant documentation that provides the same information requested for the SMP/PMP, such as an annual application instructions manual, it may be included by reference, as an attachment.

3. MANAGEMENT PLAN REVIEWS. FTA conducts oversight reviews to examine each designated recipient's management procedures, and the relationship of the procedures to its management plan. When a state management or triennial review is scheduled, FTA and its contractors examine the SMP or PMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP/PMP satisfy current requirements. At the site visit, the reviewers document whether or not the designated recipient is following its own stated procedures. Review findings relating to the SMP/PMP might include recommendations that the designated recipient revise the SMP/PMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP/PMP.
4. MANAGEMENT PLAN CONTENT. While there is no prescribed format for the SMP/PMP, the plan should address the following topics and provide the information as requested for each topic below.
 - a. Program Goals and Objectives. Describe the philosophy and policy underlying the recipient's management of the Section 5339 program. Include a description of any process that exists for establishing long-term goals for replacing buses, bus equipment, and bus facilities for grant recipients.
 - b. Roles and Responsibilities. Specify the agencies designated to administer the Section 5339 Program. Explain the respective roles and responsibilities of the recipients and their subdivisions, other recipient agencies or review boards, local governments, private providers, local applicants, and other involved parties.
 - c. Coordination. Describe how the recipient coordinates with other agencies at the state or designated recipient level and encourages and enhances coordination at the project level. This could include a description of any recipient-level coordinating mechanisms, legislation, review boards, and state or designated recipient policies that encourage or mandate coordination at the local level.
 - d. Eligible Subrecipients. Describe which entities are eligible to apply for funds, and describe any recipient eligibility requirements that are more restrictive than federal eligibility.
 - e. Local Share and Local Funding Requirements. Describe any recipient policies on provision of local matching share. Include a description of any programs which provide matching funds for Section 5339.
 - f. Project Selection Criteria and Method of Distributing Funds. The National Distribution funds may be transferred to the Section 5307/5311(c) programs or be distributed by the state using a process of their choosing. The state has the flexibility to allocate funding amongst small UZAs using a process of their choosing. A competitive selection process is not required; whether or not the recipient engages in a competitive selection process, the recipient should describe in its SMP/PMP the criteria for selecting projects and distributing funds among various applicants. Whether the recipient uses a formula for allocation, imposes its own limitations on use of the funds, or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used.

- g. Annual Program of Projects Development and Approval Process. Describe the recipient's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the state's annual program of projects (POP) for Section 5339. The SMP/PMP may include instructions to potential subrecipients on how to prepare local project applications.
 - h. Transfer of Funds. The state has the flexibility to transfer funds between small UZAs based on their own defined process. The national distribution funds may be transferred between small UZAs, large UZAs, and rural areas. Describe any policy the state has for transferring funds between rural, small UZAs and large UZAs, or to any area of the state if the state has a statewide program for meeting the objectives of Section 5339.
 - i. Civil Rights. Describe how the recipient meets federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, Equal Employment Opportunity (EEO), and Disadvantaged Business Enterprise (DBE). The management plan must include the program-specific Title VI requirements detailed in Chapter VI, "Other Provisions," including the recipient's efforts to assist minority applicants and to include subrecipients serving significant minority populations. (Inclusion in the SMP/PMP may satisfy certain requirements for one-time submissions in the civil rights areas.)
 - j. Section 504 and ADA Reporting. Describe the recipient's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports, and certifications submitted to it under the provisions of those regulations.
 - k. Program Management. Describe how the recipient administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit, and closeout. In addition, include any procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the recipient for matters such as productivity, cost-effectiveness, or service standards. Detail any other reporting requirements.
 - l. Other Provisions. Describe the process by which the recipient complies with other federal requirements such as environmental protection, Buy America (see Chapter V) provisions, preaward and post-delivery reviews, restrictions on lobbying, prohibition of exclusive school transportation, and drug and alcohol testing, including the state's procedures for monitoring compliance by subrecipients.
5. MANAGEMENT PLAN REVISIONS. All recipients must have an SMP/PMP approved by FTA on file with their FTA regional office. An approved SMP/PMP remains valid until FTA approves a later plan submitted by the recipient or an FTA management review results in a specific request to the recipient by FTA for a revised SMP/PMP, or FTA announces significant new program documentation requirements. FTA strongly encourages the recipient to issue timely revisions to the SMP/PMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the recipient proposes significant

revisions to the SMP/PMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other state agencies and representatives of other funding sources, and any relevant state associations and professional organizations.

If revisions are substantive, but not pervasive, the recipient may submit changes and additions in the form of page changes that can be approved by FTA and incorporated into the SMP/PMP on file. If the recipient changes the SMP/PMP significantly, however, it should submit the entire revised plan to FTA for approval. The recipient is responsible for ensuring that FTA has a complete copy of the current SMP/PMP. The recipient may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The recipient should reexamine the SMP/PMP to make sure it reflects current requirements of this circular and revise the SMP/PMP by May 1, 2014.

6. EXISTING SMP/PMP. All recipients may amend an existing/approved SMP or PMP or create a stand-alone section in order to meet the requirement for these documents.

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CHAPTER VII

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements, Federal Transit Administration (FTA) recipients are held to a number of FTA-specific and other federal requirements. This chapter provides a summarized, alphabetical listing of those requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. This circular should be used in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (by using the FTA electronic award management system) to establish or renew their funding relationship with FTA.

The Master Agreement and the Certifications and Assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized throughout this chapter, as a reminder to recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement, the Certifications and Assurances on the FTA public website (www.fta.dot.gov), the FTA electronic award management system's website (<http://fateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

Recipients are encouraged to contact the appropriate FTA regional office for more details about these requirements.

2. CHARTER BUS SERVICES. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604—Charter Service, amended effective April 30, 2008 (73 FR 2326, Jan. 14, 2008). Each recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless otherwise permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter bus service website (http://www.fta.dot.gov/legislation_law/12922.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within

one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) The Americans with Disabilities Act (ADA), as amended (42 U.S.C. 12101 *et seq.*), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities "standing in the shoes" of a public entity as a subrecipient or under a contract or other arrangement) providing fixed-route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements

described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (5) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regard to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), DOT’s Order 5610.2 on Environmental Justice (62 FR 18377, Apr. 15, 1997), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, Dec. 14, 2005).
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This Executive Order 13166 guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Order 5610.2, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice. The DOT order describes the

process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third-party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e *et seq.*), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” (49 CFR part 25).
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ (DHHS) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 through 634), and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE) Program. To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
- (1) The recipient agrees and assures that it will comply with MAP-21 Section 1101(b) 23 U.S.C. 101, which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE’s. This 10 percent national goal is aspirational and is used by the Department of Transportation to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities.
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local

transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

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

For further guidance, refer to the federal laws, regulations, and Executive Orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and Transportation Improvement Programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the Metropolitan Planning Organization (MPO), and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in

nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.
6. DEBARMENT AND SUSPENSION. The purpose of the DOT governmentwide debarment and suspension (nonprocurement) regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration's (GSA) System for Award Management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a website, at <https://www.sam.gov>, which is updated in real time as changes to the data occur.
 - a. DOT regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (such as those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
 - c. The awarding party must verify that the person is not excluded or disqualified by:
 - (1) Checking the SAM list of excluded parties maintained by the GSA and available at <https://www.sam.gov> (Note: Strongly recommended by FTA);
 - (2) Collecting a certification from the prospective awardee; or
 - (3) Adding a clause or condition to the third party contract or subagreement with that awardee.

In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under these regulations.

7. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the Section 5339 Bus and Bus Facilities Program, 5307 Urbanized Area Formula Program, 5309 Fixed Guideway Capital Investment Grants, 5311 Formula Grants for Rural Program, and other programs as determined by the secretary are required by 49 U.S.C. 5331 to establish Drug and Alcohol (D&A) Testing Programs.

The purpose of the testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning drug and alcohol testing (49 CFR parts 40 and 655, respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with 49 CFR parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*, which allows FTA more flexibility in enforcing compliance. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219 – for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382 – for contractors with mixed transit/motor carrier/school bus), and United States Coast Guard (USCG) (46 CFR parts 4 and 16 – for ferryboat) regulations concerning drug and alcohol programs.

FTA's regulation (49 CFR part 655) applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides [public] transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes subrecipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations with effective ongoing oversight. FTA's regulation does not apply to construction phases of funded projects. Contractors that supply newly manufactured equipment are excluded, as are facility construction workers. The regulation applies to the testing, start-up, and actual revenue operations of FTA-funded transit systems. Van pool drivers, as volunteers and not employees of a transit system that do not receive remuneration over their actual expenses, are exempt from testing. Also exempt are taxi operations for paratransit transportation where the patron chooses the service through a user subsidy or voucher and the service is not dispatched through the FTA recipient or subrecipient. In addition, maintenance contractors for rural 5311 providers and providers in urbanized areas with populations of less than 200,000 are exempt as well.

FTA's regulation requires testing of employees who perform one or more of five transit safety-sensitive functions, which are defined at 49 CFR 655.4. The regulation requires the following six types of testing for illegal drug use and alcohol misuse: pre-employment (including transfer from a non-safety-sensitive position to a safety-sensitive position, and removal from the random pool for ninety days or more); reasonable suspicion; random; post-accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in twelve months after returning to duty). Since an October 2010 amendment to 49 CFR part 40, return-to-duty and follow-up tests are required to be directly observed.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training and educating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Technical assistance materials and training information to help recipients implement the rules are available at FTA's website (<http://www.fta.dot.gov/safetysecurity/12533.html>) or through contacting the FTA office of transit safety and oversight, FTA headquarters.

8. **DRUG-FREE WORKPLACE**. In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. These provisions apply only to FTA's direct recipients and do not extend to subrecipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link: <http://www.dol.gov/elaws/asp/drugfree/menu.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and drug and alcohol testing rules are available on FTA's website, <http://www.fta.dot.gov>, or by contacting FTA's office of safety and oversight, FTA headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590.

9. **EMPLOYEE POLITICAL ACTIVITY**. To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. Sections 1501–1508, and Sections 7324–7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment

activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(l)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.

10. ENERGY CONSERVATION. The recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.* The recipient, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 part 622, subpart C. Only after the completion of an energy assessment will FTA approve assistance for the construction, reconstruction, or modification of buildings for which the recipient submits an application. An energy assessment consists of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The energy assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special or innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure projected over the life of the facility and including projected costs of this fuel; and the kind of energy the recipient will use.
11. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with the National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR § 1500-1508), FHWA and FTA’s Environmental Impact and Related Procedures (23 CFR § 771), Efficient Environmental Reviews for Project Decisionmaking (23 U.S.C. § 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR part 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion, environmental assessment, or environmental impact statement) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., final design and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE). Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until an ROD, FONSI, or CE is issued.
12. ENVIRONMENTAL JUSTICE. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and the FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on programs, policies, and activities on minority populations and/or low income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice

Policy Guidance for Federal Transit Administration Recipients,” provides FTA recipients and subrecipients with guidance and instructions necessary to carry out the executive order.

13. INTERGOVERNMENTAL REVIEW. Executive Order 12372 and DOT regulations, “Intergovernmental Review of Department of Transportation Programs and Activities” (49 CFR part 17), require that a grant applicant applying for FTA funds comply with a state’s intergovernmental review process. The requirement is to ensure that the appropriate state authorities are informed about and provided an opportunity to comment on projects for which federal assistance is being provided within the state. Many states have their own review procedures, which describe the federal programs and activities that had been selected for intergovernmental review and how applicants satisfy the states’ intergovernmental review requirements.

If there is no intergovernmental review process in the grant applicant’s state, then programming of a project in the TIP/statewide transportation improvement program (STIP), or Unified Planning Work Program (UPWP), as appropriate, will be considered by FTA as meeting the need for intergovernmental review.

If there is an adopted state process of intergovernmental review for an FTA program or activity, FTA requires that the applicant, upon the MPO’s approval of the TIP, notify the single point of contact for the state’s intergovernmental review process that the MPO has approved the TIP and that the applicant has submitted the TIP to the governor for approval and subsequent inclusion in the STIP. The applicant must provide the single point of contact with the name and mailing address of the office to which it is submitting the TIP.

The applicant may wish to transmit to the single point of contact, or request the MPO to transmit, pertinent documents on public transportation projects from the approved TIP. Timely alerting of the single point of contact will allow that entity to review and comment on the projects in the TIP during the STIP development process, if the entity so chooses. In the appropriate places in the FTA electronic award management system, an applicant should indicate whether Executive Order 12372 applies, and the date the state reviewed the application, if applicable.

14. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the secretary of Labor and in accordance with the Davis-Bacon Act, as amended. The secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the Master Agreement.

- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), formerly Section 13(c) of the Federal Transit Act, as amended). Those arrangements must be certified by the secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-1519, 200 Constitution Avenue, NW, Washington, DC 20210; telephone, 202-693-1193; fax, 202-693-1344.

15. PRESIDENTIAL COIN ACT. In accordance with Pub. L. 109-145, beginning January 1, 2008, all transit systems that receive operational subsidies or any disbursement of funds from the federal government shall be fully capable of accepting and dispensing \$1 coins and must display signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.
16. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.
17. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use federal financial assistance in a project which will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C. 61)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-wide regulations that apply to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR part 24 is available from the Government Printing Office website at <http://www.gpo.gov/fdsys/pkg/CFR-1999-title49-vol1/pdf/CFR-1999-title49-vol1-part24.pdf> or on FHWA’s website at <http://www.fhwa.dot.gov/realestate/49cfr.htm>. Also, recipients should be aware of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and FTA Circular 5010.1.

18. RESTRICTIONS ON LOBBYING. Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or Cooperative Agreement. The state, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

19. SAFETY. MAP-21 amended 49 U.S.C. 5329 to provide FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that DOT issue a National Public Transportation Safety Plan, establish safety performance criteria for all modes of public transportation, define a “state of good repair,” establish minimum safety performance standards for public transportation vehicles, and a safety certification training program. States are required to strengthen their State Safety Oversight (SSO) programs and submit them to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will be issuing regulations and interim guidance to implement these new requirements in consultation with public transportation industry stakeholders.

Note: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers.

20. SCHOOL BUS TRANSPORTATION. Title 49 U.S.C. 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose

of FTA's school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start program limit the types of vehicles which may be used to transport children participating in a Head Start program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.

21. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building it designs and constructs with federal assistance is compliant with seismic safety standards. The grant applicant is responsible for knowing before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with DOT implementing regulations, "Seismic Safety," at 49 CFR 41.117(d), and must assure FTA that it will obtain a certificate of compliance with the requirements. A recipient makes this assurance through the FTA annual certification process.
22. SENSITIVE SECURITY INFORMATION. To the extent applicable, the recipient agrees to comply with 49 U.S.C. 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR part 15, and with 49 U.S.C. 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 CFR part 1520.
23. STATE SAFETY OVERSIGHT. MAP-21 did not alter 49 U.S.C. 5330, but subsection 20030(e) of MAP-21 provided that Section 5330 would be repealed three years after the effective date of FTA's regulation implementing the new Section 5329 requirements. Until then, the current regulations at 49 CFR part 659 will remain in effect. The existing regulations require oversight of the System Safety Program Plan development and implementation, internal safety and security audits, accident and hazard investigations, and corrective action plan development and implementation.

Until new regulations are in effect, an oversight agency must continue to annually certify to FTA that it has complied with the requirements of 49 CFR part 659. The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

The current Section 5330 and the amended Section 5329 authorize FTA to withhold up to five percent of an affected state or urbanized area's apportionment if FTA determines the state is not in compliance or is not making adequate efforts to comply with the rule. FTA may restore withheld formula funds if the state is in compliance within two years.

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APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION

1. PREAPPLICATION STAGES.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the FTA electronic award management system. Applicants must have access to FTA's the system in order to enter a grant. If an applicant does not have access to the FTA electronic award management system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix D of this circular.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved Statewide Transportation Improvement Program (STIP) for capital projects or a Unified Planning Work Program (UPWP) for planning projects.
- c. Environmental Determination. The impact that a proposed FTA-assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Urbanized Area Formula Program, or any other FTA grant program, must annually submit Certifications and Assurances that are applicable to the grant applicant's active and new grants during the fiscal year (FY). The Certifications and Assurances should be examined annually for changes, deletions, and additions.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, DBE Goals, and Americans with Disabilities Act (ADA) Paratransit Plan. FTA's regional civil rights officer must verify that all required civil rights submissions are current at the time the grant application is submitted in the FTA electronic award management system. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. ("Civil Rights" see Chapter VII of this circular.) FTA's office of civil rights may request additional information needed to affirm that the proposed project or elements thereof are in compliance with federal civil rights requirements, and/or reports on activities and progress to address findings identified in civil rights compliance reviews and assessments.
- f. Flexible Funding Documentation (If Applicable). A grant applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once this resource of funds is included in the Transportation Improvement Program (TIP), and incorporated into the STIP, the grant applicant informs the state transportation agency that a grant application is in development to FTA for the use of flexible funds and requests that the

state inform the Federal Highway Administration (FHWA) of the need to transfer the funds to FTA for obligation (in some states, in practice, the Metropolitan Planning Organization [MPO] or FTA notifies the state transportation agency). Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the agency will use the funds for public transportation purposes and requests that FHWA transfer funds for the project to FTA. Information showing that these processes are under way should be included in the grant application. The grant applicant should also include the type of flexible funds, the amount, the purpose for which the funds will be used, and where they appear in the STIP.

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEMS INFORMATION). Applicants should submit their grant applications electronically in FTA’s electronic management system database accessible via the Internet. The User Guide, available on the homepage, provides detailed information on how to access and use FTA’s system. The User Guide covers the creation, submission, award, and execution of a grant application; reporting requirements, grant amendments, budget revisions, and close-out procedures are also addressed. Applicants should enter the following information into the system when preparing an application:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields, including recipient address, contact information, union information, urbanized area (UZA) identification number, congressional district(s), Data Universal Numbering System (DUNS) number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.

Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the “Instructions on How to Obtain a DUNS Number.” As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

- b. Project Information. Certain basic information required on the Federal Grant Application Standard Form 424 is incorporated into the project set-up fields. Applicants must identify whether the application is a new grant, or a grant amendment, the project start/end date, Executive Order (EO) 12372 – Intergovernmental Review of Federal Programs – review date, if applicable (see additional information about EO 12372 at <http://www.whitehouse.gov>), and grant project costs.
- c. Project Description. This information must include sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. There is a project description field as well as a specific text field for this information associated with each activity line item (ALI). Project activities must be sufficiently described to assist the reviewer in determining eligibility under the program. Sources of funds may also be included in the description.

- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, a grant applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the grant applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the grant applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). For the Section 5339 program, all projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management system has a field designated “program date” where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details Section.
- f. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All rolling stock procurements must include vehicle description and fuel type; expansion activities must include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for the Section 5339 program. The project budget for each grant application that includes transit enhancement funds must include a scope code for transit enhancements and specific budget ALIs for transit enhancements. The grant budget may also include non-add scopes. A non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Non-add scopes are used for Intelligent Transportation Systems (ITS), security funds, funding allocated to tribal governments, and other special emphasis areas.
- g. Determination of Sufficient Funds. All sources of funds must be identified and confirmed. The grant applicant should periodically examine the status of existing grants to make sure that unused fund balances, consisting of funds with a potential to lapse, are in fact needed to complete those grants. A grantee may deobligate any excess funds during their period of availability so that they may be reobligated into any pending or upcoming grant application. Otherwise excess funds left at the end of the project will be deobligated at closeout and, if lapsed, will be lost to the grantee.

FTA reviews the status of a UZA's apportionment, including prior year carryover balances, as well as current year allocations, to make sure that sufficient funds exist to finance the proposed program. FTA obligates Section 5339 program funds on a first-in, first-out basis to make sure that the oldest funds are obligated before more recent funds. This process prevents the potential of funds lapsing in a given UZA, which would render them no longer available to the area for obligation.

- h. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will auto-populate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- i. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.118.) Grant applicants should refer to part 771.118(c) and (d) for a listing of the Class II (categorical exclusion) projects. Most projects under the Section 5339 program meet the criteria for a categorical exclusion (CE). The application should include sufficient information for FTA to determine whether a CE applies, such as a description of the project, as well as any maps or figures typically included with the application or as requested by the FTA regional office. However, if a project does not clearly meet the criteria for a CE, a grant applicant should contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.

Under NEPA, FTA must assess the potential environmental impacts resulting from an FTA "action" (for FTA's purposes this generally means a stand-alone FTA-funded project that has independent utility and logical termini). However, a grant application generally includes several ALIs that could be organized to constitute one or more stand-alone actions. For applications containing more than one action, applicants should clearly identify the separate actions and their corresponding ALIs. It is important to keep in mind that not all ALIs are separate actions under NEPA, nor does one grant application necessarily contain only one action. For each action identified the applicant should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.118.) Grant applicants should refer to part 23 CFR 771.118 (c) and or (d) for a listing of the Class II (categorical exclusion) projects; for actions requiring an EA or EIS, clearly indicate whether an EA or EIS is proposed.

- j. Fleet Status. Applications submitted in requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's entire fleet including the applicant's spare ratio. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria. A Sample Fleet Status Report can be located in Appendix C of this circular. Official property records (or a Rolling Stock Status Report) must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and

statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable. The requirements for equipment records that must be maintained by the grantee are detailed in FTA Circular 5010.1

k. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in by the authorized official of the applicant.

l. Department of Labor Certification. Once the grant application has been submitted by the recipient, the application is forwarded to the Department of Labor (DOL). DOL must certify all Bus and Bus Facilities grants containing capital or operating expenses before FTA will approve them. See Chapter VI, “Program Management and Administrative Requirements,” of this circular for more information on DOL certification.

m. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements and other federal requirements have been met, FTA awards and obligates funds requested in the grant.

- n. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Grants that indicate the use of preaward activity require the submission of a Federal Financial Report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.

3. APPLICATION CHECKLIST

- a. The following checklist is intended to assist applicants in preparing a complete application.

Section 5339 <u>APPLICATION CHECKLIST</u>	
Part I—Recipient Information	
	Are annual Certifications & Assurances selected and pinned/signed by the authorized official and attorney?
	Is the Recipient Contact, Designated Signatory, Opinion of Counsel, Authorizing Resolution & other information complete?
	Is UZA/Congressional District information entered and accurate?
	Is union contact information entered and accurate?
	Has Civil Rights Program documentation been approved by FTA?
	Has the applicants DUNS Number been entered in the appropriate field?
Part II—Project Information	
	Does the Project Description include adequate detailed information of the project(s) such as an appropriate project title?
	Is information on any subrecipient(s) and their projects included?
	Is this a new application or grant amendment?
	Does the application include an appropriate Start/End date?
	If a supplemental agreement is applicable, has “yes” been selected?
	Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included?
	Are STIP/UPWP pages attached in the FTA electronic award management system?
	If pre-award authority is applicable, has “yes” been selected?
	If federal debt delinquency is applicable, has “yes” been selected. (If yes, grant applicant must explain in details Section.)
	Has the EO 12372 Review been completed, if applicable?
	Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements?
	Is UZA/Congressional District information entered and accurate?
Part III—Budget	
	Are ALI codes entered under the appropriate scope codes and consistent with project descriptions?
	Are funding percentages and match ratios appropriate?
	Does the funding amount entered in the budget match financial information entered in the “Project Information” field for:

	a. Federal Funds
	b. Local Match
	Does the rolling stock (vehicle) line item contain accurate information such as:
	a. Description
	b. Fuel Type
	Has descriptive information been added in the details Section of each ALI that identifies the items being funded using the line item? If appropriate and necessary.
	Where applicable, have non-add scopes been added showing the funds allocated to Intelligent Transportation Systems, security funds, tribal governments, or other special areas of emphasis?
Part IV—Project Milestones	
	Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.)
	Have estimated completion dates been entered?
Part V—Environmental Findings (NEPA)	
	Has an environmental finding been entered for each ALI or scope?
	For Categorical Exclusion II (d), EA, and EIS, have decision documentation been referenced or attached?
Part VI—Fleet Status (This information is only required if acquiring rolling stock using grant funds.)	
	Has information pertaining to current and future revenue vehicles been entered?
	If applicable, are vehicles entered in the table consistent with the budget?
	If applicable, is the Spare Ratio 20 percent or less?

4. ECHO INFORMATION.

- a. Office of Management and Budget (OMB) Circulars A-102, A-110, and 31 CFR part 205 govern payment to recipients for financing operations under federal grant and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System User's Manual for Recipients," <https://ftaecho.fta.dot.gov/echologin.asp>.

ECHO Control Number
(ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

Initial Setup Info. Change Recipient Information Change

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a recipient's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See the bottom for instructions on completing this form.

RECIPIENT INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ()
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ()
DATE: / /	
AGENCY INFORMATION	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>1200 New Jersey Avenue, SE Washington, DC 20590</i>	
CONTACT PERSON NAME:	
FINANCIAL INSTITUTION INFORMATION	
(Note: Have Your Bank Complete This Section)	

NAME:		
ADDRESS:		
CITY/STATE/ZIP:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()	
NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: / /	FAX NUMBER: ()

b. Instructions for Completing Form:

- (1) Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, agency will assign ECHO Control Number.
- (2) Check appropriate box(es):
 - (a) Initial Setup.
 - (b) Change in Bank Information.
 - (c) Change in Recipient Information.
- (3) Fill out information in the appropriate section(s) listed below:

- c. Recipient Information Section: Print or type the name of the recipient and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone, and telefax numbers.
- d. Financial Institution Information Section: Have your bank fill out this section. They should print or type the name and address of the financial institution who will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (recipient) account title, depositor (recipient) account number, and type of account (type can **ONLY** be designated as **Checking** or **Saving**), signature and title of representative, date, and telefax number.

- e. Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
- f. If there are any questions, please call **202-366-9748** and ask for the agency's ACH contact.

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APPENDIX B

INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

1. **INTRODUCTION.** This Appendix provides information about the items that appear on an Approved Project Budget and provides instruction for preparing a project budget. A Federal Transit Administration (FTA) grant obligates a recipient to undertake and complete activities defined by the purpose or purposes of a grant and the budget incorporated into the grant agreement. A grant budget is the approved financial plan that FTA and the recipient agree they will follow in carrying out the purposes of the grant.

The recipient will use the FTA electronic award management system to prepare project budgets for FTA's various programs. The User's Guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose. A grant program and budget may have several scopes.

So that FTA can comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L 109-282), enacted September 26, 2006, a designated recipient must provide FTA with the following information for each subrecipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award, and the primary location of performance under the award, including the city, state, and congressional district. The designated recipient may choose to submit this information as a separate attachment in the FTA electronic award management system or to include the information in the POP.

2. **DEVELOPING THE BUDGET.** FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the Scope and Activity levels of information on the Approved Project Budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system.
3. **GRANT MODIFICATIONS.** At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The recipient is responsible for controlling and monitoring all grant activities to ensure they are implemented according to the approved budget. The manner in which the applicant initially structures a budget during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded—either through a budget revision, an administrative amendment, or a grant amendment. Whether FTA permits a budget revision (with or without prior FTA approval before incurring costs), or whether the grantee will need an amendment to the project, depends on the effect of the proposed change on the scope of the project. FTA's review of grant modifications will include a determination of whether or not the proposed

change is significant enough to require Department of Labor (DOL) certification of Employee Protective Arrangements. Recipients should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of modification is appropriate for the proposed action.

Grant modifications are electronically submitted, reviewed, and approved in the FTA electronic award management system.

a. Budget Revision.

- (1) General. Budget revisions may be made as long as there is no change in the recipient, purpose, scope codes, and federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved Statewide Transportation Improvement Program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new equipment must be addressed in the budget revision, as applicable.
- (2) Procedures. Grantees submit budget revisions in the FTA electronic award management system using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. The FTA reviewer will return incomplete budget revisions to the grantee for more information. For assistance with completing budget revisions, please contact the FTA regional or metropolitan office.

Recipients may request budget revisions either before or after incurring costs, depending on the nature of the request. If the budget revision meets the criteria outlined below, FTA concurrence is required before costs associated with the proposed change are incurred.

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the criteria below may result in a recommendation to complete a grant amendment. The FTA regional or metropolitan office will make this determination during its review.
 - (a) The federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
 - (b) Federal funds are transferred between ALIs with different federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer.
 - (c) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with Americans with Disabilities Act (ADA) or Clean Air Act (CAA) requirements.

- (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units, for grants with fewer than ten vehicles, or more than 20 percent from the quantity identified in the original grant.

Note: If the change in the number of revenue rolling stock vehicles exceeds 20 percent, the revision must meet FTA's spare ratio requirements, and a bus fleet status report should supported it.

- (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
- (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of federal funds awarded in the original grant or change the scope of the project contained in the grant.
- (g) The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

Note: If an ALI to an existing scope is added to move a facility project to the next phase of construction, the budget revision may be sent to DOL for informational purposes. In addition, FTA must confirm eligibility of the project to advance to the next phase of construction.

- (4) Examples. The following are examples of situations when a grantee might request a budget revision. **Note:** If the examples below meet one of the criteria outlined above, the grantee must request FTA concurrence prior to incurring the costs for the requested activities.

- (a) Budget revisions to existing Activity Line Items (ALIs). Grant AB-90-234 includes a scope for vehicles (111-00) with the ALI to purchase 40' buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover added construction expenses. Following the process described above and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Adding an ALI to an existing scope. The scope for Stations Stops/Terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that it prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI—11.33.10 and shift the funds from 11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and has satisfied applicable NEPA requirements.

b. Administrative Amendment.

- (1) General. An administrative amendment is usually initiated by FTA and may only be used when no change will result in the scope, amount, or purpose of the grant. FTA may use an administrative amendment to change or clarify the terms, conditions, or provisions of a grant agreement. FTA also uses an administrative amendment to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee or grantee's name, or to deobligate federal funds that the grantee no longer needs to complete the approved project scope or purpose.

c. Grant Amendment.

- (1) General. FTA requires a grant amendment when there is either a change in the scope or an addition of federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in the FTA electronic management system using the "Create Amendment" screen. Grant amendments require a revised grant agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee does not need to resubmit the portions of the original grant application that the change did not affect. The grantee must submit a detailed description of the changes and a revised project budget. For example, in the FTA electronic award management system under the project details section of the grant, grantees should include a header (e.g., "Amendment #1") and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:
 - (a) Examples.
 1. A change in the quantity of items the grantee will purchase or construct that changes the purpose or intent of the approved grant.
 2. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
 3. The addition of an ALI that results from an amendment to the approved Transportation Improvement Program (TIP)/STIP.
 4. Budget revisions that result in additions or deletions of scope(s) or ALIs are sent to DOL for information. Grant amendments are sent to DOL for certification.
- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of federal funds in the grant. The one exception is if the request does not change the scope of a grant and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification.

4. FORMAT FOR CAPITAL ASSISTANCE. Capital expenditures under the Section 5339 Program include those items defined as “capital” in 49 U.S.C. 5302(a). Vehicles can be purchased either for replacement or expansion purposes. Careful attention to use of the appropriate ALI codes enables FTA to report accurately on the use of formula funds, for example in the annual Statistical Summary report. For the current Statistical Summary reports, see http://www.fta.dot.gov/funding/data/grants_financing_1090.html.

ALIs are six-digit codes. For capital projects, the first digit “1” indicates a capital item. The second digit indicates whether it is for bus (1), fixed guideway projects (other than New Starts) (2), or New Starts (4).

The scope code is generally composed of the first three digits of the related ALIs grouped into it. The three-digit scope is followed by a two-digit sequence number so that the same scope can be used more than once in a budget, if there are multiple projects with similar purposes. Several examples of use of scopes and ALIs follow.

EXHIBIT B-1
Project Scope—Sample No. 1

Scope	Quantity
111-010 Bus—Rolling Stock	6
Activity Line Items	
Quantity	
11.12.02 Purchase 35-foot replacement buses with lifts	4
11.13.03 Purchase 30-foot buses with lifts for service expansion	2
11.12.40 Spare Parts/Assoc Capital Maintenance Items	

In the example above, a mix of rolling stock will be purchased, and the scope includes the purchase of associated capital maintenance items (spare parts). If a grant applicant wishes to include radios and fareboxes as part of this purchase, it could also list radios and fareboxes as part of the rolling stock scope. In such a case, the grant applicant would not include the quantities for the radios and fareboxes in the rolling stock total quantity under 111-01, but would indicate it in the activity level description. If a grant applicant proposes to purchase an entirely new fare collection system or radio communications system, the more appropriate classification might appear as follows:

EXHIBIT B-2
Project Scope—Sample No. 2

Scope	Quantity
114-00 Bus—Support Equipment and Facilities	45
(Note that in this example the activity code description appropriate to this Scope Code, Bus—Stations/Stops/Terminals has been overwritten to provide a more accurate description.)	

Activity	Line Items	Quantity
11.42.06	Shop Equipment	
11.42.10	Purchase Fare Collection (mobile)	45

Scope	Quantity
116-00 Bus Signal/Communications System	70

Activity	Line Items	Quantity
11.61.01	Design Bus Signal System	
11.62.02	Acquire Communication System	
11.62.03	Purchase Bus Radios	50

From these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear. A grant applicant that operates a fixed guideway system or engages in a new start project will use scope level numbers that correspond to the Fixed Guideway and New Start segments of the Activity Code Chart, for example, scope code 121-01, 02... for Rail Rolling Stock or 141-01, 02... for New Start Rolling Stock; or 123-01, 02... for Rail Stations and 143-01, 02... for New Start Stations.

- a. Subrecipient Information. The design of the project budget can also accommodate subrecipient information in cases where a recipient such as the state wishes to track each subrecipient's projects separately. In the following examples, the grant applicant is purchasing rolling stock on behalf of two small operators:

EXHIBIT B-3
Presenting Subrecipient Information—Format Option No. 1

Scope	Quantity
111-01 Purchase Rolling Stock and Related Equipment	7
Activity Line Items	Quantity
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4
11.42.10 Purchase of fareboxes for buses	
11.62.03 Purchase of radios for vans	

EXHIBIT B-4
Presenting Subrecipient Information—Format Option No. 2

Scope	Quantity
111-00 Rolling Stock for Allegany County	3
Activity Line Items	Quantity
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
Scope	Quantity
111-01 Rolling Stock for Cumberland Transit System	4
Activity Line Items	Quantity
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4

Under Format Option No.1, FTA would base the determinations regarding budget revisions and scope changes on the quantity total of seven vehicles found at the scope level. Under Format Option No. 2, FTA would base those determinations on the specific scope level quantity for each of the subrecipients—that is, quantities of three and four.

- b. Two Budget Approaches to Large Capital Projects. A grant applicant can also choose which of the two format options above best suit its internal management of projects. For example, a grant applicant developing a Bus Rapid Transit line may wish to develop separate scope level activities

for each station and include the relevant activities under each, or the same grant applicant may wish to group all activity under one scope.

In either case, the project budget can easily accommodate budget revisions, since funds can be transferred between or among various scope level projects and their associated line items.

5. REGIONAL ASSISTANCE. Grant applicants should contact the appropriate FTA regional office for assistance in preparing the project budget for a Section 5339 Program grant application.

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APPENDIX C

FORMS AND REPRESENTATIVE DOCUMENTS

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1. SAMPLE AUTHORIZING RESOLUTION.

Resolution No. _____

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53; Title 23, United States Code, or other federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. (If the Applicant is requesting Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5339, either alone or in addition to other federal assistance administered by the Federal Transit Administration, the resolution should state whether the Applicant is the Designated Recipient as defined by 49 U.S.C. 5307(a)(2) and required by 49 U.S.C. 5339.)
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the

(Governing Body of the Applicant) held on (Month, Day, Year)

[If the Applicant has an official seal, impress here.]

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

2. SAMPLE OPINION OF COUNSEL.

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for federal transportation assistance authorized by 49 U.S.C. Chapter 53; Title 23, United States Code; and other federal statutes authorizing activities administered by the Federal Transit Administration.

(If the Applicant intends to use this opinion to qualify for Bus and Bus Facilities Program assistance authorized by 49 U.S.C. 5339, the opinion must state whether the Applicant is the Designated Recipient as defined at 49 U.S.C. 5307(a)(2).)

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation _____
2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (cite source and provide a copy of, for example, the local ordinance passed by city council or other governing body authorizing funding for the local share)

3. I have reviewed the pertinent federal, state, and local laws, and I have concluded that there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find that there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

3. FLEET STATUS REPORT. Shown below is a screen sample of a Fleet Status Report as seen in the FTA electronic award management system:

FLEET STATUS - City of Folsom			
	Before	Change	After
I. Active Fleet			
A. Peak Requirement	13	-2	11
B. Spares	0	0	0
C. Total (A +B)	13	-2	11
D. Spare Ratio (B/A)	0.00%	0.00%	0.00%
II. Inactive Fleet			
A. Other	0	0	0
B. Pending Disposal	0	0	0
C. Total (A+B)	0	0	0
Total (I. C and II. C)	13	-2	11

FLEET STATUS - Paratransit Inc.			
	Before	Change	After
I. Active Fleet			
A. Peak Requirement	160		160
B. Spares	30		30
C. Total (A +B)	190		190
D. Spare Ratio (B/A)	18.75%		18.75%
II. Inactive Fleet			
A. Other	0	0	0
B. Pending Disposal	0	0	0
C. Total (A+B)	0	0	0
Total (I. C and II. C)	190	0	190

4. PROCEEDS FROM THE SALE OF PUBLIC TRANSPORTATION ASSETS.

Pursuant to 49 U.S.C. 5334(h), a recipient may transfer or sell capital assets that it has acquired with FTA assistance. In accordance with 49 U.S.C. 5334(h)(4), the recipient must apply the proceeds of the sale of public transportation assets no longer needed to a subsequent public transportation capital project.

A recipient intending to dispose of an asset in accordance with 49 U.S.C. 5334(h) should inform FTA of its intentions, before disposing of the asset, in order to obtain FTA approval.

When the recipient/applicant next submits a grant application to FTA, it must apply the proceeds to reduce the gross capital costs of the new public transportation project. In the FTA electronic award management system, the grant applicant should indicate the amount of the proceeds in the "Adjustment Amount" field; this shows that the proceeds from the earlier disposition are being applied to the project and that those proceeds are being used to reduce the total eligible cost. If appropriate, the grant applicant may also describe this action in the Project Description or Extended Budget Description text box.

EXAMPLE.

Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. The recipient no longer needs the parcel for public transportation purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000. The recipient applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, FTA expects the recipient to report the use of the proceeds from the earlier sale of the asset in the following manner:

5. LIKE-KIND EXCHANGE EXAMPLE.

A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was federal funding while 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 "federal interest" in the new vehicle.

Instead of keeping the bus in service for twelve years, the useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.

Since the bus had a minimum useful life of twelve years and FTA determined its depreciation on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or \$125,000. The remaining federal interest was 80 percent of that figure, \$100,000.

Assume, for example, the recipient realized \$100,000 from the sale of the six-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.

If the recipient were to purchase a new bus in 2011 for \$270,000, the transaction would look like this:

Net project cost calculation:

Gross project cost of new bus	\$270,000
Less straight-line depreciated value of replaced bus.	- 125,000
Net project cost	\$145,000
Federal share 80%	116,000
Local share 20%	29,000

Sources of funds for new bus:

Net sales proceeds from replaced bus	\$ 100,000
New local cash	
Straight-line depreciated value shortfall	25,000
Local share of net project cost	29,000
Federal share	<u>116,000</u>
TOTAL	\$270,000

The federal interest in the new bus is \$216,000 (\$100,000 transferred from the old vehicle and \$116,000 in the new).

If the recipient had received more than \$125,000 in proceeds, all the proceeds (minus reasonable sales costs) would still have been applied as the federal share to the new vehicle. FTA is entitled to have applied to the new vehicle the greater of the straight-line depreciation or the fair market value as evidenced by the sales proceeds.

6. SAMPLE SUPPLEMENTAL AGREEMENT.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
SUPPLEMENTAL AGREEMENT
(Attachment to FTA G-15, October 1, 2008)**

It is the practice of the Federal Transit Administration to enter into a formal agreement with the Designated Recipient for projects that the Designated Recipient does not carry out directly. Under this Grant Agreement, the Grant Recipient is not the Designated Recipient. Therefore, the Designated Recipient hereby agrees to permit the Grant Recipient under this Grant Agreement to receive and dispense the federal assistance funds described in this Grant Agreement. The Designated Recipient further agrees that the Grant Recipient shall assume all responsibilities set forth in this Grant Agreement.

The Federal Government and the Grant Recipient under this Grant Agreement hereby agree that the Designated Recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement and is a party to this Grant Agreement only to assign the right to receive and dispense federal funds to the Grant Recipient as described above.

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Federal Transit Administration

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Designated Recipient

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Grant Recipient

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APPENDIX D

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

Office	Area Served	Contact Information
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Volpe National Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York- and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U. S. Virgin Islands	230 Peachtree Street NW. Suite 800 Atlanta, Georgia 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921

Office	Area Served	Contact Information
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St. Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	1 Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212- 668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW, Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

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APPENDIX E

REFERENCES

- a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
- b. Federal-aid highway and surface transportation laws, Title 23, United States Code.
- c. Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141, July 6, 2012).
- d. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005).
- e. Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998).
- f. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, Dec. 18, 1991).
- g. Federal Public Transportation Act of 1978 (Pub. L. 95-599, Nov. 6, 1978).
- h. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*
- i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
- j. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
- k. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e.
- l. Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*
- m. Section 404 of the Clean Water Act, as amended, 33 U.S.C. 1344.
- n. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. 303.
- o. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f.
- p. Internal Revenue Code, Non-profit Organizations, 26 U.S.C. 501.
- q. Lobbying Restrictions, 31 U.S.C. 1352.
- r. Disadvantaged Business Enterprises, 23 U.S.C. 101 note.
- s. Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*
- t. Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as

- amended, 42 U.S.C. 4601, *et seq.*
- u. Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*
 - v. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*
 - w. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
 - x. Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*
 - y. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 701 *et seq.*
 - z. DOT regulations, “Organization and Delegation of Powers and Duties,” 49 CFR Part 1.
 - aa. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18.
 - bb. DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20.
 - cc. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21.
 - dd. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24.
 - ee. DOT regulations “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25.
 - ff. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.
 - gg. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 27.
 - hh. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 CFR Part 29.
 - ii. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32.
 - jj. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37.

- kk. DOT regulations, “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38.
- ll. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40.
- mm. FTA regulations, 49 CFR Subtitle B Chapter VI.
- nn. Joint Federal Highway Administration/FTA regulations, “Planning Assistance and Standards,” 23 CFR Part 450 and 49 CFR Part 613.
- oo. Joint Federal Highway Administration/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622.
- pp. Federal Motor Carrier Safety Administration regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382.
- qq. U.S. Department of Treasury regulations, “Rules and Procedures for Efficient Federal- State Funds Transfers,” 31 CFR Part 205.
- rr. U.S. Environmental Protection Agency regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR Part 93.
- ss. Executive Order 12372, “Intergovernmental Review of Federal Programs,” July 14, 1982.
- tt. Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” Feb. 11, 1994.
- uu. Office of Management and Budget Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” codified at 2 CFR Part 225, Aug. 31, 2005.
- vv. Office of Management and Budget Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” Oct. 29, 1992.
- ww. Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” June 23, 2003.
- xx. Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377 (Apr. 15, 1997).
- yy. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (Dec. 14, 2005).

- zz. FTA Circular 4220.1, “Third Party Contracting Requirements.”
- aaa. FTA Circular 4702.1, “Title VI Program Guidelines for FTA Recipients.”
- bbb. FTA Circular 5010.1, “Grant Management Requirements.”
- ccc. FTA Circular 9030.1, “Urbanized Formula Program Guidance and Application Instructions.”
- ddd. U.S. General Services Administration, “Excluded Parties List System,” <https://www.sams.gov>.
- eee. FTA Master Agreement FTA MA(15), Oct. 1, 2008.
- fff. FTA ECHO-Web System Operations Manual
<http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>

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FTA Circular: FTA C 5100.1: Bus and Facilities Formula Program: Program Guidance and Application Instructions

January 16, 2014

**Subject: URBANIZED AREA FORMULA PROGRAM: PROGRAM GUIDANCE
AND APPLICATION INSTRUCTIONS**

1. PURPOSE. This circular is a reissuance of guidance on the administration and preparation of grant applications for the Urbanized Area Formula Program under 49 U.S.C. 5307. This revision incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141 (2012)), and includes the most current available guidance as of the date of publication.
2. CANCELLATION. This cancels FTA Circular 9030.1D, "Urbanized Area Formula Program: Grant Application Instructions," dated May 1, 2010.
3. AUTHORITY.
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on January 16, 2014 (79 FR 2930), addressing comments received during the development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "Connect with FTA" for more information.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original signed by _____

Peter M. Rogoff
Administrator

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OPI: Office of Program
Management

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SECTION 5307 PROGRAM CIRCULAR

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I. INTRODUCTION AND BACKGROUND

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA).** The Federal Transit Administration (FTA) is one of ten modal administrations within the U.S. Department of Transportation (DOT), and is headed by an administrator appointed by the president of the United States. The FTA functions through a headquarters office in Washington, DC, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes.

Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intraterminal or intrafacility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. **AUTHORIZING LEGISLATION.** Most federal transit laws are codified at Title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law as well as changes required by other laws that have become effective since the circular was last published in May 2010.
3. **HOW TO CONTACT FTA.** FTA's regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA's headquarters offices. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which the recipient is located. See Appendix F, "FTA Regional and Metropolitan Contact Information," of this circular for more information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
East Building
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. DEFINITIONS. All definitions in 49 U.S.C. 5302 and 5307 apply to this circular, as well as the following definitions:
- a. Applicant. In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.”
 - b. Associated Capital Maintenance. A category of capital project activities that is defined as equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.
 - c. Associated Transit Improvement. With respect to any project or area to be served by a project, an Associated Transit Improvement is a project designed to enhance public transportation service or use and that is physically or functionally related to transit facilities. As defined in 5302(1), eligible projects are: historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service; bus shelters; landscaping and streetscaping, including benches, trash receptacles, and street lights; pedestrian access and walkways; bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles; signage; or enhanced access for persons with disabilities to public transportation.
 - d. Bus Rapid Transit System. A bus transit system in which the majority of each line operates in a separated right-of-way dedicated for public transportation use during peak periods; and includes features that emulate the services provided by rail-fixed guideway public transportation systems, including (i) defined stations; (ii) traffic signal priority for public transportation vehicles; (iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and (iv) any other features the secretary of the Department of Transportation may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail-fixed guideway public transportation systems.
 - e. Capital Asset. Facilities or equipment with a useful life of at least one year.

- f. Capital Lease. Any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.
- g. Capital Project. A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter IV of this circular.
- h. Clean Fuel Bus. A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, propane, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or other low or zero emissions technology that the administrator of the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions.
- i. Coordinated Plan. See “Locally Developed, Coordinated Public Transit–Human Services Transportation Plan.”
- j. Cost of Project Property. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty, or in-transit insurance, should be treated in accordance with the grantee’s regular accounting practices, in the same or as separate line items.
- k. Designated Recipient. The term “designated recipient” means: (i) an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- l. Direct Recipient. For purposes of this circular, a direct recipient is an eligible entity authorized by a designated recipient or state to receive Urbanized Area Formula Program funds directly from FTA.
- m. Electronic Clearing House Operation (ECHO) System. ECHO is an FTA Web-based application system that processes payment requests from FTA grantees.
- n. Electronic Award Management System. A system that grantees and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by grantees to submit financial status reports and milestone progress reports and to submit grant modification requests; this term includes FTA’s transportation electronic award and management (TEAM) system and its successor.
- o. Equipment. An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes,

or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.

- p. Fixed Guideway. The term “fixed guideway” means a public transportation facility (i) using and occupying a separate right-of-way for the exclusive use of public transportation; (ii) using rail; (iii) using a fixed catenary system; (iv) for a passenger ferry system; or (v) for a bus rapid transit system.
- q. Fleet Management Plan. The management plan includes an inventory of all buses among other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- r. Fleet Status Report. A report in FTA’s electronic award management system that identifies rolling stock to be replaced, retired, or disposed. Appendix D of this circular contains a sample Fleet Status Report.
- s. Force Account. The use of a grantee’s own labor force to accomplish a capital project. Force account does not include grant or project administration, preventive maintenance, mobility management, or other nontraditional capital project types. Further guidance on force account work is available in FTA Circular 5010.1D.
- t. Governor. The term “governor” means the governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- u. Grant. An award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient. Used interchangeably with Grant Agreement.
- v. Grant Application. A complete application for an award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient.
- w. Growing States. States forecasted to expand in population size based upon annual population estimates and estimates determined by the decennial census. See 49 U.S.C. 5340(c)(1).
- x. High Density States. States with population densities in excess of 370 persons per square mile. See 49 U.S.C. 5340(d)(1).
- y. Intelligent Transportation Systems (ITS). Intelligent transportation systems refers to the use of electronics, communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system.

- z. Job Access and Reverse Commute Project. A category of reimbursable project expenses that includes activities identified under 49 U.S.C. 5302(9), as explained in Chapter IV of this circular.
- aa. Large Urbanized Area. An urbanized area (UZA) with a population of at least 200,000 at the time of the last decennial census.
- bb. Local Governmental Authority. The term “local governmental authority” includes a political subdivision of a state; an authority of at least one state or political subdivision of a state; an Indian tribe; and a public corporation, board, or commission established under the laws of a state.
- cc. Locally Developed, Coordinated Public Transit–Human Services Transportation Plan. A plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.
- dd. Low-Income Individual. The term “low-income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved.
- ee. Master Agreement. The official FTA document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its project(s). The Master Agreement is incorporated by reference and made part of each FTA grant, and amendment thereto.
- ff. Metropolitan Planning Area. The geographic area determined by agreement between the metropolitan planning organization (MPO) for the metropolitan area and the governor of the state, within which the metropolitan transportation planning process is carried out.
- gg. Metropolitan Planning Organization (MPO). The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and transportation improvement programs for metropolitan planning areas of a state.
- hh. Mobility Management. Mobility management is a capital project activity that consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or sub-recipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. Chapter 53 (other than 49 U.S.C. 5309). Mobility management is a type of capital project.
- ii. National Transit Database (NTD). The NTD is FTA’s primary source for information and statistics collected from transit systems that receive FTA formula funding under the Urbanized Area Formula Program (Sec. 5307) or Rural Area Formula Program (Sec.

- 5311). Public transportation systems receiving funds from these programs are required by statute to report to the NTD.
- jj. Net Project Cost. The part of a project that reasonably cannot be financed from revenues. See 49 U.S.C. 5302(12). Revenues, in this instance, means farebox revenues.
- kk. New Bus Model. The term “new bus model” means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been used in public transportation in the United States, but is being produced with a major change in configuration or components.
- ll. Operating Expenses. Operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.
- mm. Overhaul. Overhaul is a capital expense performed as a planned or concentrated preventive maintenance activity and intended to enable the rolling stock to perform to the end of the original useful life.
- nn. Passenger Ferry. A passenger ferry is a vessel providing regular and continuing shared-ride service that regularly accommodates walk-on passengers not traveling in motor vehicles. Passenger ferries may or may not also accommodate private passenger vehicles with the walk-on passengers. A passenger ferry is a type of fixed guideway public transportation and excludes sightseeing service.
- oo. Preventive Maintenance. All maintenance costs related to vehicles and nonvehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- pp. Private Nonprofit Organization. A corporation or association determined by the secretary of Treasury to be an organization qualifying under 26 U.S.C. 501(c) as exempt from taxation under 26 U.S.C. 501(a), or which has been determined under state law to be private nonprofit and for which the designated state agency has received documentation certifying the status of the private nonprofit organization.
- qq. Program of Projects (POP). A program of projects (POP) is a list of projects proposed by a designated recipient in cooperation with a metropolitan planning organization to be funded from the urbanized area’s Section 5307 apportionment. The POP includes a brief description of the projects, including any sub-allocation among public transportation providers, total project costs, and federal share for each project.
- rr. Public Transportation. The term “public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter

243 (or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.

- ss. Rebuild. Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock's useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- tt. Recipient. For purposes of this circular, the term "recipient" means an entity that receives a grant of Urbanized Area Formula Program funds directly from FTA. In this circular, the word "recipient" is used interchangeably with "direct recipient," and "grantee."
- uu. Rural Area. The term "rural area" means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an "urbanized area" by the secretary of the Department of Commerce.
- vv. Senior. The term "senior" means an individual who is 65 years of age or older.
- ww. Shared Use. Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- xx. Small Transit Intensive City (STIC). An urbanized area with less than 200,000 in population at the time of the last decennial census that provides public transportation service FTA has determined meets or exceeds the industry average for all UZAs with a population of at least 200,000 but not more than 999,999 in one or more of the following performance criteria: passenger miles traveled per vehicle revenue mile; passenger miles traveled per vehicle revenue hour; vehicle revenue miles per capita; vehicle revenue hours per capita; passenger miles traveled per capita; and passengers per capita. See 49 U.S.C. 5336(j)(1).
- yy. Small Urbanized Areas. As used in the context of FTA formula grant programs small urbanized areas are UZAs with a population of at least 50,000 but less than 200,000.
- zz. State. The term "state" means a state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- aaa. Statewide Transportation Improvement Program (STIP). A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans (MTPs), and transportation improvement program (TIP), and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- bbb. Sub-Recipient. An entity that receives FTA funds via a pass-through agreement with a direct recipient or designated recipient, whereby the original recipient remains responsible for compliance with all terms, conditions, and requirements associated with the grant.
 - ccc. Transit. The term “transit” means public transportation.
 - ddd. Transportation Improvement Program (TIP). A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
 - eee. Triennial Review. The process by which FTA meets its statutory obligation to review and evaluate completely every three years the performance of a recipient of Urbanized Area Formula Program funds and how the recipient meets statutory and administrative requirements, especially those requirements included in the annual certifications and assurances. In addition to evaluating compliance with federal law, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements.
 - fff. Unified Planning Work Program (UPWP). A program of work identifying the planning priorities and activities to be carried out within a metropolitan planning area (MPA) during the next one- or two-year period. At a minimum, a UPWP includes a description of the transportation planning work and resulting products, the organization that will be responsible for performing the work, time frames for completing the work, the cost of the work, and the source(s) of funds.
 - ggg. Uniform System of Accounts (USOA). The USOA is a structure of categories and definitions used for NTD reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.
 - hhh. Urbanized Area (UZA). An area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of the Department of Commerce.
 - iii. Useful Life. The expected lifetime of project property, or the acceptable period of use in service. Useful life is used interchangeably with “service life.” **Note:** Land does not depreciate and therefore does not have a useful life.
5. PROGRAM HISTORY. Section 103(a) of the National Mass Transportation Assistance Act of 1974, Pub. L. 93-503, amended former Section 5 of the Urban Mass Transportation Act to authorize funding for the “Urban Mass Transit Program,” a formula program for UZAs that provided federal assistance for both capital and operating projects, with a “maintenance of effort” requirement on the recipient as a prerequisite for access to operating assistance. The Surface Transportation Assistance Act of 1978, Pub. L. 95-599, continued funding for capital and operating assistance under this program, and amended the maintenance of effort

requirement to permit reductions in state and local funding of operating expenses if those reductions were offset by an increase in operating revenues through fare increases without reducing service levels.

The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, amended Section 9 of the Urban Mass Transportation Act to establish a new Block Grant Program providing federal assistance by formula to UZAs for capital and operating projects. Because the Act did not authorize additional funding for the Section 5 Urban Mass Transit Program, the new Block Grant Program essentially superseded, without repealing, the Section 5 Urban Mass Transit Program. Unlike the Urban Mass Transit Program, Block Grant funds used for operating expenses did not have a “maintenance of effort” requirement, but there was a limit on the percentage of Block Grant funding that could be used for operations.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, authorized Block Grant Program assistance to designated recipients for capital and operating projects in UZAs. STURAA imposed limits on a grantee’s use of its apportionments for operating expenses based on the 1982 apportionments.

The Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, retained the STURAA restrictions on use of apportioned funds for operating expenses. However, ISTEA permitted increases in amounts available based in part on the Consumer Price Index, and provided greater increases for all UZAs. ISTEA also designated 1 percent of funds be used for transit enhancements.

In 1994, Pub. L. 103-272 codified Section 9 of the Urban Mass Transportation Act, “Block Grants,” at 49 U.S.C. 5307. Upon enactment of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, in 1998, the heading for 49 U.S.C. 5307 was changed to “Urbanized Area Formula Grants.” Under this program, funding was no longer available to support operations in UZAs with a population of 200,000 or more. For UZAs with a population of less than 200,000, there was no limitation on the amount of a recipient’s apportionment that could be used for operating expenses. Subsequent legislation authorized operating expenses in a few limited exceptions for certain UZAs and parts thereof with populations of 200,000 or more. This continued under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

In 2005, the enactment of SAFETEA-LU expanded eligible activities. Capital investments in bus and bus-related projects such as replacement of buses, overhaul of buses, acquisition of crime prevention and security equipment, mobility management, and construction of passenger and maintenance facilities became eligible reimbursable expenses under the Urbanized Area Formula Program (Section 5307). Capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software were also eligible reimbursable expenses under the program. Further, the program also considered all costs involving preventive maintenance, certain crime prevention activities, security-related activities, and some Americans with Disabilities Act of 1990 (ADA) complementary paratransit service expenses as capital costs.

In 2012, MAP-21 modified the program's formula for the apportionment of funds by increasing the amount of funding apportioned under the Small Transit Intensive Cities formula from 1 percent to 1.5 percent of the funds made available for the program. It also added a new apportionment component based on a UZA's low-income population, in an amount equal to 3.07 percent of the amount made available for the program. Operating assistance remained eligible in UZAs with populations less than 200,000; however, previously authorized exemptions for specific UZAs over 200,000 were repealed and replaced with a single nationwide exemption for fixed route transit operators that operate fewer than one hundred buses in peak service. Qualifying operators are eligible for operating assistance in an amount based on an individual operator's percentage of all public transportation service in the UZA.

MAP-21 also expanded eligible activities to include job access and reverse commute projects, which provide nontraditional transportation services intended to serve the employment-related transportation needs of welfare recipients and low-income individuals. These projects were previously eligible under the repealed Section 5316 Job Access and Reverse Commute Program. In addition, MAP-21 created a discretionary passenger ferry grant program under Section 5307.

In addition to the changes made by MAP-21 to the Urbanized Area Formula Program, MAP-21 directed FTA to establish and implement broad public transportation safety and asset management regulations, which will apply to all recipients of FTA funding once finalized.

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II. PROGRAM OVERVIEW

1. **STATUTORY AUTHORITY.** The Urbanized Area Formula Program, codified at 49 U.S.C. 5307 (“Section 5307”), is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. Under this program, the secretary may make grants to assist states and local governmental authorities in financing capital and planning projects, job access and reverse commute projects, associated transit improvements, and certain operating costs, as described in Chapter IV of this circular. Certain provisions of Section 5307 may also be incorporated in the program circulars for the Section 5337 State of Good Repair Program and the Section 5339 Bus and Bus Facilities Program. The Catalog of Federal Domestic Assistance (CFDA) number for the Urbanized Area Formula Program is 20.507.
2. **PROGRAM GOALS.** Pursuant to 49 U.S.C. 5307, FTA apportions Urbanized Area Formula Program funds to urbanized areas (UZAs) and to states for public transportation capital projects, operating assistance, job access and reverse commute projects, and for transportation-related planning. To support the continuation and expansion of public transportation services in the United States, Section 5307 supports public transportation by:
 - a. assisting in the planning, engineering, design, construction, evaluation, and maintenance of public transportation projects, equipment, and facilities;
 - b. facilitating cooperation between public transportation companies and private companies engaged in public transportation to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development;
 - c. encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development;
 - d. providing financial assistance to states and local governments to help carry out national goals related to mobility for all, including elderly individuals, individuals with disabilities, and economically disadvantaged individuals;
 - e. investing in bus and bus-related activities such as replacement, overhaul, and rebuilding of buses; and
 - f. investing in crime prevention, public transportation safety, and security equipment.
3. **PROGRAM MEASURES.** The Government Performance and Results Act (GPRA), Pub. L. 103-62, (1993), requires FTA and other federal agencies to “establish performance goals to define the level of performance” and to “establish performance indicators to be used in measuring relevant outputs, service level, and outcomes” for each of its programs. The performance measures described below are designed to fulfill FTA’s obligations under GPRA.

FTA reports on program measures in conjunction with GPRA. The following indicators are targeted to capture overarching program information as part of the annual report that each grantee submits to FTA.

The measures FTA established for the Urbanized Area Formula Program are:

- a. Ridership: Average percent change in public transportation boardings per public transportation market of the 150 largest public transportation localities.
 - b. Accessibility: Percent of bus fleets and rail stations that are in compliance with the Americans with Disabilities Act of 1990 (ADA).
 - c. Condition: Improvement in the average condition of bus and rail fleets.
4. CENSUS DESIGNATION OF URBANIZED AREAS. FTA apportions Urbanized Area Formula Program funds for public transportation in UZAs. UZAs are designated by the U.S. Bureau of the Census based on the results of each decennial census, and represent concentrated geographic areas with populations of at least 50,000. The Urbanized Area Formula Program provides grants for public transportation in urbanized areas, and establishes distinct requirements and eligibilities for UZAs over and under 200,000 in population.

UZAs generally correspond to U.S. cities and their densely populated suburbs. Most urbanized areas include multiple independent jurisdictions, and some include multiple cities, if those cities are linked by a densely populated area. The criteria for qualification as a UZA are based on geographic and demographic factors determined by the Bureau of the Census. The specific factors used to determine which adjacent areas are included in a UZA are subject to change in each decennial census.

Once published, these population counts and boundaries are used by FTA for funding apportionments and program eligibility determinations until the Census Bureau designates new UZAs as a result of the next decennial census.

As a result of the 2010 census, the total number of UZAs increased from 465 in 2000 to 497 in 2010. The 2010 census population counts resulted in five UZAs crossing over one million in population, one UZA falling under the one million population threshold, twenty-seven UZAs crossing into the 200,000 to 999,999 population category, thirty-six UZAs that became newly qualified UZAs with populations between 50,000 and 199,999, and four former UZAs that are now areas under 50,000 in population.

Category	Census 2010 Number of UZAs	Census 2010 Total Population
UZAs over 1 million	42	135,639,208
UZAS 200,000-999,999	137	56,845,584
UZAs 50,000-199,999	318	30,817,308
Total	497	223,302,100

5. FTA ROLE IN PROGRAM ADMINISTRATION.

a. FTA's headquarters office in Washington, DC, serves a broad, program level role in the administration of the program. FTA headquarters:

- (1) provides overall policy and program guidance for the Urbanized Area Formula Program;
- (2) apportions funds annually to states and designated recipients;
- (3) develops and implements financial management procedures;
- (4) initiates and manages program support activities; and
- (5) conducts national program reviews and evaluations.

b. FTA's regional offices are responsible for the day-to-day administration of the program. Regional offices:

- (1) review and approve grant applications for designated and direct recipients;
- (2) obligate funds for approved grant applications;
- (3) work with recipients to implement the annual program;
- (4) provide technical assistance;
- (5) receive recipient certifications and amendments to the program of projects;
- (6) monitor and close grants; and
- (7) conduct triennial reviews and state management reviews every three years or as circumstances warrant, and other reviews as necessary.

6. DESIGNATED RECIPIENT ROLE IN PROGRAM ADMINISTRATION. FTA apportions funds for urbanized areas to states and designated recipients, which are responsible for receiving and apportioning FTA funds to eligible projects within the applicable urbanized area or areas.

The state or designated recipient has the principal authority and responsibility for administering Urbanized Area Formula Program funds within a UZA. A state is responsible for administering the program on behalf of all UZAs under 200,000 in population, or portions thereof, that are located within its boundaries. A designated recipient is responsible for administering the program on behalf of a UZA with a population of 200,000 or more.

The state or designated recipient's responsibilities include:

- a. Allocating the relevant apportionment among recipients in the urbanized area or areas based on local needs and arrangements, and in coordination with the MPO(s);
- b. Identifying and selecting the projects (capital, operating, job access and reverse commute, or planning) that the MPO or state department of transportation (state DOT) will include in a metropolitan transportation plan, transportation improvement program (TIP), long-range statewide transportation plan, statewide transportation improvement program (STIP), and/or unified planning work program (UPWP);

- c. Submitting a grant application for the Section 5307 program of projects (POP) and/or authorizing other eligible applicants to apply for all or part of the apportionment, and notifying FTA of such authorizations;
- d. Ensuring that the annual POP complies with the requirements that at least 1 percent of the apportionment is used for associated transit improvements and that at least 1 percent is used for public transportation security projects unless all security needs are certified to have been met; and
- e. Each designated recipient must verify that appropriate documentation of designation is on file with FTA and, if not, provide such documentation.

For UZAs with populations of at least 200,000, a designated recipient must be selected in accordance with the local planning process, as detailed in the following section.

7. RECIPIENT DESIGNATION PROCESS. As described above, a requirement for funding under Section 5307 is the selection of a designated recipient for Section 5307 in a UZA. The recipient(s) so designated in each UZA must be a governmental authority and have the legal authority to receive and dispense federal funds in the UZA.
 - a. FTA encourages the designation of a single designated recipient for each UZA 200,000 or more in population, including such UZAs that span more than one state, in order to streamline the administration of the program and foster coordination. However, nothing precludes the designation of multiple designated recipients.
 - b. The governor of a state or the governor's official designee may also designate a single recipient for multiple contiguous large UZAs. In cases where a UZA extends into more than one state, and the public transportation providers are also located in more than one state, the governor of each state must participate in the process to designate a recipient.
 - c. The governor or the governor's designee performs the role of the designated recipient for UZAs under 200,000 in population, and for the state's portion of any multi-state UZAs under 200,000 in population. Although the governor may authorize a local entity, such as a metropolitan planning organization, to develop and recommend funding allocations, the governor must approve the final allocation of program funds for these areas. Additionally, the governor may authorize eligible public transportation operators to apply directly to FTA for grants as direct recipients.
 - d. Designations for UZAs of 200,000 or more in population become effective when the governor of a state officially notifies the appropriate FTA regional administrator(s) in writing of that designation, and remains in effect until changed by the governor of a state by official written notice of re-designation to the appropriate FTA regional administrator. The written designation notice must include:
 - (1) A letter expressing the governor's concurrence; and

- (2) Documentation of concurrence in the selection of the designated recipient by the providers of publicly owned public transportation service in the UZA, and an appropriately certified resolution of the metropolitan planning organization (MPO) concurring in the designation.
- e. For each designated recipient, the state must submit an Opinion of Counsel certifying the entity's legal capacity to perform the functions of a designated recipient.

8. DIRECT RECIPIENT AND SUB-RECIPIENT ELIGIBILITY

- a. Applicants Other than Designated Recipients. A state or designated recipient may authorize another public entity to be a "direct recipient" for Section 5307 funds. A direct recipient is a public entity that is legally eligible under federal transit law to apply for and receive grants directly from FTA. The designated recipient may make this authorization one time or at the time of each application submission, at the option of the designated recipient.

The designated recipient must inform FTA of the arrangement in a "split letter," which establishes the allocation of Section 5307 funds in a large UZA. A state must inform FTA of such arrangements in an annual apportionment letter for funds attributable to small UZAs. Once an agency has been authorized to apply to FTA as a direct recipient, it is not necessary to repeat this authorization upon each future allocation of program funds.

A public agency other than the designated recipient may apply for some or all of the UZA's Section 5307 apportionment if:

- (1) The state or designated recipient authorizes the public agency to do so;
- (2) The public agency submits an independent grant application; and
- (3) Upon award of the grant, the designated recipient and the public agency execute a supplemental agreement, which releases the designated recipient from any liability under the grant agreement. The supplemental agreement permits the grant recipient (e.g., direct recipient) to receive and expend the federal funds and sets forth that the grant recipient assumes all responsibilities of the grant agreement. This supplemental agreement is required for all grantees in UZAs under 200,000 in population, as well as for all recipients in UZAs with populations of at least 200,000 that are not a designated recipient. A sample supplemental agreement is provided in Appendix D of this circular.

The amount of funds available to direct recipients is determined cooperatively by public transit providers, the MPO, and the designated recipient(s) for the UZA, in adherence with federal planning requirements and communicated to FTA by the designated recipient. FTA can only make grants to direct recipients after the designated recipient provides a split or suballocation letter to the FTA regional office.

- b. Sub-Recipient Arrangements. A Section 5307 recipient, whether a designated recipient or direct recipient, may choose to pass its grant funds through to another entity (sub-recipient) to carry out a project eligible under Section 5307.

For example, sub-recipient arrangements may be utilized to allocate funding to projects undertaken by a smaller cooperating agency on behalf of a designated or direct recipient, or to a private nonprofit organization that is responsible for a job access and reverse commute project within or near the service area of a designated or direct recipient.

Unlike supplemental agreements between a direct recipient and FTA, a sub-recipient arrangement does not relieve the original recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

(1) Eligible sub-recipients:

- (a) are public entities otherwise eligible to become direct recipients under Section 5307, or
- (b) may be private nonprofit operators for purposes of carrying out eligible job access and reverse commute projects.

(2) To establish a sub-recipient arrangement, the recipient must:

- (a) enter into a written agreement with the sub-recipient that assures FTA that the sub-recipient will comply with its obligation to satisfy the requirements of the grant agreement;
- (b) inform the FTA regional office of the arrangement in its grant application or through other documentation; and
- (c) inform FTA of any changes in that arrangement during the life of the project.

If public transportation service within a UZA is provided by a private nonprofit organization, an FTA designated or direct recipient may choose to enter into a contracted service arrangement to fund the service using Section 5307 funds. This situation may occur after the Census Bureau revises its UZA boundaries as a result of the decennial census. For example, the revised boundaries may result in a formerly rural transit service being incorporated into a UZA. Such an arrangement would be subject to federal procurement laws and regulations, including the requirement for a competitive procurement. Further information on competitive procurement requirements is available in FTA Circular 5010.

9. FTA OVERSIGHT. Congress has charged FTA with conducting reviews of recipients or requiring that recipients have independent audits conducted on their programs to determine whether the recipients have met the program's requirements and certifications.

FTA performs a triennial review at least once every three years to evaluate the performance of each recipient of Section 5307 funds. FTA must ensure that the recipient is carrying out its program in compliance with federal statutory and administrative requirements. Triennial reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made.

FTA may also conduct procurement, financial management, civil rights, drug and alcohol, safety, security, and other compliance reviews and audits, in addition to the triennial review. When FTA evaluations or independent audits identify compliance deficiencies, FTA provides technical assistance to the recipient to facilitate compliance with federal requirements. FTA may reduce or withdraw financial assistance as a result of review findings or withhold further grants until the grantee comes into compliance.

The Single Audit Act of 1984, as amended in 1996 (31 U.S.C. 7501 *et seq.*), and OMB Circular A-133 (“Audits of State, Local Governments, and Non-Profit Organizations”) provide audit requirements for ensuring that funds granted by the federal government to nonfederal entities are expended properly.

All nonfederal entities that expend \$500,000 or more of federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, (31 U.S.C. 7502), OMB Circular A-133, the OMB Circular Compliance Supplement and Government Auditing Standards. A single audit is intended to provide a cost-effective audit for nonfederal entities in that one audit is conducted in lieu of multiple audits of individual programs.

10. RELATIONSHIP TO OTHER PROGRAMS. Other federal transportation programs may provide support for Section 5307 projects, and Section 5307 projects may in turn enhance the effectiveness of these programs. The following is a brief discussion of existing programs, including programs that were repealed, but for which funding remains available, and those newly authorized under MAP-21.

- a. Repealed Programs: MAP-21 repealed a number of public transportation programs that existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of each of these repealed programs to the Urbanized Area Formula Program is described below.

(1) Clean Fuels Grant Program (Section 5308).

The Clean Fuels Grant Program was a former grant program that assisted in financing the acquisition of clean fuel rolling stock and clean fuel-related facilities for agencies providing public transportation and operating in an urbanized area designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act, (42 U.S.C. 7407(d)), or a maintenance area for ozone or carbon monoxide.

The program was established under the Transportation Equity Act for the 21st Century (TEA-21) and was repealed under MAP-21. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation unless Congress rescinds or redirects them to other programs. Funds available to carry out this program are subject to the program rules and requirements at the time they were appropriated.

Eligible recipients were designated recipients in UZAs 200,000 or more in population, and states for UZAs with populations of less than 200,000—for areas that are designated as nonattainment or maintenance areas for ozone or carbon monoxide. Nonurbanized areas were not eligible recipients under this program.

(2) Section 5309 Bus and Bus Facilities Program.

The Section 5309 Bus and Bus Facilities Program was a former discretionary grant program for bus transit projects. Allocations of funding under this program were made either through congressional direction (“earmarks”) or through a competitive discretionary solicitation of proposals. This program was repealed under MAP-21 and replaced with the Section 5339 Bus and Bus Facilities Formula Program.

From 2010 through 2012, FTA allocated discretionary funding under this program to proposals solicited through several notices of funding availability (NOFAs). The NOFAs identified eligible project types and discretionary selection criteria and were based on specific policy initiatives, including:

- (a) State of Good Repair Initiative;
- (b) Bus Livability Initiative; and
- (c) Veterans Transportation and Community Living Initiative.

Funds awarded in response to these NOFAs are available for obligation to the project selected until they lapse, and are subject to the program terms and requirements at the time of allocation. Additional information on the Section 5309 Bus and Bus Facilities Program is available in the most current version of FTA Circular 9300.1.

(3) Job Access and Reverse Commute Program (JARC) (Section 5316).

The Section 5316 Job Access and Reverse Commute Program (JARC) was a former formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and nonurbanized areas to suburban employment opportunities. MAP-21 repealed this program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects the funds to other programs. Funds remain subject to the program requirements at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Program funds are available for capital, planning, and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although the Section 5316 JARC program was repealed under MAP-21, job access and reverse commute projects are now an eligible project activity under the Urbanized Area Formula Program. Please see Chapter IV, Eligible Project Types and Requirements, for a list of project types and requirements under Section 5307.

Guidance for funds apportioned under the Section 5316 JARC Program is contained in FTA Circular 9050.1, “The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions.”

(4) Paul S. Sarbanes Transit in Parks Program (Section 5320).

The Paul S. Sarbanes Transit in Parks Program was a former discretionary grant program that provided funding for “alternative transportation” projects within or in the vicinity of federal lands. The goals of the program were to enhance the protection of America’s national parks, refuges, forests, and other federal lands and to increase the enjoyment of visitors. This program was established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (Pub. L. 109-59, SAFETEA-LU) and repealed by MAP-21.

FTA announced the final allocation of discretionary Transit in Parks funds in February 2013. Unobligated funds under this program remain available for obligation until Congress rescinds or redirects them to other program, and are subject to the program requirements at the time they were made available. Projects undertaken outside of federal lands must comply with all metropolitan and statewide and nonmetropolitan planning requirements.

FTA carries out the Transit in Parks program in consultation with the Department of the Interior (DOI) and other federal land management agencies. Funding for projects previously eligible under the Transit in Parks program is now available under the Federal Lands Access Program and the Federal Lands Transportation Program, which are managed by the Federal Highway Administration. These programs are described in additional detail below.

In addition, Section 5307 funds may be used to support projects previously funded under the Transit in Parks program. For example, an UZA may contain a national park, monument, memorial, or historic sites, a national wildlife refuge, or another federal land unit that has received funding for a public transportation project or a qualifying associated transit improvement activity under this program.

(5) New Freedom Program (Section 5317).

The New Freedom Program (Section 5317) was a formula grant program that provided funding for capital and operating expenses to support new public transportation services and new public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (ADA). The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing Americans with disabilities seeking integration into the workforce and full participation in society.

MAP-21 repealed the New Freedom Program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects them to other programs. Program funds are subject to the requirements existing at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Local transit providers are expected to participate in the development of this transportation plan. Program funds are available for capital and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although MAP-21 repealed the Section 5317 New Freedom Program, similar project activities are eligible under the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program. Program information is available in FTA Circular 9070.1.

Guidance for funds apportioned under the Section 5317 New Freedom Program is contained in FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions.”

(6) Alternatives Analysis Program (Section 5339).

The Alternatives Analysis Program (Section 5339) was a discretionary grant program that provided funding for the evaluation of public transportation and multimodal alternatives and general alignment options for identified transportation needs in a particular travel corridor. The transportation planning process of Alternatives Analysis included an assessment of a wide range of public transportation or multimodal alternatives, which provided information to enable the secretary to make a finding of project justification and local financial commitment and supported the selection of a locally preferred alternative.

Grants under the Alternatives Analysis program were intended to enable the local metropolitan planning organization to adopt a locally preferred alternative as part of the long-range transportation plan, and to enable recipients to fulfill project

development requirements under FTA's Section 5309 Fixed Guideway Capital Investment Program. This discretionary grant program was established under SAFETEA-LU and repealed by MAP-21.

a. New and Revised Programs Under MAP-21.

(1) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (Section 5309)

The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that funds the construction of new fixed guideway systems or extensions to existing fixed guideway systems and, as amended by MAP-21, projects that will expand the core capacity of existing fixed guideway corridors. States and local governmental authorities are eligible applicants for Section 5309 funds.

Eligible projects include rapid rail (heavy rail), commuter rail, light rail, hybrid rail, trolley bus (using overhead catenary), cable car, passenger ferries, and bus rapid transit system (BRT). The Small Starts program also includes corridor-based bus rapid transit systems. The majority of the BRT must operate in a separated right-of-way dedicated for public transportation use during peak hours. BRT features must emulate the services provided by rail-fixed guideway including defined stations, traffic signal priority, and short headway bidirectional services for a substantial part of weekdays and weekend days. The Core Capacity Improvement program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent.

Projects become candidates for funding under this program by successfully completing steps in the process defined in Section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multiyear federal commitment to the project. Small Starts projects receive construction funds through a single year grant or an expedited grant agreement that defines the scope of the project and specifies the federal commitment to the project.

Section 5307 funds may be used to complement funding awarded under the Fixed Guideway Capital Investment Program, as well as to support the continued capital investment needs of completed projects.

Additional information about the Fixed Guideway Capital Investment Program is available in the most current version of FTA Circular 9300.1.

(2) Bus and Bus Facilities Formula Program (Section 5339).

The Section 5339 Bus and Bus Facilities Program is a formula grant program that provides funding to states and UZAs for bus-related capital projects. This program was established under MAP-21, which concurrently repealed the Section 5309 Bus and Bus Facilities discretionary grant program.

Under the Section 5339 Bus and Bus Facilities formula program, a portion of the funds are allocated through an initial national distribution to states. The remaining funds are apportioned consistent with the formula under 5336 (other than subsection (b) to states and UZAs on the basis of population, vehicle revenue miles and passenger miles. Section 5307 requirements apply to Section 5339 grants. The governor of a state or the governor's designee may transfer funds apportioned under the nation distribution to supplement amounts apportioned under the Rural Area (Section 5311(c)) or Urbanized Areas Formula (5307) programs. However, the law does not allow Section 5339 funds apportioned pursuant to the Section 5336 formula to be transferred to the Section 5307 or 5311 programs.

Additional information on the Section 5339 Bus and Bus Facilities Formula Program, including transfer provisions to Section 5307, can be found in the successor to FTA Circular 9100, which is expected to be published as FTA Circular 5100.

(3) Public Transportation Emergency Relief Program (Section 5324).

MAP-21 authorized the Section 5324 Public Transportation Emergency Relief Program (ER program). The ER program allows FTA to make grants to public transportation agencies that have experienced serious damage to transit assets as a result of an emergency. Emergency is defined as a natural disaster that affects a wide area, such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide, or a catastrophic failure from an external cause, as a result of which the governor of a state has declared an emergency and the secretary has concurred, or the president has declared a major disaster.

FTA may make grants under the ER program for capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system that the secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of a declared emergency. In addition, FTA may reimburse operating expenses that are outside the scope of an affected recipient's normal operations, including but not limited to evacuations; rescue operations; bus, ferry, or rail service to replace inoperable service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

(4) Grants under this program, or those made under Sections 5307 or 5311 to address a declared emergency, are subject to the terms and conditions that FTA determines are

necessary. FTA will not provide funding for any expenses that are reimbursed by the Federal Emergency Management Agency (FEMA). This program is implemented by regulation under 49 CFR 602. State of Good Repair Formula Program (Section 5337).

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to UZAs with fixed guideway systems and high intensity motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and rehabilitation projects for existing fixed guideway systems and high intensity motorbus systems that have been operating for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization formula grant program.

The state of good repair funds must be used for capital projects intended to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions state of good repair funds to designated recipients in the UZAs according to a statutory formula. The high intensity fixed guideway formula is applicable to fixed guideway projects using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a BRT system and comprises: (1) a modified version of the formula used under the now repealed fixed guideway rail modernization program, and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High intensity motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program is available in a separate FTA Circular.

(5) Rural Area Formula Program (Section 5311).

The Rural Area Formula Program is a formula grant program that provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000, where many residents often rely on public transportation to reach their destinations. FTA apportions these funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible sub-recipients include private nonprofit organizations and operators of public transportation or intercity bus service that receive funds indirectly through a recipient.

The Tribal Transit Program is funded from amounts made available to carry out the Section 5311 program. Tribal Transit Program funds are allocated by formula and on a discretionary or competitive basis. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are allocated based on criteria established for the program. Eligible direct recipients are federally recognized Indian tribes in rural areas. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transportation services and rural intercity bus service.

The Appalachian Development Public Transportation Assistance Formula Program is also funded from amounts made available to carry out Section 5311. This program provides formula funds to support public transportation for states in the Appalachian region. Funds are allocated for any purpose eligible under Section 5311. Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(6) Transit-Oriented Development Planning Pilot Program

The Transit-Oriented Development Planning Pilot Program is a new FTA program that was established by Section 20005(b) of MAP-21. This program provides funding to advance planning efforts that support transit-oriented developments (TOD) associated with new fixed guideway and core capacity improvement projects. TOD focuses growth around transit stations to promote ridership, affordable housing near transit, revitalized downtown centers and neighborhoods, and encourages local economic development. Funds from Section 5307 may be used to support planning projects that receive funding under this program, or may be used for capital projects relating to transit-oriented development projects.

(7) Transportation Alternatives Program (FHWA – 23 U.S.C. 213(b))

The Transportation Alternatives Program (TAP) was authorized under Section 1122 of Moving Ahead for Progress in the 21st Century Act (MAP-21) (23 U.S.C. 213(b), 101(a)(29)). The TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving nondriver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; projects for the planning, design, or construction of boulevards and other roadways largely in the right-of-way of former interstate system routes or other divided highways; and workforce development, training, and education activities that are in accordance with 23 U.S.C. 504(e).

The TAP is administered by the Federal Highway Administration (FHWA). Funds are allocated to states based on each state's proportional share of fiscal year 2009

transportation enhancements funding. States are responsible for administering the program within the state and for allocating funds to urbanized and rural areas according to a statutory formula based on population. In UZAs with a population of 200,000 or more, projects are selected by the MPO. In rural and small urbanized areas, projects are selected by the state through a competitive process.

(8) Federal Lands Access Program (FHWA – 23 U.S.C. 204)

The Federal Lands Access Program is a grant program established under MAP-21 and administered by the Federal Highway Administration. This program provides funding to states and local governments for projects to improve transportation facilities that provide access to, are adjacent to, or are located within federal lands, and for which ownership or maintenance responsibility is vested in the state or local government.

The Access Program provides funding to supplement state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators. The program is designed to provide flexibility for a wide range of transportation projects in the fifty states, the District of Columbia, and Puerto Rico. Funds are allocated according to a statutory formula, which is based in part on the proportion of federal lands that exist within each state. A programming decisions committee (PDC) within each state makes programming decisions and is responsible for developing a multiyear program of projects.

The PDC in each state is comprised of a representative from FHWA, the state, and of affected local governments. The PDC is required to consult with public transit agencies that operate in the vicinity of federal lands in developing its list of projects. Eligible transit projects include all planning, capital, and operating assistance projects eligible under FTA's grant programs.

The Access Program complements the FHWA Federal Lands Transportation Program (FLTP), which provides funding for transportation facilities owned or maintained by federal land management agencies.

(9) Federal Highway Administration "Flexible" Programs

Certain FHWA transportation programs, such as the Surface Transportation Program (STP) or Congestion Management and Air Quality Program (CMAQ), allow recipients to transfer funds to FTA for public transportation projects that are eligible under the FHWA program and under Section 5307. When such "flexible" fund transfers are made for eligible transit projects, FTA will administer these funds in a separate Section 5307 grant. Guidance on the eligibility of these funds for transfer and associated requirements is provided in Chapter V of this Circular, "Availability of FHWA 'Flexible' Funds for Transit Projects."

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III. GENERAL PROGRAM INFORMATION

1. APPORTIONMENT OF PROGRAM FUNDS. Section 5338 of Title 49, U.S.C. authorizes funding for the Urbanized Area Formula Program from the mass transit account of the highway trust fund. Each fiscal year, FTA apportions urbanized area funds to states and designated recipients according to a statutory formula using the latest available U.S. decennial census data and other information reported by the Bureau of the Census and the National Transit Database. FTA publishes Section 5307 apportionments in the *Federal Register* along with formula apportionments and allocations for other FTA programs.

The funds made available for Section 5307 for a given fiscal year under Section 5338(a)(2)(c) are allocated, apportioned, or set aside as follows:

- a. Of the total made available, \$30,000,000 is set aside for discretionary Passenger Ferry Grants in accordance with Section 5307(h);
- b. Of the total made available, 3.07 percent of the total is allocated to UZAs based on the number of eligible low-income individuals, in accordance with Section 5307(j).
- c. Of the amounts not apportioned under (a) and (b) above, 1.5 percent is set aside for allocation to UZAs according to the Small Transit Intensive Cities (STIC) provision;
- d. Of the total made available, 0.5 percent are set aside for allocation to states for the State Safety Oversight Program in accordance with Section 5329(e)(6); and
- e. Of the total made available, 0.75 percent are set aside for oversight pursuant to Section 5338(i)(1)(B).
- f. Of the amounts not allocated or set aside under (a) through (e) above, the remainder of Section 5307 appropriations is apportioned among two basic categories as follows:
 - (1) 90.68 percent to UZAs of at least 200,000 in population, and
 - (2) 9.32 percent to UZAs less than 200,000 in population.

In addition to the funds apportioned above, FTA also apportions funds to states and UZAs based on the Section 5340 Growing States and High-Density States formula. FTA publishes a single combined apportionment for Sections 5307 and 5340.

2. APPORTIONMENT DATA. For UZAs with populations of fewer than 200,000, the formula is based on total population and population density according to the most recent decennial census. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, fixed guideway route miles, fixed guideway passenger miles, as well as population and population density.

UZAs under 200,000 in population may also receive funding under the small transit intensive cities (STIC) provision, which allocates funds based on a set of performance factors. To qualify for STIC funding, a UZA must have transit service that meets or exceeds the industry average in one or more performance categories for all UZAs with a population of at least 200,000 but not more than 999,999.

FTA also apportions funds to states and UZAs on the basis of low-income population. These funds are apportioned based on the proportion that a UZAs population bears to the total low-income population for all large or small UZAs. Low-income population totals are published annually by the Census Bureau based on the most recent American Community Survey (ACS) counts. The ACS is the Census Bureau's ongoing sample-based study of the population, which supplements the decennial census. In addition to the funds made available under Section 5307, FTA apportions funds to states for use in urbanized areas according to the Section 5340 Growing States and High-Density States. FTA combines these Section 5340 funds and the low-income allocation together with the funds apportioned by the Section 5307 formula into a single Section 5307 apportionment.

FTA obtains population and population density data from the most recently available decennial census at the time of apportionment. FTA obtains all other data used for formula apportionments from the latest report year of validated data reported in the National Transit Database (NTD). For purposes of the formula, FTA may not use data that is submitted late or data that FTA cannot validate. Transit providers making data submissions should refer to the current editions of the NTD Reporting Manuals and Uniform System of Accounts in reporting to the NTD. Copies of these publications and other NTD policy statements and reporting guidance can be found on the NTD website at <http://www.ntdprogram.gov/> and from the following address: FTA Office of Budget and Policy, 1200 New Jersey Avenue SE, Washington, DC 20590; or by telephone at 202-366-4050. FTA's Office of Budget and Policy provides annual workshops on the NTD for persons reporting to the database on behalf of recipients.

3. AVAILABILITY OF FUNDS. Section 5307 funds are available for obligation during the federal fiscal year for which they were apportioned plus five additional years. For example, funds appropriated in fiscal year 2013 are available until September 30, 2018. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all UZAs together with funds made available for the next fiscal year.
4. PASSENGER FERRY DISCRETIONARY PROGRAM. MAP-21 established a new Passenger Ferry Grant program under 49 U.S.C. 5307(h). A total of \$30 million is set aside each fiscal year 2013 and 2014 from the Urbanized Area Formula Program to support passenger ferry projects. Funding will be awarded based on a competitive selection, based on criteria published in a Notice of Funding Availability (NOFA) in the *Federal Register*. FTA will publish additional guidance specific to the Passenger Ferry Discretionary Grant Program in the future.

FTA posts all competitive grant opportunities on the federal government's centralized source for information on discretionary grants, Grants.gov. More information about Grants.gov is available at <http://www.grants.gov/>.

5. TRANSFER OF APPORTIONMENTS.

- a. From the State's Apportionment: Consistent with 49 U.S.C. 5336(f)(1), the governor may transfer any part of the state's Urbanized Area Formula Program apportionment for small UZAs with less than 200,000 in population to nonurbanized areas including Indian tribes in nonurbanized areas to supplement funds apportioned to the state under the Rural Area Formula Program, 49 U.S.C. 5311(c)(3). Consistent with 49 U.S.C. 5336(f)(1), the governor may make such transfers only after consultation with responsible local officials and publicly owned providers of public transportation service in each area to which FTA originally apportioned the funding. In addition, the governor may transfer such amounts apportioned to UZAs under 200,000 in population to and among other UZAs within the state with populations of under 200,000.
- b. Lapsing funds: The governor may use any 5307 program funds from the governor's apportionment that remain available for obligation beginning ninety days before the expiration of their period of availability in any area within the state (including large UZA's) for purposes eligible under the Urbanized Area Formula Program without prior consultation.
- c. From the Formula Grants for Rural Areas Program to Supplement the Urbanized Area Formula Program. The governor may transfer funds from the state's apportionment under the Formula Grants for Rural Areas Program (Section 5311) to supplement funds apportioned to the state under the Urbanized Area Formula Program for small UZAs under 200,000 in population. A recipient may use amounts so transferred for any expenditures capital and operating assistance eligible under the Rural Area Program.
- d. From Larger Urbanized Areas to the Governor of the State. A designated recipient in a large UZA with a population of 200,000 or more may transfer its Urbanized Area Formula Program or a portion of it, to the governor, who in turn is to allocate it to large and small UZAs in the state for eligible purposes under the Urbanized Area Formula Program. Note that there is no statutory provision allowing the transfer of funds apportioned to a large UZA directly to another UZA without going through the governor's apportionment. To transfer funds from a large UZA 200,000 or more in population to the governor, the following process is applicable:
 - (1) The designated recipient, after consultation with all potential recipients in the UZA, writes to the FTA regional office of the designated recipient's intent to transfer a part of its apportionment to the governor. This letter must identify the amount of the apportionment the designated recipient will transfer; the fiscal year FTA apportioned the funds; and confirm that the designated recipient has consulted with all potential recipients of the originally apportioned funds. All the designated recipients in a UZA must sign this letter;

- (2) The governor and the designated recipient, either separately or together, notifies the FTA regional office in writing of the governor's willingness to accept the apportionment; confirms that the governor will use the apportionment only according to Urbanized Area Formula Program requirements; and
 - (3) After receipt of these letters and verification that the apportionment is available for transfer (i.e., the funds have been apportioned, have not been otherwise committed, etc.), FTA, in writing, notifies both the designated recipient and the governor that the apportionment is available to the governor for allocation in compliance with the Urbanized Area Formula Program upon FTA's receipt of an appropriate grant application.
- e. Limitations: Transfers of apportionments are subject to the capital and operating assistance limitations applicable to the original apportionment of such amounts.
 - f. Notification to FTA: Federal requirements do not mandate prior FTA approval, but the governor must provide notification to FTA of a transfer for each transaction, so that FTA can accurately reflect the transfer decision in overall program budget levels and UZA apportionment records prior to grant award. The grant application project budget must show the amount of transferred funds.

6. FEDERAL SHARE OF PROJECT COSTS.

- a. Planning and Capital Projects. Except as provided for in b. below, the federal share for planning and capital projects that receive funding under the Section 5307 Program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the grantee's revenues.
- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA, CAA, and certain bicycle projects as follows:
 - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*). A revenue vehicle that complies with 49 CFR part 38 may be funded at 85 percent federal share.
 - (2) Vehicle-Related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or required by the ADA, is 90 percent.

FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.

The grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with ADA or CAA. The federal share is 90 percent of the cost for these itemized elements.

(3) Bicycle Facilities. As provided by 49 U.S.C. 5319, the federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:

(a) provide access for bicycles to public transportation facilities,

(b) provide shelters and parking facilities for bicycles in or around public transportation facilities, or

(c) install equipment for transporting bicycles on public transportation vehicles.

(4) Bicycle Enhancement Projects. When the project involves bicycle access to public transportation and the grant or any portion of the grant is made with the funds required to be expended under the 1 percent for “associated transit improvement” requirement as provided by 49 U.S.C. 5307(c)(1)(K), the federal share will be 95 percent.

c. Operating Assistance. The federal share may not exceed 50 percent of the net operating cost, which is determined after deducting fares and other system-generated revenues and ineligible costs as described in Chapter IV, Section 4, of this circular.

7. LOCAL SHARE OF PROJECT COSTS. After the appropriate federal share is established, the applicant must provide the local share of the net project cost in cash (or in-kind) and must document in its grant application the source of the local match.

Title 49 CFR part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government,” (the common grant rule) at Section 18.24, “Matching or Cost Sharing,” describes detailed rules for eligibility, valuation, and accounting for the local matching share.

The local match may include:

a. Cash from nongovernmental sources other than revenues from providing public transportation services;

b. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue;

c. Amounts received under a service agreement with a state or local social service agency or private social service organization;

d. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

- e. Amounts appropriated or otherwise made available to a department or agency of the government (other than the Department of Transportation) that are eligible to be expended for transportation; and
- f. In-kind contribution such as the market value of in-kind contributions integral to the project may be counted as a contribution toward local share. See more specific discussion of use of real property as an in-kind contribution in section 8(i), below.

8. ADDITIONAL SOURCES OF LOCAL SHARE

- a. Revenue Bond Proceeds as Local Share. A recipient of Section 5307 funds may use the proceeds from the issuance of revenue bonds as part of the local match for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Use of the proceeds of revenue bonds as local share will be approved only if FTA finds that the aggregate amount of financial support for public transportation in the UZA provided by the state and affected local governmental authorities during the next three fiscal years, as programmed in the STIP, is not less than the aggregate amount provided by the state and affected local governmental authorities in the UZA during the preceding three fiscal years.
- b. Transportation Development Credits (formerly referred to as Toll Revenue Credits). A state may use, as a credit toward a project's local share, certain expenditures it has made with toll revenues. The amount of credit toward local share to be earned by a state is based on revenues generated by toll authorities within the state that are used by the authorities to build, improve, or maintain highways, bridges, or tunnels that serve interstate commerce. A recipient wishing to apply the provisions of 23 U.S.C. 120(i) should discuss with its state department of transportation (state DOT) the availability of transportation development credits for use as local share in matching FTA grants, and should obtain a letter from the state DOT indicating that TDCs are available for a project prior to submitting a grant application in FTA's electronic award management system. FHWA oversees the determination of transportation development credits within each state.

FTA will not approve a retroactive application of transportation development credits.

The effect of utilizing transportation development credits means that FTA, in essence, provides 100 percent of the total net project cost. For example, if the actual cost of the asset the applicant will purchase is \$500,000, FTA's share at 80 percent equals \$400,000. The remaining \$100,000 match is transportation development credits, so additional federal funds are needed to equal \$500,000 or 100 percent of the net project cost. Note, however, Section 120(i) does not make federal funds available above the amount for which the grantee is eligible.

FTA calculates a project using transportation development credits as shown in the example below:

Actual cost of the asset \$500,000

=====	
Federal share (80%)	\$400,000
Local share (20%)	<u>\$100,000</u> (from toll revenue credits)
	\$500,000
=====	

In FTA's electronic award management system, the recipient will enter the following:

Total project cost	\$500,000
Federal Share	\$500,000

FTA requires the recipient to state within the comment section of the FTA electronic award management system that transportation development credits will, in this example, provide \$100,000 for the local share.

- c. Use of Program Income as Local Share. Recipients may use program income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use program income as the local share for the grant that generated the income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations, program income does not include interest on grant funds; nor does program income include rebates, credits, discounts, refunds, and interest earned on any of them.

FTA Circular 5010.1, "Grant Management Requirements," discusses program income in some depth, as does 49 CFR 18.25. FTA Circular 5010.1 notes that recipients may retain program income so long as they use it for public transportation purposes—that is, for allowable capital and operating expenses. For additional information on program income, please refer to FTA Circular 5010.1.

The recipient's accounting system must be capable of identifying program income and the purpose for which the recipient used it. The recipient must account for program income in its accounting system, which FTA subjects to audit. The Federal Financial Report requires the reporting of program income.

In a grant application requesting operating assistance, the applicant must deduct farebox revenues from operating costs to arrive at the net project cost of an operating assistance project. See Appendix C, "Operating Assistance Projects," of this circular for assistance in calculating the net project cost of a grant requesting operating assistance. In no event may the applicant use farebox revenue as local share for the project that generated those revenues, although the applicant may use farebox revenue to support bonds issued to finance capital projects.

- d. Funds Other Than Program Income. Revenue derived from an activity that is not federally assisted is not program income.

Generally, FTA does not consider sales proceeds from the disposition of FTA-funded equipment and excess real property to be program income. Recipients may retain sales proceeds as program income only if the sale of the asset, as in some joint development activities, achieves the purpose of the grant. Recipients may retain sales proceeds to undertake a like-kind exchange also (see Appendix D of this circular), but the sales proceeds are not program income and recipients must not use them as local share.

With prior FTA approval, grantees may exercise the provisions of 49 U.S.C. 5334(h)(4), Proceeds from the Sale of Transit Assets, retain the proceeds from the sale of federally funded assets that they no longer need for public transportation purposes, and reduce the gross project cost of subsequent federally assisted public transportation capital projects. Thus, recipients may not use such proceeds as local share. The provisions of 49 U.S.C. 5334(h)(4), however, do not apply to vehicles that have not reached their minimum useful life. See FTA Circular 5010.1, "Grant Management Requirements," for further discussion regarding use of such proceeds.

- e. Proceeds Related to Social Security Act Funds as Local Share. Section 403(a)(5)(C)(vii) of the Social Security Act, codified at 42 U.S.C. 603(a)(5)(C)(vii), Welfare-to-Work grant prohibits the use of Temporary Assistance for Needy Families (TANF) block grant funds as local share for other federally assisted projects. Consistent with 49 U.S.C. 5307(d)(4), however, federal transit law expressly authorizes recipients to use TANF funds as the local share for Section 5307 projects.
- f. Funds Made Available Under the Federal Lands Transportation Program (FLTP). The FLTP program, as authorized under 23 U.S.C. 203, provides funding directly to federal land management agencies, including the National Park Service, the USDA Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Army Corps of Engineers, for transportation projects on or near federal lands. Eligible projects include capital projects and operating assistance for facilities or equipment, including federally owned roads and transit systems. Funds apportioned under this program may be used as a form of local match for other FHWA and FTA programs. For example, a recipient may partner with the Forest Service or National Park Service to install bus shelters or other transit improvements on federal lands within the recipient's service area.
- g. Providers of Public Transportation by Vanpool. Section 5323(i)(2) permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. This excludes any amounts received from federal, state, or local governments for the purchase of the rolling stock.

A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient that are in excess of the provider's operating costs to acquire rolling stock, provided that the

recipient and provider have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area.

The effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted toward a recipient's local match requirement under a capital cost of contracting grant agreement. If an applicant intends to utilize this provision in a grant, the applicant must inform FTA in advance of submitting the grant and must attach the required agreement to the application in FTA's electronic award management system. The agreement must specify the amount intended to be counted as local match and must identify any amounts under that agreement that have already been applied as local match on any other previous grants. FTA reserves the right to request any additional information necessary to justify the use of this provision in a grant application.

The term "private provider of public transportation" means a private entity providing vanpool service in the service area of a recipient of Section 5307 funds using a commuter highway or vanpool vehicle. These types of vehicles must have the seating capacity of at least six adults (not including the driver) and at least 80 percent of the vehicle's mileage can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

- h. Other Federal Funds. In addition to funds from Section 403 of the Social Security Act, in a very limited number of situations, other federal funds may be eligible for inclusion in the local match. Such use is dependent upon agreement by the federal agency. As an example, Community Development Block Grant (CDBG) funds administered by the Department of Housing and Urban Development (HUD) may be used to provide the local share of federal public transportation projects so long as the public transportation activities are:

- (1) Eligible for assistance under the Community Development Block Grant Program; and
- (2) In compliance with HUD regulations, "Community Development Block Grants," 24 CFR part 570. See 42 U.S.C. 5305(a)(9) and 24 CFR 570.201(g).

Profit from operations not related to public transportation may be included in the local match to the extent that such revenues are applied to cover eligible operating expenses.

Federal and local matching funds may only be applied to eligible operating expenses incurred on the accrual basis of accounting in providing public transportation services during the project period.

- i. Joint Development: "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- j. In-Kind Contributions of Real Estate Property. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office. FTA must review and concur on in-kind contributions of any value before federal funds are expended or the value is used as local match.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match and the remaining sub-parcel is intended to be used at a future date for future match, the grantee is cautioned to clearly indicate the limits of the sub-parcel to be used as local match and the appraised amount associated with the sub-parcel. The remnant sub-parcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess sub-parcel as over-match, eligibility of the over-match sub-parcel may be lost. If federal funds were used to purchase the property, only the nonfederal share of such property may be counted as the value of the in-kind contribution, see 49 CFR 18.24(f). Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," at Section 18.24, "Matching or Cost Sharing," describes detailed rules for eligibility, valuation, and accounting for the local matching share.

9. DEFERRED LOCAL SHARE. A recipient may request on a case-by-case basis that all or a portion of the local share for a project be deferred until up to 100 percent of the federal funds have been drawn down or other period. A request for the deferral must accompany the grant application. A recipient that intends to use deferred local share must receive FTA approval prior to the obligation of the grant. FTA will specify the terms and schedule for the deferral.

Approval is contingent upon the deferral resulting in benefits to transit and upon the recipient's demonstrating that it has the financial capacity to complete the project. Local share cannot be deferred indefinitely. When FTA approves the use of deferred local share, the local funds must be available and used to match drawn-down federal funds in the time period specified by FTA's approval.

Generally, FTA will not approve retroactive deferral of local share. In exceptional circumstances, FTA may approve retroactive deferral of local share—for example, in

response to a catastrophic event such as a hurricane or flood where sources of local funds are temporarily disrupted.

10. **ALTERNATIVE FINANCING.** Section 5307 recipients, especially those wishing to undertake major capital projects, are encouraged to explore alternative methods of financing transit projects, in addition to grant funding. Alternative financing can involve combining multiple, nontraditional sources of funding as well as federal, state, local, and private funding, in support of transit capital needs.

a. Approaches recipients might investigate include:

- (1) capital leasing arrangements;
- (2) joint development;
- (3) state economic development or revolving loan funds;
- (4) state infrastructure bank loans;
- (5) state and federal tax credit programs;
- (6) special tax districts, such as transportation development districts, special benefit districts, and tax increment financing;
- (7) exchanges of real property; and
- (8) in-kind contributions.

b. Recipients with a dedicated funding source (e.g., sales tax proceeds, transportation development district proceeds, tax increment financing proceeds, and other revenue sources including user fees) may wish to consider a direct loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 2002 of MAP-21 (23 U.S.C. 601 *et seq.*). Eligible projects include any transit capital project which is anticipated to meet the threshold size. Threshold sizes for projects are:

- (1) \$50 million; or
- (2) \$25 million for rural projects and those in cities of 250,000 or less in population; or
- (3) \$15 million for intelligent transportation system (ITS) projects; or
- (4) 33 ⅓ percent of the most recently completed fiscal year's FHWA formula apportionment for the state in which the project is located.

TIFIA direct loans or loan guarantees must be repaid with nonfederal funds. Multiple related projects constituting a program of projects may be grouped in order to meet the cost threshold as long as the credit assistance is secured by a common pledge of revenues.

- c. The TIFIA program is administered by FHWA's Office of Innovation Program Delivery formerly known as the TIFIA Joint Program Office. FTA provides staff support to this office for transit transactions. All transactions begin by submitting a letter of interest to office identified in the annual Notice of Funds Availability. Projects are processed on a first-come, first-served basis. Funding decisions are made by the secretary following Credit Council recommendation.

Contact:

Innovative Program Delivery Office
TIFIA Joint Program Office (HITJ)
US Department of Transportation
1200 New Jersey Avenue, SE
Room E64-462
Washington, DC 20590
Fax: 202-366-0828
TIFIAcredit@dot.gov

<http://www.fhwa.dot.gov/ipd/tifia/index.htm>

IV. ELIGIBLE PROJECTS AND REQUIREMENTS

1. **PLANNING PROJECTS.** Section 5307 funds are available for the planning, engineering, design, and evaluation of public transportation projects and for other technical transportation-related studies. Eligible activities include, but are not limited to: studies relating to management, operations, capital requirements, and economic feasibility; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment; plans and specifications; evaluation of previously funded projects; job access and reverse commute projects; and other similar or related activities before and in preparation for the construction, acquisition, or improved operation of public transportation systems, facilities, and equipment.

FTA encourages recipients to use Section 5307 funds for technical studies of special interest to the transit agency, such as maintenance plan development, operational service planning, transit asset management plans, public transportation safety plans, and management and operation planning studies. FTA also encourages recipients to use program funds to supplement regular formula planning funds when the planning resources authorized by 49 U.S.C. 5305(d) are insufficient to meet such needs. Similarly, where the federal government proposes a high-cost study, such as one for major capital investments, recipients may use Section 5307 funds to supplement available formula planning funds and Federal Highway Administration (FHWA) planning funds.

All planning projects carried out within the metropolitan transportation planning process that use FTA or FHWA funds must be included in the unified planning work program (UPWP), as approved by the MPO. The UPWP must include a list of the proposed planning projects, project scopes, and related costs.

For more information on planning activities, please refer to FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."

2. **CAPITAL PROJECTS.** Capital projects eligible under the Urbanized Area Formula Program include all projects included under 49 U.S.C. 5302(3), as explained below. In general, capital project expenses involve purchasing, leasing, constructing, maintaining, or repairing facilities, rolling stock, and equipment for use in a public transportation system. Capital project costs may include all direct costs and indirect costs associated with the project (provided that the grantee has an approved cost allocation plan or indirect cost proposal).

The examples of eligible activities, below, indicate the breadth of capital projects eligible under the Section 5307 Program. This list is intended to be illustrative, not exhaustive. Please contact the appropriate FTA regional office regarding the eligibility of other projects.

Projects eligible for capital funding include but are not limited to:

- a. **Bus and Bus-Related Activities.**

- (1) Replacement of buses;
 - (2) Overhaul of buses (includes paratransit vehicles);
 - (3) Rebuilding of buses;
 - (4) Expansion of bus fleets;
 - (5) Purchase and installation of service and support equipment;
 - (6) Accessory and miscellaneous equipment such as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment;
 - (7) Construction of maintenance facilities, including land acquisition, design, engineering, and demolition;
 - (8) Rehabilitation of maintenance facilities, including design and engineering, land acquisition, and relocation;
 - (9) Construction of other facilities, for example, transfer facilities, intermodal terminals and bus shelters, including design and engineering, and land acquisition;
 - (10) Construction, renovation, and improvements of intercity bus and intercity rail stations and terminals;
 - (11) The introduction of new technology, through innovative and improved products, into public transportation; and
 - (12) Capital support equipment, including computer hardware, software, bus diagnostic equipment, and other equipment that enhances operating efficiency.
- b. Fixed Guideway Systems.
- (1) Rolling stock, including rail cars, locomotives, work trains, bus rapid transit vehicles, and ferryboats;
 - (2) Overhaul of vehicles;
 - (3) Rebuilding of vehicles;
 - (4) Track;
 - (5) Line equipment;
 - (6) Line structures;
 - (7) Passenger stations, depots, and terminals, including ferry terminals;
 - (8) Signals and communications;

- (9) Power equipment and substations;
 - (10) Projects to improve safety and security;
 - (11) Operational support, including computer hardware and software;
 - (12) Systems extensions or new system construction, including engineering, demolition, etc.; and
 - (13) Land acquisition, design, and construction for fixed guideways.
- c. Associated Transit Improvements. The term “associated transit improvements” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. This category of projects was formerly known as “transit enhancements.”
- (1) The following public transportation projects and project elements qualify as associated transit improvement projects:
 - (a) Historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service;
 - (b) Bus shelters;
 - (c) Landscaping and streetscaping, including benches, trash receptacles, and street lights;
 - (d) Pedestrian access and walkways;
 - (e) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;
 - (f) Signage; or
 - (g) Enhanced access for people with disabilities to public transportation. Associated transit improvement projects or elements of projects designed to enhance access for people with disabilities are required to exceed the minimum requirements of the ADA.
 - (2) Bicycle and pedestrian paths within a certain distance from a transit stop or station are eligible capital projects and qualify as associated transit improvements. Pedestrian paths located within 0.5 miles of a transit stop or station and bicycle paths located within three miles of a transit stop or station are eligible capital projects. Projects outside this distance may be eligible if they are within the distance that a person could be expected to safely and conveniently walk or bicycle to the particular stop or station.

- (3) MAP-21 amends the definition of transit enhancements (now “associated transit improvements” under 49 U.S.C. 5302) so as to remove public art from the eligible projects specifically listed in law. However, art can be integrated into facility design, landscaping, and historic preservation, and funded as a capital expense. Art also can be integrated through the use of floor or wall tiles that contain artist-designed and fabricated elements, use of color, use of materials, lighting, and in the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses. Procuring sculptures or other items not integral to the facility is no longer an eligible expense.
- (4) The following requirements are associated with associated transit improvements:
 - (a) In a large UZA (population of 200,000 or more), the designated recipient must certify that not less than 1 percent of the amount apportioned to the UZA for a given fiscal year is spent on projects that qualify as associated transit improvements; and
 - (b) In a large UZA with more than one recipient, it is the designated recipient’s responsibility to work with other public transportation operators to ensure that 1 percent of the UZA’s apportionment is used for associated transit improvements. Recipients are not individually required to expend 1 percent of their suballocation for associated transit improvements, provided that this requirement is met collectively by the recipients within the UZA. A designated recipient’s sub-area allocation documentation should identify the use of funds for eligible associated transit improvements and how this requirement will be met.
- d. Vehicle-Related Equipment to Comply with the Americans with Disabilities Act of 1990. Examples of vehicle-related equipment for compliance with the Americans with Disabilities Act of 1990 (ADA) include:
 - (1) Low floor vehicles and components that allow for level boarding of all passengers.
 - (2) Lifts, ramps, and other level-change mechanisms attached to or within the vehicle. **Note:** Throughout 49 CFR part 38, reference is continually made to “level-change mechanisms (e.g., lift or ramp).” A kneeling mechanism by itself is not a level-change mechanism; however, it may be necessary in order to minimize the slope of a vehicle boarding ramp in order to meet ADA requirements.
 - (3) Securement devices (nonrail vehicles only). **Note:** Securement devices are not required for rail vehicles.
 - (4) Seats that fold to create wheelchair space. **Note:** Folding seats are permitted in the securement area; however, the securement area may be devoid of seating. Per 49 CFR 38.23(d)(2), “Securement areas may have fold-down seats to accommodate other

- passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.”
- (5) Audible communication systems at doors and within seating areas.
 - (6) Visual monitoring systems at doors and within seating areas to observe when assistance is requested or necessary for the use of securement systems, ramps, and lifts per 49 CFR 37.165(f).
 - (7) Call systems for alerting drivers and other employees to provide assistance.
 - (8) Variable passenger information displays at doors and within seating areas.
 - (9) For railcars equipped with restrooms, restroom features specific to accessibility (dimensions, fixtures).
 - (10) Features specific to accessibility (signs, barriers between cars, handrails).
 - (11) Other vehicle-related equipment specifically required by 49 CFR part 38.
- e. Facility and Vehicle Projects to Comply with the Americans with Disabilities Act of 1990. Applications to FTA requesting a federal share of 90 percent for purchasing vehicle-related equipment or facilities for ADA compliance must separately account for the project elements that provide for the compliance with the requirements. The application must also account for the other vehicle-related equipment or facility project elements that the recipient does not directly attribute to ADA compliance. Examples of vehicle-related equipment or facilities projects for compliance with ADA include, but are not limited to:
- (1) Level boarding passenger platforms to enter a vehicle (applies to full platforms);
 - (2) Lifts and ramps at a station, either attached or mobile;
 - (3) Passenger elevators on a path of travel within a station;
 - (4) Platform edge and pathway markings;
 - (5) Accessible passenger ticketing elements;
 - (6) Accessible doors and door systems;
 - (7) Audible communication systems;
 - (8) Variable passenger information displays;
 - (9) Fixed passenger signage with accessible features;
 - (10) Passenger rest room features that are specific to accessibility;

- (11) Station features that are specific to accessibility; and
 - (12) ADA-related features of other facilities, including administrative facilities and vehicle maintenance facilities.
- f. Extended warranty is an eligible capital cost. FTA's Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment acquisitions cost in order to make a good business decision.
- g. Mobility management is intended to build coordination among public transportation providers and other transportation service providers carried out by a recipient or sub-recipient through an agreement (see 49 U.S.C. 5302(K)(i)). Mobility management does not include the costs of operating public transportation services, fuel, driver salaries, and other nonadministrative operating expenses directly related to the operation of vehicles.

Mobility management includes:

- (1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, older adults, and low-income individuals;
- (2) Support for short-term management activities to plan and implement coordinated services;
- (3) The support of state and local coordination policy bodies and councils;
- (4) The operation of transportation brokerages to coordinate providers, funding agencies, and customers;
- (5) The provision of coordination services, including employer-oriented transportation management organizations, transportation management associations, business improvement districts or other like organizations, and human service organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;
- (6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- (7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system (GPS) technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems.

h. Acquisition and Reconstruction of “Associated Capital Maintenance” Items. The acquisition and reconstruction of associated capital maintenance items are capital expenses, subject to the following provisions:

- (1) Equipment, tires, tubes, and material must cost at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.
- (2) The type of rolling stock for which the recipient is procuring the equipment and material determines the threshold minimum cost of each item eligible for acquisition. This definition is equally applicable to all rolling stock, whether highway or rail operated.

For example, if a recipient desires to purchase associated capital maintenance items for a fleet of 40-foot, heavy-duty public transportation buses with an average fleet age of four years, the cost of each item requested can be no less than 0.5 percent of the straight line depreciated value of an average vehicle of the agency’s 40-foot heavy-duty bus fleet, or comparable four-year-old bus.

Assuming that an average fleet bus or comparable four-year-old bus costs \$300,000 when new, then its depreciated value is \$200,000 [$\$300,000 - (4/12 \times \$300,000)$], and the cost of each associated capital maintenance item must be equal to or exceed \$1,000 ($.005 \times \$200,000$).

- (3) The word “item” refers to a specific unit which a supplier customarily offers, such as an engine, transmission, generator, axle assembly, or compressor. This definition also includes repair or rebuild kits.
- (4) Repair, rebuild, or refurbishing kits that are readily available from suppliers are eligible for acquisition with FTA funding under this provision if the cost of the complete kit meets the 0.5 percent test.
- (5) FTA treats acquisition of sets or groups of like items similarly to acquisition of kits, described above. Recipients may procure sets of brakes, seats, windows, or other like items providing the total cost of the set meets the 0.5 of 1 percent test.
- (6) Associated capital maintenance items relate to items for revenue rolling stock only and do not include facilities, facility equipment, or nonrevenue vehicles. Rolling stock means buses, vans, cars, rail cars, trolley cars and buses, ferryboats, and vehicles used for guideways and inclined planes.
- (7) Reconstruction or rebuilding of equipment and material, each of which after reconstruction must have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

(8) In some instances, a recipient may have the personnel and facilities available to manufacture or reconstruct a replacement item in-house. Such activities are eligible for FTA capital assistance under the associated capital maintenance provisions provided that:

- (a) manufacturing the item in-house, including material, burden labor, and overhead, is cost-effective when compared with purchasing the item from a commercial source; or
- (b) the required part is unavailable commercially, or obtaining it from an outside source requires an excessively long lead time that the recipient cannot tolerate.

Otherwise the recipient should acquire such items by contract.

(9) An eligible capital activity includes a recipient's rebuilding of any item of equipment, such as generators, starters, and so forth, for use on rolling stock provided that, after rebuild, the item meets the 0.5 percent threshold test.

(10) A grant applicant may find that it can simplify its application by applying for FTA assistance under the preventive maintenance category rather than applying for capital assistance for associated capital maintenance items. The choice of how best to structure the grant application rests with the grant applicant. FTA cautions the grant applicant not to count the same costs twice.

- i. Preventive Maintenance. Preventive maintenance costs are all maintenance costs related to vehicles, equipment, and facilities. Please see Appendix E for a description of eligible preventive maintenance activities.
- j. Transit-Oriented Development. FTA encourages land use policies that promote investment in transit-oriented development (TOD) projects, which are compact, mixed-use development near transit facilities with high-quality walking environments. TOD projects help create sustainable communities where people of all ages and incomes have transportation and housing choices, and increasing location efficiency where people can walk, bike, and take transit.

Eligible activities that could foster TOD include but are not limited to: construction, renovation and improvement of intercity bus or rail facilities; transportation-related furniture, fixtures, or equipment; transit facilities that incorporate community services; walkways; incorporation of open space in facility designs; real estate acquisition for transit projects; project development activities; and other related professional services. TOD benefits transit by increasing ridership, reducing congestion, and providing value for both the public and private sectors while creating a sense of community and place.

- k. Joint Development Projects. "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public

entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- l. Technology Introduction. Recipients may use Section 5307 funds for capital projects that introduce new technology. FTA encourages suppliers to produce and public transportation providers to introduce new technology in public transportation service, in the form of innovative and improved products.
- m. Projects to Comply with the Clean Air Act (CAA). The following projects are eligible in any area of the country, and are specifically eligible in order to comply with CAA for nonattainment or maintenance areas and include:
 - (1) purchasing or leasing clean fuel buses including buses that employ a lightweight composite primary structure;
 - (2) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses;
 - (3) constructing new or improved existing public transportation facilities to accommodate clean fuel buses; and
 - (4) at the discretion of the secretary, may include projects located in nonattainment or maintenance areas relating to clean fuel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

The vehicles must be powered by clean natural gas (CNG), liquefied natural gas (LNG), batteries, or by hybrid electric or fuel cell systems.
- n. ADA Complementary Paratransit Service. Recipients operating fixed route systems may use up to 10 percent of their annual formula apportionment (the 10 percent applies to annual formula apportionments under Sections 5307 and 5311), at the capital project 80/20 federal/local share ratio, to pay for complementary paratransit services in accordance with 49 CFR part 37, Subpart F, for grant recipients that are in compliance with U.S. DOT regulations at 49 CFR parts 27, 37, and 38 implementing the transportation provisions of the Americans with Disabilities Act of 1990 (ADA).

- (1) **ADA Compliance:** Eligibility for using this expanded definition of capital depends on compliance with ADA requirements. FTA recipients must certify compliance with the ADA annually, and are subject to compliance review activities conducted by FTA to monitor compliance and correct deficiencies. Entities whose compliance is in question, due to volume of complaints, compliance review findings, or triennial review findings, will be subject to review and approval prior to using capital funds to operate ADA paratransit service.
 - (2) **UZAs with More than One Recipient:** When a UZA has more than one recipient, it is the designated recipient's responsibility to work with public transportation operators to allocate the 10 percent of the UZA's apportionment that may be used for ADA paratransit purposes. Recipients' subarea allocation documentation should include language regarding the use of the ADA paratransit provision.
- o. **Leasing Capital Assets.** A recipient may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Recipients with preaward authority must conduct the cost comparison before entering into the lease and should contact the appropriate FTA regional office regarding the cost comparison. Recipients must comply with 49 CFR part 639 including these specific procedures:
- (1) Section 639.11 requires the grantee to demonstrate that the lease of a capital asset is more cost effective than the purchase or construction of the asset.
 - (2) Section 639.23 requires the calculation of the purchase or construction cost and Section 639.25 requires the calculation of the lease cost. These two calculations are used to determine which approach is the most cost effective.

Leasing costs eligible for capital assistance include finance charges, including interest; ancillary costs such as delivery and installation charges; and maintenance costs. For additional information about leasing capital assets see FTA Circular 5010.1, "Grant Management Requirements."

Recipients should submit the cost comparison to the appropriate FTA regional office for review before entering into the lease or before approval of the grant which supports the lease. The cost comparison should be retained on file for later review or audit. Some types of capital leases call for more than a single up-front payment but still load the payment into the early years of an extended lease. If the payment is made over several years instead of in a single lump-sum, the recipient must be able to complete the acquisition with local funds in the event FTA funds are not available in later years.

When a recipient receives funding for a project and proposes to enter into a capital lease for some element of the project, the recipient should submit the cost comparison for FTA approval as part of the grant application. Recipients should review the Office of Management and Budget (OMB) Circular A-94 for the necessary discount rate to be used in making the cost effectiveness determination. The circular can be found at <http://www.whitehouse.gov/omb/circulars/index.html>.

- p. Capital Cost of Contracting. Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor providing vehicles for public transportation service, the capital consumed is equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.”

Only the costs attributable to the privately owned assets are eligible under this policy. With one exception, items purchased with federal, state, or local government assistance are not eligible. The exception is a public transportation vehicle privately owned in which the recipient has invested FTA funds from the Over-the-Road Bus Accessibility Program to finance incremental capital costs of complying with ADA. Capital consumed for service or maintenance in the provision of service outside the public transportation portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which is defined as all maintenance. In some instances, the recipient contracts with outside sources for both maintenance and public transportation service, and the contractor provides both maintenance and vehicles. In such cases, both FTA’s capital cost of contracting and preventive maintenance standards will apply.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. EXHIBIT IV-1, below, shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the National Transit Database (NTD). Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, paratransit, or demand-responsive service.

EXHIBIT IV-1
PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE
WITHOUT FURTHER JUSTIFICATION

Bus and Paratransit-Related Contract Services	Percent of Contract Eligible for 80 Percent Federal Share
Type of Contract	
1. Service Contract (contractor provides maintenance and transit service; recipient provides vehicles)	40 percent
2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance)	0 percent
3. Vehicle Maintenance Contract (contractor provides maintenance; recipient provides vehicles and transit service)	100 percent
4. Vehicle Lease Contract (contractor provides vehicles; recipient provides maintenance and transit service)	100 percent
5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service)	100 percent
6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent
7. Vehicle/Service Contract (contractor provides vehicles and transit service; recipient provides maintenance)	10 percent

Some of the calculations above in EXHIBIT IV-1 are based on the assumption that the contractor (or someone other than the recipient) provides the assets. For example, if a contractor provides maintenance, FTA assumes in the calculations that the contractor does so in a facility provided by the contractor. For another example, in a contractor-operated vanpool program that qualifies under a Turnkey Contract (see type 6), a vanpool driver may provide the service rather than a contractor employee, but because the recipient does not provide the service, these costs are treated as part of the contract.

A recipient may request FTA participation at a higher percentage of the contract than FTA shows in Exhibit IV-1, but must provide substantiation of the actual costs in order to do so.

A recipient applying for assistance with costs that contain any of the capital costs of contracting permutations listed in EXHIBIT IV-1 may list costs for the contracted

service in the capital cost of contracting budget category, or the recipient may use both that category and another appropriate category such as preventive maintenance or leasing, so long as the total of the costs do not exceed the amount of the contract.

In the case where the grantee owns the facilities (constructed with FTA funds) from which the contractor operates, the vehicles (purchased with FTA funds) are maintained by the contractor, and the service contractor is responsible for maintenance of the facility and vehicles within the scope of the service contract, the grantee will need to calculate the proportion of the contract that actually represents allowable capital costs. These include (1) all vehicle maintenance costs, and (2) all costs to maintain the grantee's facilities, because such costs are eligible as preventive maintenance. In this case, because the facility is already owned by the grantee, depreciation of the facility cannot be included as an eligible cost, because to do so would be double counting because FTA and grantee funds have already been used to cover the capital costs of the maintenance facility itself. Because the facility is owned by the grantee, although capital cost of contracting does apply, the eligible amount will have to be determined based on the contract. The amount of the contract costs attributed to the vehicle maintenance and facility maintenance is eligible for federal capital funds at 80 percent as an eligible preventive maintenance expense.

Costs of a contract which remain after application of capital cost of contracting are operating expenses and may, depending on the size of the UZA, recipient, or purpose of the service, be eligible for federal operating assistance. For example, in a UZA with a population of under 200,000, 50 percent of a turnkey contract (type 6) would be eligible for federal capital assistance at a matching ratio of 80 percent federal. The remaining 50 percent of the costs of the contract, less any fares received, would be eligible for federal operating assistance at a matching ratio of 50 percent federal. The same costs of a contract may not be double counted and receive both capital and operating assistance. Thus, if a maintenance/lease contract (type 5) is treated as a capital expense under capital cost of contracting, none of these expenses would be reimbursable as an operating expense.

- q. Rail Trackage Agreements. Capital portions of rail trackage rights agreements are eligible for Section 5307 capital assistance.
- r. Crime Prevention and Security Projects. Eligible capital projects related to crime prevention and security activities include, but are not limited to:
 - (1) Increased lighting in or adjacent to a public transportation system.
 - (2) Increased camera surveillance of an area in or adjacent to a public transportation system.
 - (3) Providing emergency telephone lines in or adjacent to a public transportation system to contact law enforcement or security personnel.

(4) Any other capital project intended to increase security and safety of public transportation.

- s. Project Administration. Administrative activities of an organization pertaining to the immediate accomplishment or oversight of a project are eligible. Project administration costs must be directly associated with administering the capital project. Although there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable federal costs principles and properly supported. For further guidance on costs principles, see 2 CFR part 225 for states and local governments, and 2 CFR part 230 for private nonprofit organizations. Eligible project administration costs must be identified in a grant application. General administrative expenses that a designated recipient or state incurs to implement the program (as contrasted with the eligible costs directly related to administering a capital project) are not eligible as a direct cost under the Section 5307 program.

3. EMPLOYEE TRAINING EXPENSES.

- a. Education and Training. Pursuant to 49 U.S.C. 5322(d), up to 0.5 of 1 percent of Section 5307 and 5309 funds are available to a state or public transportation authority recipient in a fiscal year to use for tuition and direct educational expenses at the National Transit Institute for education and training of state and local transportation employees, at a federal share not to exceed 80 percent.

States, but not other recipients, may also use these funds for tuition and direct educational expenses through grants and contracts with public and private agencies, and other institutions and individuals.

Direct educational expenses include supplies, tuition, and travel to and from training. Overtime pay is an employment expense, not an educational expense and is not an eligible expense. The grant applicant should include proposed training activities it will support with Section 5307 funds in its Section 5307 application. In addition, the MPO must reflect proposed training in the transportation improvement program (TIP) and the statewide transportation improvement program (STIP).

Recipients are also advised that training and educational expenses, such as travel expenses relating to staff attendance at FTA-sponsored workshops, may also qualify for reimbursement as an operating expense at a 50 percent federal share.

- b. Public Transportation Safety Certification Training. Recipients of 5307 and 5311 funds may expend not more than 0.5 percent of their formula funds for the costs of participating in a Public Transportation Safety Certification Training Program established under Section 5329(c) by employees who are directly responsible for safety oversight. These costs require a 20 percent local matching share.

4. OPERATING ASSISTANCE. FTA provides funding to eligible recipients for costs incurred in the operation of public transportation service. In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating

expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

a. Eligible Recipients of Operating Assistance.

- (1) Recipients in Small UZAs: Recipients in UZAs with populations of less than 200,000 may use Section 5307 funds for operating assistance. There is no limitation on the amount of their apportionment that recipients in these UZAs may use for operating assistance.
- (2) Recipients in Large UZAs: Recipients in UZAs with populations of 200,000 or more may not use Section 5307 funds for operating assistance unless identified by FTA as being eligible under Section 5307(a)(2).

Under Section 5307(a)(2), public transportation operators that operate 100 or fewer buses in fixed route service during peak service hours may use a variable percentage of their UZA's 5307 apportionment for operating assistance. Eligible agencies may use program funds for operating assistance, excluding rail-fixed guideway, up to the amount published by FTA for a given fiscal year. The use of program funds for operating assistance is subject to metropolitan and statewide planning requirements and requires that funds be allocated to a recipient for this purpose by the designated recipient for a UZA. If an agency provides public transportation across multiple UZAs, that agency will receive an operating cap for each UZA. Operating assistance caps for eligible operators are published by FTA in the *Federal Register*.

The amount available to the eligible operators is based on the following:

- (a) Systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak hour service may receive operating assistance in an amount not to exceed 50 percent of the share of the apportionment that is attributable to such systems within the UZA as measured by vehicle revenue hours.
- (b) Systems that operate 75 or fewer buses in fixed route service during peak hour service may receive operating assistance in an amount not to exceed 75 percent of the share of the apportionment that is attributable to such systems within the UZA as measured by vehicle revenue hours.

The amount available (operating cap) is calculated by dividing the UZA's apportionment by the total number of vehicle revenue hours reported in the UZA from all public operators and multiplying this quotient by the number of total vehicle revenue hours operated in the UZA by the eligible system, and then by either 50 or 75 percent as indicated above.

- b. Expenses Eligible for Operating Assistance. Eligible operating expenses are direct labor, material, and overhead expenses incurred during a specified project period, most often one local fiscal year. Costs are calculated on the accrual basis of accounting by the

operator providing public transportation services in the UZA. Expenses for contractual services directly related to the management and operations of public transportation services, which are otherwise not reimbursed, are included. Cost principles established in 2 CFR part 225 (formerly OMB Circular A-87) must be used as guidelines for determining the eligibility of specific types of expenses. The following are representative of operating expenses eligible for FTA operating assistance:

- (1) Fuel, wages, and other expenses incurred in the operation of public transportation services to or within the UZA;
 - (2) Pension benefits and contributions to a pension plan, only if actually paid and only up to a maximum of the current year accrual;
 - (3) Self-insurance costs are limited to the extent of actual contribution to a reserve for an approved self-insurance program;
 - (4) Purchase of service contracts for public transportation services (except that certain portions of a service contract may be treated as a capital expense under the Capital Cost of Contracting);
 - (5) Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses. The recipient must properly document the loan agreement and open it to audit;
 - (6) Operating expenses associated with special public transportation services for people with disabilities (some of these costs may be supported with capital funds);
 - (7) Amortization of leasehold improvements may be eligible; recipients should discuss this with the FTA regional office;
 - (8) For private operators, a reasonable return on investment (profit) is an eligible expense; and
 - (9) Eligible public transportation security operating assistance projects (for UZAs with a population of 200,000 or less) include, but are not limited to:
 - (a) staff salaries for personnel exclusively involved with security;
 - (b) contracts for security services; and
 - (c) any other operating projects intended to increase the security and safety of an existing or planned public transportation system.
 - (10) Indirect costs provided that there is an approved cost allocation plan before incurring costs.
- c. Operating Expenses Not Eligible for FTA Assistance. To find standards for determining eligible and ineligible expenses, see 2 CFR part 225, formerly OMB Circular A-87, "Cost

Principles for State and Local Governments.” In practice, when recipients apply for FTA Urbanized Area Formula Program funding, eligible operating expenses are derived as the remainder when various categories of ineligible expenses are subtracted from total operating expenses.

Ineligible expenses are actual or estimated expenses during the project-specified time period for activities not related to the provision of public transportation or within the recipient’s UZA. Recipients may not include ineligible expenses in the computation of net project cost. Such activities in UZAs might include, but are not limited to, the following:

- (1) Charter bus operations;
- (2) Sightseeing services;
- (3) Freight haulage;
- (4) School bus operations (i.e., operations for the exclusive transportation of school students, not the carrying of students in regularly scheduled public transportation services);
- (5) Intercity transportation other than commuter service;
- (6) Public transportation services wholly outside of the UZA;
- (7) Expenses for contingencies including contributions to a capital reserve account or fund;
- (8) Capitalized costs or expenses recognized as part of and reimbursable under another FTA project;
- (9) Expenses incurred by a governor, a designated recipient, or other agency in its capacity as an intermediary for providing Urbanized Area Formula Program funds between FTA and the public transportation operating entity;
- (10) Indirect public transportation-related functions or activities of state, regional, or local entities performed as a normal or direct aspect of general public administration;
- (11) For private operators of public transportation, provision for federal, state, or local income taxes;
- (12) Depreciation accrued by public operators, depreciation on facilities or equipment purchased with public (federal, state, or local) capital assistance, depreciation of an intangible asset, depreciation in excess of the rate otherwise used for income tax purposes, or both;
- (13) Interest expense on long-term borrowing and debt retirement;

- (14) Lobbying expenses;
 - (15) Revenue items that directly offset public transportation expenses (referred to as contra-items), such as the following:
 - (16) Interest income earned on working capital;
 - (17) Proceeds from the sale of equipment in excess of the depreciated value (private operators only);
 - (18) Cash discounts and refunds that directly offset accrued expenses;
 - (19) Insurance claims and reimbursements that directly offset accrued liabilities; and
 - (20) State fuel tax rebates to public operators.
5. JOB ACCESS AND REVERSE COMMUTE PROJECTS. MAP-21 created a new eligible project category for “job access and reverse commute projects” under Section 5307. This category includes all types of projects that were formerly eligible under the Section 5316 Job Access and Reverse Commute Program. Examples of eligible projects are listed in paragraph (e) below. There is no requirement or limit to the amount of Section 5307 funds that can be used for these projects.

Although private nonprofit organizations are not eligible sub-recipients for other Section 5307 funds, private nonprofit organizations may receive funding for job access and reverse commute projects as a sub-recipient of an FTA designated recipient or direct recipient.

A job access and reverse commute project is defined in 49 U.S.C. 5302(9) as:

“a transportation project to finance the planning, capital and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.”

Consistent with this definition, job access and reverse commute projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible job access and reverse commute projects is not limited by the “100 bus” special rule for operating assistance established by MAP-21 under 5307(a)(2).

In order for a job access and reverse commute project to receive funding under Section 5307, it must meet the following requirements:

- a. New and Existing Services. Eligible job access and reverse commute projects must provide for the development or maintenance of eligible job access and reverse commute services. Recipients may not reclassify existing public transportation services that have

not received funding under the former Section 5316 program as job access and reverse commute services in order to qualify for operating assistance. In order to be eligible as a job access and reverse commute project, a proposed project must qualify as either a “development project” or “maintenance project” as follows:

- (1) Development Projects. “Development of transportation services” means new projects that meet the statutory definition and were not in service as of the date MAP-21 became effective October 1, 2012. This includes projects that expand the service area or hours of operation for an existing service. Projects for the development of new qualifying job access and reverse commute projects must be identified as such in the recipient’s program of projects (POP).
 - (2) Maintenance Projects. “Maintenance of transportation services” means projects that continue and maintain job access and reverse commute projects and services that received funding under the former Section 5316 program.
- b. Reverse Commute Projects. Reverse commute projects are a category of job access and reverse commute projects that provide transportation services from urbanized and rural areas to suburban employment locations. Generally, these services increase the capacity of public transportation services operating in the reverse direction of existing peak services. Reverse commute projects may only qualify as job access and reverse commute projects under Section 5307 if they meet all other requirements, including having been designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment related activities.
 - c. Welfare Recipients and Eligible Low-Income Individuals. Projects funded as “job access and reverse commute projects” must be designed to provide transportation for welfare recipients and eligible low-income individuals. The term “low-income individual” is defined as an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved. Projects that serve the general public without specific route or design characteristics intended to respond to the needs of these populations may not be eligible as job access and reverse commute project. However, job access and reverse commute projects do not need to be designed exclusively for these populations.
 - d. Planning and Program Development. In order for an entity to receive Section 5307 funding for a job access and reverse commute project, the project must be identified by the recipient as a job access and reverse commute project in the recipient’s POP, which must be made available for public review and comment.

In addition, FTA encourages recipients to ensure that projects meet the employment-related transportation needs of welfare recipients and low income individuals, either by deriving such projects from a locally coordinated public transportation/human services planning process that involves low-income communities and their stakeholders, or by an alternative process that engages low income community stakeholders in the identification and development of the project.

- e. Eligible Projects. Projects that comply with the requirements above may include, but are not limited to:
- (1) Late-night and weekend service;
 - (2) Guaranteed ride home service;
 - (3) Shuttle service;
 - (4) Expanding fixed route public transit routes, including hours of service or coverage;
 - (5) Demand-responsive van service;
 - (6) Ridesharing and carpooling activities;
 - (7) Transit-related aspects of bicycling (e.g., adding bicycle racks to vehicles to support individuals that bicycle a portion of their commute, providing secure bicycle parking at transit stations, or infrastructure and operating expenses for bicycle sharing programs in the vicinity of transit stations, not including the acquisition of bicycles);
 - (8) Promotion, through marketing efforts, of the: (i) use of transit by low-income individuals and welfare recipients with nontraditional work schedules; (ii) use of transit voucher program by appropriate agencies for welfare recipients and other low-income individuals; (iii) development of employer-provided transportation such as shuttles, ridesharing, carpooling; or (iv) use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986;
 - (9) Supporting the administration and expenses related to voucher programs. This activity is intended to supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment to providers of alternative transportation services. Job access and reverse commute projects can provide vouchers to low-income individuals to purchase rides, including (i) mileage reimbursement as part of a volunteer driver program, (ii) a taxi trip, or (iii) trips provided by a human service agency. Providers of transportation can then submit the voucher to the FTA recipient or sub-recipient administering the project for payment based on predetermined rates or contractual arrangements. Transit passes for use on fixed route or Americans with Disabilities Act of 1990 (ADA) complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50 percent local match;
 - (10) Supporting local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides, including the provision of capital loan guarantees for such car loan programs, provided the Federal interest in the loan guarantee fund is maintained and the funds continue to be used for subsequent loan guarantees or are returned to the government upon the release of funds from each guarantee;

- (11) Implementing intelligent transportation systems (ITS), including customer trip information technology, vehicle position monitoring systems, or geographic information systems (GIS) software;
 - (12) Integrating automated regional public transit and human service transportation information, scheduling, and dispatch functions;
 - (13) Subsidizing the costs associated with adding reverse commute bus, train, carpool van routes or service from urbanized and nonurbanized areas to suburban workplaces;
 - (14) Subsidizing the purchase or lease by a private nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;
 - (15) Otherwise facilitating the provision of public transportation service to suburban employment opportunities; and
 - (16) Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management techniques may enhance transportation access for populations beyond those serviced by one agency or organization within a community. For example, under mobility management, a private nonprofit agency could receive job access and reverse commute funding to support the administrative costs of sharing services it provides to its own clientele with other low-income individuals and coordinate usage of vehicles with other private nonprofits, but not the operating costs of the service. As described under “Capital Projects,” mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service.
6. INTEREST AND DEBT FINANCING AS AN ELIGIBLE COST. There are several areas in which interest is an eligible project cost for FTA’s Section 5307 program assistance, with certain limitations.
- a. Bond Interest in Advance Project Authority. This applies to a situation in which a recipient has obligated all of its Urbanized Area Formula Program funds for capital or planning projects and would like to carry out any part of a project with local funds which FTA may later reimburse under advance project authority. This authority, which is set forth in 5307(e), permits FTA to participate in the project costs, including any interest payable by the recipient and earned by the bondholder on bonds issued by the recipient to the extent the recipient has actually expended the proceeds of the bonds in carrying out the portion of the project. The recipient must certify that it has shown reasonable diligence in seeking the most favorable financing terms available in order for interest to be an eligible reimbursable cost.
 - b. Buildings and Equipment. Office of Management and Budget (OMB) regulations at 2 CFR part 225, formerly OMB Circular A-87, “Cost Principles for State, Local, and

Indian Tribal Governments,” allow financing costs (including interest) associated with otherwise allowable costs of building acquisition, construction, or fabrication; reconstruction; or remodeling finished after October 1, 1980, subject to conditions identified below. The term “building” includes the associated real property (land) and fixtures.

Title 2 CFR part 225 allows financing costs (including interest) paid or incurred on or after September 1, 1995, associated with otherwise allowable costs of equipment subject to the conditions cited below. The regulation defines equipment as, “an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5,000.”

Conditions associated with the allowable financial costs for buildings and equipment are as follows:

- (1) A bona fide third party external to the governmental unit provides the financing (from other than tax or user fee sources).
 - (2) The assets are used in support of federal awards.
 - (3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.
 - (4) For debt arrangements over \$1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit must reduce claims for interest cost by an amount equal to interest earnings on excess cash flow.
 - (5) Interest attributable to fully depreciated assets is unallowable.
- c. Working Capital. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs.
 - d. Leasing. Leasing costs eligible for capital assistance include finance charges, including interest. **Note:** Leasing arrangements include certificates of participation (COPs) and cross-border leasing as well as traditional leasing of capital assets.
 - e. Capital Cost of Contracting. Interest on facilities and equipment is eligible for reimbursement by FTA when a recipient enters into a contract with a third party for service or maintenance.

- f. Other Interest Costs. FTA will consider other proposals concerning the eligibility of interest case-by-case. FTA will use the guidelines provided in 2 CFR part 225, formerly, OMB Circular A-87, Attachment B, "Selected Items of Cost," in such considerations.

V. PLANNING & PROJECT DEVELOPMENT

1. **METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING REQUIREMENTS.** A grant applicant requesting Section 5307 assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304, and 5306. Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide and nonmetropolitan transportation planning process specified in 49 CFR part 613 and 23 CFR part 450.

MAP-21 contains new language regarding the structure of metropolitan planning organizations (MPOs) that requires MPOs that serve areas designated as a transportation management area (TMA) include representation by providers of public transportation. Composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation in the region (including representation by providers of public transportation), the MPO is responsible for the development and adoption of the metropolitan transportation plan (twenty-year horizon) and the shorter term (four years) transportation improvement program (TIP).

All transit projects for which federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan transportation plan and TIP developed and approved by the MPO and the governor of a state, and must be included in a statewide transportation improvement plan (STIP) that has been approved by FTA and FHWA. Projects listed in the TIP must be consistent with the MPO metropolitan transportation plan and projects listed in the STIP must be consistent with the long-range statewide transportation plan.

Projects funded under other FTA programs outside of the metropolitan planning boundaries, such as under the Formula Grants for Rural Areas Program (49 U.S.C. 5311), are only required to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers or other identifying numbers and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s) within the appropriate Section of the FTA electronic award management system.

Planning projects must be included in the unified planning work program (UPWP). In addition, MPOs may include planning projects in the TIP for informational purposes.

Each project in the STIP/TIP must include sufficient descriptive material to identify the project or phase of the project. In addition, each project in the STIP/TIP must indicate reasonably expected resources to carry out the project.

FTA and FHWA will issue revised joint planning regulations implementing Sections 5303, 5304, and 5306 as amended by MAP-21. More information on the planning process can be found in the following regulations and guidance documents:

- a. “Statewide Transportation Planning” and “Metropolitan Transportation Planning,” 23 CFR parts 450 and 500 and 49 CFR part 613. The regulations outline the requirements for state departments of transportation (state DOTs), MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states; and
 - b. FTA Circular 8100.1, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.
2. TRANSPORTATION MANAGEMENT AREAS. Title 49 U.S.C. 5303(k) defines all UZAs with a population of more than 200,000 individuals as transportation management areas (TMA). The secretary of Transportation shall designate any additional area as a TMA on the request of the governor and the MPO designated for the area.

Joint FTA/Federal Highway Administration (FHWA) transportation planning regulations contained in 23 CFR part 450.312 include guidelines on determining the boundaries of a metropolitan planning area (MPA), which is determined by agreement between the MPO and the governor. The MPA boundaries at a minimum should include the entire existing UZA (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a twenty-year forecast period for the metropolitan transportation plan. An MPA boundary may encompass more than one UZA. The apportionment of funding under Section 5307 is based entirely on census-defined UZAs and is not affected by the designation or boundaries of MPAs or TMAs.

3. PERFORMANCE-BASED PLANNING. MAP-21 establishes a broad performance management program that brings significant changes to both the metropolitan transportation planning and statewide and nonmetropolitan transportation planning processes. The performance management framework attempts to improve project decision making through performance-based planning and programming and to foster a transparent and accountable decision-making process for MPOs, states, and providers of public transportation.

MAP-21 requires MPO and states to develop their long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for the metropolitan and nonmetropolitan areas of the state.

- a. The metropolitan and statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. In the development of the metropolitan transportation plan and long-range statewide transportation plan, MPOs and states must include performance targets that address the transit safety and transit state of good repair performance measures established by the USDOT under 23 U.S.C. 150(c) and 49 U.S.C. 5329.
- b. The MPO’s and state DOT’s long-range transportation plans should also include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.

- c. The MPO's TIP and state's STIP must demonstrate the linkage between investment priorities and the performance targets by including a discussion of the anticipated effect of the STIP/TIP toward achieving the performance targets established in the transportation plan.

FTA and FHWA will issue revised joint planning regulations implementing Sections 5303 and 5304 that address performance-based planning. More information on the planning process can be found in "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500 and 49 CFR part 613. The regulations outline the requirements for state DOTs, MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states.

4. ROLE OF THE DESIGNATED RECIPIENT AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING PROGRAM FUNDS. Under the Section 5307 Program, the state or designated recipient is responsible for "receiving and apportioning" the amounts made available by Congress and apportioned by the FTA to an urbanized area. The state or designated recipient receives and apportions the amounts within the UZA to the state, regional authorities, or to other public agencies.

Pursuant to 49 U.S.C. 5303(d), a metropolitan planning organization (MPO), which in some cases may also serve as the designated recipient, is the forum for cooperative decision making to carry out the transportation planning process.

Both the planning requirements and the statutory provisions of 49 U.S.C. Chapter 53 specify the roles of the MPO and of the designated recipient. Although the MPO develops and adopts the TIP, the designated recipient, which may in some cases also be the MPO, is responsible for developing the program of projects (POP) for the Section 5307 funds apportioned to a UZA for inclusion in the TIP.

In a small UZA (population less than 200,000), the TIP may take the place of the POP once it is adopted by the state into the STIP. If the TIP does not contain sufficient detail about the projects, the operators and MPO may develop the POP and present it to the state.

In the case of multiple designated recipients or multiple MPOs, the designated recipient or designated recipients must work with the MPO to ensure that the POP requirements are met by inclusion of all projects in the TIP or TIPs. The MPO and the designated recipient must work cooperatively to develop the TIP and agree on how to spend Section 5307 funds.

5. SUB-AREA ALLOCATION. In UZAs with more than one designated recipient or other recipients, FTA expects local officials, operating through the MPO, and designated recipients to determine the allocation of Section 5307 funds together. The designated recipient(s) and the MPO(s) should determine the sub-area allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A sub-allocation that is based on predetermined fixed percentages, for example, may not adequately represent the needs of transit systems in the UZA.

Designated recipients must provide documentation to FTA showing how the 5307 allocation will be split among the recipients. FTA may request a written agreement signed by a representative of each designated recipient or entity involved.

To assist in making such subarea allocations, any UZA may request the appropriate FTA regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Urbanized Area Formula Program resource.

6. PROGRAM OF PROJECTS AND PUBLIC PARTICIPATION REQUIREMENTS. A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5307 apportionment. If more than one recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP that identifies the projects to be funded in the grant. The POP must include a description of each project to be funded from the UZA's apportionment, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. Where there are multiple designated recipients or MPOs for a UZA, the POP may be presented in several separate parts for the purpose of programming and public participation. As stated above, eligibility for funding under most FTA and FHWA programs also requires the MPO to list projects in the approved TIP and STIP for metropolitan areas or the approved STIP for nonmetropolitan areas.
 - a. Sub-recipients. FTA and their grantees must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109-282, enacted September 26, 2006, as amended by Section 6202 of Public Law 110-252, and implemented by 2 CFR part 170. In order to do so, grant recipients must provide FTA with the following information for any sub-recipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award and the primary location of performance under the award, including the city, state, and congressional district. The grant recipient is required to submit this information and may choose to submit this information as a separate attachment in the FTA electronic award management system or include the information in the POP.
 - b. Programming in TIP or UPWP. Eligibility for most FTA and FHWA programs, including Section 5307, requires the MPO to list capital and operating assistance projects in the approved TIP or STIP, or both. The MPO must include planning projects in a UPWP. However, the MPO may include planning projects in the TIP and STIP for information purposes. The designated recipient is responsible for developing the POP whereas the MPO is responsible for placing the projects in the TIP or UPWP.

Projects included in an FTA grant application must be derived from that part of a metropolitan area's TIP (approved by the MPO, found to be consistent with the metropolitan area's long-range plan by FTA, and approved by the governor) that is within an approved STIP. The first-year program of the approved TIP constitutes a list of "agreed to" projects for FTA grant application purposes. The TIP/STIP public participation and approval processes carried out by the MPO can serve to satisfy the requirements for public participation under Section 5307. The list of projects the

designated recipient proposes for funding from the UZA's Section 5307 apportionment constitutes the POP.

Although operating assistance that does not involve funding from FTA or FHWA does not need to be listed in the TIP, demonstration of the reasonable availability of funding to adequately operate and maintain the system must be documented in the financial plan that accompanies the TIP. Capital projects may be selected from years one, two, three, or four of the TIP in accordance with the TIP project selection process described in 23 CFR 450.324.

- c. Public Participation Requirements. To receive a grant under Section 5307, a recipient must meet certain requirements concerning public participation in development of a POP and must certify to compliance with these requirements. The requirements are listed in 49 U.S.C. 5307(b)(1) through (7) and are discussed in the paragraphs below. The recipient may satisfy these requirements in whole or in part through the development of the metropolitan TIP and the local coordinated public transit-human service transportation plan.

Either the designated recipient for a UZA or each individual direct recipient must:

- (1) Make available to the public information concerning the amount of funds available under the Section 5307 Program and the POP that the recipient proposes to undertake with such funds;
- (2) Develop a proposed POP for activities the designated recipient will finance, in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals;
- (3) Publish the proposed POP in sufficient detail and in such a manner as to afford affected members of the public, private transportation providers, representatives of welfare recipients and low-income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient;
- (4) Provide an opportunity for a public hearing to obtain the views of the public on the proposed POP;
- (5) Ensure that the proposed POP provides for the coordination of Section 5307 public transportation services with transportation services assisted with other federal sources;
- (6) Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP; and

(7) Make the final POP available to the public. **Note:** Where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate process for the different areas involved.

- d. Satisfying the Requirement for Public Participation in Development of the POP using the Transportation Improvement Program Process. Federal transit law and joint FHWA/FTA planning regulations governing the metropolitan planning process require a locality to include the public and solicit comment when the locality develops its metropolitan long-range (twenty-year) transportation plan and its (four-year) metropolitan TIP. Accordingly, FTA has determined that when a recipient follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations, the recipient satisfies the public participation requirements associated with development of the POP that recipients of Section 5307 funds must meet. See 23 CFR part 450 and 49 CFR part 613 (specifically Subpart B, “Statewide Transportation Planning,” and Subpart C, “Metropolitan Transportation Planning and Programming”).

A recipient that chooses to integrate the two should coordinate with the MPO and make sure the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b). The recipient must ensure the TIP document explicitly states that public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP requirements of the Section 5307 Program. Furthermore, if recipients intend to follow such an ongoing practice, FTA encourages them to include such a reference in the metropolitan planning agreement required between public transportation operators, MPOs, and states, as called for in 23 CFR 450.314. Regulations at 23 CFR 450.316 provide a detailed description of the public participation plan.

- e. Substitute (Contingency) Projects. A grant application for Section 5307 funds may include substitute projects; see Appendix B of this circular for further information. Substitute projects may be drawn from years one, two, three, or four of the approved TIP. Applicants must include any substitute projects in the grant application (not the grant budget) and the project must meet the same requirements as other projects in the grant application (e.g., environmental, clean air, civil rights, labor protection requirements, etc.). Although the grant applicant must provide budget information about a substitute project in the grant application, it must not include these figures in the total project cost. If the state postpones or drops a project within the grant application, the recipient may move the substitute project from “below the line” into the grant budget, with written notification and explanation to FTA. If the applicant draws the project from years two, three, or four of the TIP, the applicant must advance it to year one through the local project selection process before FTA may approve the budget revision. The grant applicant must provide FTA with the project selection documentation.
- f. Budget Constraints, Additional Information. The total federal share for the final POP may not exceed the amount apportioned to the UZA or the amount allocated to the grant applicant by the designated recipient from these amounts, plus any Section 5307 carryover funds for previous years, funds transferred from other UZAs from the Section

5311 program, or for flexible funding from FHWA. Apportioned funds transferred to another UZA or to the Section 5311 program should be deducted from those available to the donating area.

7. COORDINATED PLANNING. Three former FTA formula programs, the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom (Section 5317) programs, previously required that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan.

This coordinated planning process was intended to create an inventory of area transportation services, identify gaps in transportation service for the affected transportation-disadvantaged populations, ascertain opportunities for human services program coordination, and establish funding priorities for those projects. This process was designed to be highly participatory by involving affected low income, persons with disabilities, and older adult populations in the development and approval of this plan.

Under MAP-21, the Section 5316 JARC program was repealed and a new eligibility was created for job access and reverse commute projects under Sections 5307 and 5311. In addition, the Section 5317 program was repealed and a new eligibility was created for these project types under Section 5310. Beginning with funding apportioned for fiscal year 2013, the requirement that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan only applies to the Section 5310 program.

Although the coordinated planning process is no longer required for job access and reverse commute projects, FTA encourages public transit systems in all areas to continue to participate in the coordinated public transit-human service transportation planning process in order to identify and develop job access and reverse commute projects for funding under Section 5307. This process gives affected populations direct participation in the formulation and approval of projects that are intended to serve them, and provides an opportunity for a variety of public, private and private nonprofit transportation providers, non-DOT transportation programs, and other community interests to likewise share their knowledge and participate in formulating projects and identify opportunities for coordination.

In addition, recipients should be aware that several other FTA requirements can be met through the use of the coordinated planning process. For example, Section 5307(b)(5) requires that recipients ensure that the proposed program of projects assisted under Section 5307 provides for the coordination of public transportation with transportation services assisted from other U.S. government sources. Additionally, the metropolitan planning requirements under Section 5303(g)(3)(B)(ii) require that recipients conduct planning in coordination with non-DOT funded nonemergency transportation services.

Public transit systems in UZAs in which a recipient is applying for funds under Section 5310 are required to continue to participate in the coordinated public transit-human service transportation planning process.

MPOs and recipients may choose to address this requirement through this existing coordinated planning process. Alternatively, MPOs and recipients may develop a process that meets this coordination requirement, and which includes a process for analyzing and documenting efforts to achieve efficiencies and service effectiveness through transportation coordination efforts.

The local coordinated planning process may also include consideration of the intercity bus transportation needs of the targeted population of seniors, individuals with disabilities, and low income individuals. Identification of unmet intercity mobility needs of human service agency clients during the local coordinated planning process may help the state with its intercity bus needs assessment as described in Chapter VIII of FTA Circular 9040.1, "Nonurbanized Area Formula Program Guidance and Application Instructions." FTA encourages states to include intercity bus mobility needs in the coordinated planning process for Section 5310, and for any unobligated funds under Sections 5316 and 5317. Although intercity bus service other than commuter service is not eligible under Section 5307, the needs for intermodal connectivity and urban/rural connections for the targeted populations may be a relevant factor in the coordinated planning process for urbanized areas.

Although the coordination of service takes place at the local level, the state may facilitate coordination through participation in statewide interagency coordinating councils and statewide coordinated planning activities.

FTA Circular 9070.1 provides more detailed guidance on the requirements for locally developed, coordinated public-transit human services transportation plans.

8. AVAILABILITY OF FHWA "FLEXIBLE FUNDS" FOR TRANSIT PROJECTS

- a. Authority. "Flexible" or "flex" funds are amounts authorized by Section 104(f) of title 23, United States Code, and 49 U.S.C. 5334(i), to be transferred between FHWA and FTA for eligible highway or transit projects, respectively. Flexible funding authority facilitates a multimodal approach to meeting transportation needs at both the statewide and local levels by giving the local area the option of choosing which federal surface transportation funds should be used for a particular project or activity based on local planning priorities. Funding transfers are permitted only for projects contained in an approved metropolitan TIP and/or STIP. In addition, like all other funds available under FTA's urbanized area formula program, flex funds should only be used toward projects and activities identified in the final program of projects.
- b. Share Requirements. Pursuant to Section 104(f)(1)(B) of title 23, United States Code, and 49 U.S.C. 5334(i)(2), flexible funds transferred to FTA require the same nonfederal matching share that such funds would require if used for the original FHWA program from which the funds were derived. For example, Surface Transportation Program (STP) funds (23 U.S.C. 133) are not covered by Section 5323(i)(1)(A), which allows for an 85 percent federal share of the net project cost of vehicle acquisitions for purposes of complying with the ADA or Clean Air Act. Regardless, the law requires that the FHWA share apply. In some cases, the federal share of FHWA funds flexed to FTA may be subject to the upward sliding scale adjustment for states containing public lands.

- c. Use. FHWA funds that are authorized for transit projects may be transferred to FTA and used for eligible public transportation purposes, which may include planning activities, capital projects and activities, and operating expenses. FHWA flexible funds that are transferred to FTA should be administered and managed under the applicable FTA program requirements and must be obligated in a separate grant. However, to facilitate project delivery, flexible funds for eligible public transportation and public transportation-related projects may be administered by FHWA, rather than transferring the funds to FTA. When a project is eligible for flexible funding, the recipient should base its decision to have funds administered by FHWA or FTA on the nature of the project, the agencies involved in implementation, and the recipient's preference to follow either FHWA or FTA administrative procedures and requirements. Regardless of which agency administers the funding, all transit projects are subject to the transit employee protection requirements at 49 U.S.C. 5333.

Although flexible funds transferred to FTA should be administered under the applicable FTA program requirements, flex funds may only be used for the purposes for which they were originally authorized. For example, Surface Transportation Program (STP) funds are not authorized to be used for transit operating expenses and, therefore, may not be used for operating assistance on public transportation projects once transferred to a Section 5307 recipient, even though, in some instances, operating assistance is an eligible use of funds under Section 5307. However, certain public information and promotion expenses for vanpool programs, which are normally considered operating expenses by FTA, are permitted under STP and may be undertaken using flex funds. In addition, CMAQ funds may be used for operating assistance under certain circumstances as indicated under Section (g)(3) below.

Flex funds transferred for capital purposes in the Formula Grants programs that are lapsing or that have lapsed will be credited to the state governor's apportionment balance to benefit the entire state for later approved transit projects, and not necessarily for the sole use of the original recipient UZA. The governor will have the authority to decide transit projects for which the lapsed funds will be used. The FTA regional office will notify the appropriate state DOT by letter that lapsed funds have been credited. The governor or the governor's designee must inform the regional office in writing of his/her decision on the use of the funds. The governor may elect to direct that the funds be used for the original project or for another eligible project in the UZA for which they were originally transferred, or he/she may direct that the funds be made available for a different eligible project somewhere else in the state.

- d. Transfer to FHWA. FTA Section 5307 funds apportioned for fiscal year 2013 and subsequent fiscal years may not be transferred to FHWA.
- e. Planning. FHWA funds authorized for the following programs may be transferred to FTA and used for authorized planning purposes:
- (1) Metropolitan Transportation Planning, 23 U.S.C. 134; and
 - (2) Statewide and Nonmetropolitan Transportation Planning, 23 U.S.C. 135.

In 1997, FHWA and FTA instituted a transportation planning fund process called the Consolidated Planning Grant (CPG). The purpose of the CPG is to combine FHWA and FTA metropolitan and state planning funds into a single grant for ease of grantee administration. Under this process, FHWA, at the request of a state DOT transfers to FTA the metropolitan and state planning funds it has made available to the state. FTA then consolidates these funds with its metropolitan and state planning funds available to the same state and awards all the funds under a single grant. CPGs can include FTA funds being transferred to FHWA as well.

- f. Planning Projects, Capital Projects, and Operating Expenses. FHWA funds authorized for the following programs may be transferred to a recipient of 5307 funds and used for planning, capital projects and activities, and operating expenses, if originally eligible for those purposes:
- (1) Surface Transportation Program (STP), 23 U.S.C. 133;
 - (2) National Highway Performance Program (NHPP), 23 U.S.C. 119;
 - (3) Congestion Mitigation and Air Quality Improvement Program (CMAQ), 23 U.S.C. 149; and
 - (4) Transportation Alternatives (TAP), 23 U.S.C. 213.
- g. Congestion Mitigation and Air Quality (CMAQ) Improvement Program, 23 U.S.C. 149. States can use CMAQ funds apportioned under 23 U.S.C. 104(b)(2) for public transportation or highway projects that are likely to result in emissions reductions.
- (1) Eligible projects. Eligible CMAQ activities may include: public transportation vehicle acquisitions; construction of new facilities or improvements to facilities that increase transit capacity; and mobility improvements resulting from the provision of transit traveler information.
 - (2) Federal share. The federal share for CMAQ funds is governed by 23 U.S.C. 120. It is generally 80 percent, subject to the upward sliding scale adjustment for states containing public lands. Certain safety projects that include an air quality or congestion relief component (e.g., carpool/vanpool projects), as provided in 23 U.S.C. 120(c), may have a federal share of 100 percent, but this provision is limited to 10 percent of the total funds apportioned to a state under 23 U.S.C. 104.
 - (3) Operating Assistance. Section 120(m) of title 49, United States Code, authorizes states to obligate funds apportioned under 23 U.S.C. 104(b)(4) for operating costs. In June, 2013, FHWA published interim guidance on CMAQ operating assistance under MAP-21 and is available at: http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/cmaq13ig.cfm. This guidance is controlling until such time as FHWA issues its final guidance.

9. ASSOCIATED TRANSIT IMPROVEMENTS. In UZAs with populations of at least 200,000, the designated recipient or designated recipients are responsible for certifying that no less than 1 percent of a fiscal year's apportionment is expended for projects that qualify as associated transit improvements. Where there are multiple designated recipients, the designated recipients must jointly coordinate the use of the 1 percent requirement for associated transit improvement projects and must include a list of the qualifying projects in the letter to FTA's regional office identifying the split of the UZA apportionment. If a list of qualifying projects is not available at this time, the letter should at a minimum indicate how this requirement will be met by indicating the amount each recipient will expend for qualifying projects.

A UZA may choose to spend more than 1 percent on associated transit improvement projects; however, expenditures for items that are not otherwise eligible projects—in particular, operating costs for historic public transportation facilities—may not exceed 1 percent of the UZA's fiscal year apportionment. In addition, projects that are eligible for an increased federal share, such as bicycle projects included as associated transit improvements, may only receive the increased local share for expenses necessary to meet the one percent minimum.

a. Associated Transit Improvement Report

Recipients must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement (ATI) funds during the previous fiscal year and the amount spent. The recipient must attach the report in TEAM in the federal fiscal year's final quarterly report.

b. The report should include:

- (1) grantee name;
- (2) UZA name and number;
- (3) FTA project number;
- (4) project category;
- (5) brief description of improvement and progress towards project implementation;
- (6) activity line code from approved budget; and
- (7) amount awarded by FTA for the project.

c. Alternatively, the designated recipient or MPO may submit this report on behalf of all recipients in a UZA; however, the report must include all of the information listed in the paragraph above.

10. PUBLIC TRANSPORTATION SECURITY PROJECTS. In each UZA to which funds are apportioned under Section 5307, designated recipients and recipients must certify that either: (1) recipients in the urbanized area will collectively expend at least 1 percent of the amount apportioned to the UZA for a fiscal year on “public transportation security projects,” or (2) that such expenditures for security projects are unnecessary. If a recipient certifies that such expenditures are unnecessary, the recipient should include a brief explanation of how this was determined in their grant application.

11. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT.

- a. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office, must “make the case” by identifying a useful life period for all equipment, rolling stock, and facilities with an acquisition value greater than \$5,000 to be procured with federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the federal interest for the disposition of the project property in later years. For additional information on useful life policy for a bus, van, trolley, rail rolling stock, and ferries, and to determine the useful life of such project property, please refer to FTA’s Grant Management Requirements Circular 5010.1.
- b. Early Disposition. FTA calculates the value of vehicles before the end of their minimum useful life on the basis of a formula using straight-line depreciation. Straight-line depreciation is a term most often used to indicate that personal property has declined in service potential. Removal of an FTA-funded vehicle from revenue service before the end of its minimum useful life, except for reasons of fire, collision, or natural disaster, leaves the recipient liable to FTA for the federal share of the vehicle’s remaining value. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value must be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Consistent with this policy, the suggested vehicle useful life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty. Please see FTA’s Grant Management Requirements Circular 5010.1 for more information on disposition.
- c. Rolling Stock Spare Ratio Policies. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage (one hundred vehicles required for full service and twenty spare vehicles results in a 20 percent spare ratio). Spare ratios will be taken into account during the review of grant applications proposing to replace, rebuild, or add vehicles to the applicant’s fleet. The number of spare buses in the active fleet for grantees operating fifty or more fixed route revenue vehicles should not exceed 20 percent of the number of

vehicles operated in maximum fixed route service. Please see FTA's Grant Management Requirements Circular 5010.1 for more information on rolling stock spare ratio policies.

- d. Fleet Expansion. Recipients seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve, or whether the expansion is necessary to meet demands for service in existing markets. The application should address vehicle needs, fleet size, and spare ratio. FTA may request official property records (or a rolling stock status report), in which future needs (expansion and replacement) are discussed. Information may include documentation developed during the metropolitan and statewide transportation planning processes in which case summary information and precise reference to the earlier material will be acceptable. The recipient may also include a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used to identify feasible opportunities for new or expanded routes. These criteria are often based on demographic measures and are used to identify geographic locations that are good candidates for new transit service. The recipient should explore all areas within the region, including areas that are currently served by transit, since they may have potential for different types of service.

In order to comply with FTA C 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," recipients that operate fifty or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population must conduct, prior to implementation, service equity analyses for all major service changes in order to determine whether those changes have a discriminatory impact.

In addition, all providers of fixed route public transportation are required to adopt systemwide service policies to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. One such policy is related to vehicle assignment. Vehicle assignment refers to the process by which transit vehicles are placed into service in depots and on routes throughout the transit provider's system. Please see FTA Circular 4702.1, Chapter IV, Section 4 for additional information.

- e. Pre-Award and Post-Delivery Review of Buses. Procurements for revenue service vehicles to transport passengers, other than sedans or unmodified vans, must be reviewed in accordance with 49 CFR part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the FTA Grant Management Requirements Circular 5010.1 and in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement" on FTA's website: http://www.fta.dot.gov/legislation_law/12921_5424.html.
- f. Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with 49 CFR part 665 and must obtain a copy of the resulting test report before FTA funds can be released. FTA provides a "Bus Testing" section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

MAP-21 amended the bus testing provisions under 49 U.S.C. 5318 to require that FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if it has received a passing score. This requirement will take affect after FTA has issued regulations establishing the standard.

- g. Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR part 661). FTA's Buy America requirements at 49 CFR part 661 differ from federal Buy American regulations at 48 CFR part 25. The former applies to third party contracts funded by FTA whereas the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.
- h. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26.
- TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.
- i. Americans with Disabilities Act of 1990 (ADA). Recipients must ensure that each transit vehicle meets the accessibility requirements and standards for the vehicle type specified in 49 CFR parts 37 and 38, as applicable. Where a vehicle or component departs from the particular technical and scoping requirements, the recipient must obtain a determination of equivalent facilitation, as described in Section 38.2, from the FTA administrator under procedures set forth in Section 37.7(b). Where a specific vehicle type is not addressed by part 38, accessibility requirements must be determined by the U.S. Department of Transportation in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) as specified in Section 38.171(c).
- j. Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. Please see FTA's Grant Management Requirements Circular 5010.1 for additional information on rebuilding and overhaul policies.

- k. Requirements Related to Accessories and Miscellaneous Equipment. A grant application may include certain miscellaneous items separate from the costs of a bus procurement or facilities project. For example, a recipient may apply for mobile radios, bus stop signs or shelters, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The application must explain the rationale or need for each request. FTA does not require a separate justification if, for example, a farebox or radio is included in the cost of a new bus, or shop equipment is included in the cost of a new maintenance facility.

12. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded by Section 5307.

- a. General Philosophy. FTA generally assists in building two kinds of facilities:
 - (1) facilities that support transit operations, such as maintenance garages and administrative buildings; and
 - (2) facilities that provide passenger amenities and extend into the built environment, such as bus or rail terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus or rail services.
- b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of forty to fifty years for the minimum useful life of a facility. A railroad or highway structure has a minimum useful life of fifty years, and most other buildings and facilities (concrete, steel, and frame construction) have forty years. For further information, see FTA Circular 5010.1.
- c. American with Disabilities Act of 1990 (ADA). Recipients must ensure that transit facilities meet the accessibility standards and requirements specified in 49 CFR parts 37, 38, and 39, as applicable. Where any departure from the specific requirements is contemplated, as permitted under 36 CFR part 1191, the recipient must obtain a determination of equivalent facilitation from the FTA administrator under procedures set forth in Section 37.9(d).
- d. Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to nontransit use for construction, maintenance, and operation costs.
- e. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a recipient currently operating twenty vehicles, a request for a bus maintenance garage that will accommodate twenty vehicles and have space for a 10 to 25 percent vehicle increase would be considered an acceptable grant request. For the same

transit agency, a grant request for a garage accommodating forty vehicles would not be acceptable, unless the recipient could demonstrate its need, willingness, and ability to expand its fleet to forty vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and supporting facilities may be justifiable.

- f. Project Staging. When applying for a grant to build a facility, a recipient must be able to fully describe the project and estimate the cost of the facility. Planning for the project may include a feasibility study/needs assessment for the project that provides preliminary cost estimates, funding sources, and possible site locations and related environmental work. The next phase is engineering and design, which could include costs for development of an environmental document specific to the project, and real estate appraisals. Once FTA has reviewed and approved the environmental documentation, funds may be requested for land acquisition and construction.
- g. Planning Justifications. There must be a planning basis for every project or group of projects. Accordingly, FTA requires recipients to include the planning justification in the grant application submitted in FTA's electronic management system. Planning activities are eligible under the Section 5307 Urbanized Area Formula Program. Feasibility studies at varying levels of detail as appropriate and proportionate should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a recipient may choose to reference and summarize pertinent parts of documents in which results of project studies were reported (e.g., transportation plans, unified planning work programs [UPWPs], and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide additional guidance for various kinds of facilities projects.
- h. Passenger Shelters and Bus Boarding and Alighting Areas. A program for bus shelters and bus boarding and alighting areas should be developed for the existing and proposed network based on the operator's shelter criteria and to the extent the construction specifications are within its control, and, in the case of significant increases, should be described in the grant application. Bus shelters and bus boarding and alighting areas must comply with standards for accessibility established by U.S. DOT regulations implementing the transportation provisions of the ADA (49 CFR parts 27, 37, and 38, as amended). A map indicating the transit network and shelter and bus boarding and alighting area location should be developed and available upon request.
- i. Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning/feasibility study. Elements would include a determination of transit demand and other uses, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, an evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
- j. Park-and-Ride Facilities. The basis for a new park-and-ride lot should be documented in a feasibility study. Generally, activities would include an evaluation of demand and

service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.

- k. Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a feasibility study. Activities would include an evaluation of the condition and adequacy of the existing facility, if any, development of site evaluation criteria, identification and evaluation of alternative sites based on site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.
13. TRANSIT ASSET MANAGEMENT REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit asset management practices and procedures. The intent of the statute is to promote coordinated capital investments aimed at bringing transit systems into and maintaining a state of good repair. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on transit asset management.
14. PUBLIC TRANSPORTATION SAFETY REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit agency safety plans and system requirements. The intent of the statute is to increase the safety of public transportation systems for employees, customers and the general public. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on public transportation safety requirements.
15. ENVIRONMENTAL CONSIDERATIONS. Prior to projects receiving FTA funding, FTA is required to consider every project's potential impacts on the environment. These environmental reviews are conducted under the National Environmental Policy Act (NEPA) and related federal environmental laws, such as the National Historic Preservation Act, regulations, and executive orders. The amount of resources required to complete this process (time, documentation, consultant services, etc.) will vary depending on the type of project and its potential to impact the human and natural environment. The following list identifies and briefly describes each level of environmental review that may apply to a project:
 - a. Categorical Exclusion (CE). Projects that historically do not result in significant environmental impacts may qualify as a CE and would require little to no documentation as described further in 23 CFR 771.118. Examples of this type of project are buying a bus or construction of transit facilities primarily within the transportation right-of-way.

- b. Documented Categorical Exclusion (DCE). Projects that historically do not result in significant environmental impacts but are slightly greater in scope than those qualifying as a CE may qualify as a DCE. Examples of this type of project may include real property acquisition or construction of transit facilities with features located outside of the transportation right-of-way.
- c. Environmental Assessment (EA) and Environmental Impact Statement (EIS). Projects that are complex in scope and/or are viewed as controversial by the public may require the preparation of an EA. This level of environmental review provides the public an opportunity to comment and will ultimately determine whether or not the project will result in any significant impacts. If the analysis in an EA concludes that the project will result in significant impacts, or if from the early planning stages it is determined the size and scope of the project will result in significant impacts, an EIS will be required. Most grantees typically need to enlist consultant services when preparing an EA or EIS.

Grantees should consult with FTA early in the grant application process, and prior to expending funds for a planned project for which federal funds are requested, to confirm the appropriate level of environmental review.

Further detail and explanation on the different levels of environmental review can be found in 23 CFR 771, FTA's Environmental Impact and Related Procedures. Grantees must receive confirmation that their proposed FTA-funded project has complied with the policies and procedures provided in 23 CFR 771 before FTA can approve the grant application and funds can be obligated.

16. UNDERTAKING PROJECTS IN ADVANCE. There are three different authorities under the Urbanized Area Formula Program in which a recipient may incur costs on a project (e.g., award a contract or begin work) before grant approval and retain eligibility for reimbursement after grant approval. The first is automatic pre-award authority which FTA typically authorizes in each of its fiscal year apportionments notice. A letter of no prejudice (LONP) is a second authority and a third is advanced construction authority (ACA). When utilizing pre-award authority, a recipient must comply with all FTA and federal requirements prior to undertaking the project, including federal planning requirements, in order to retain eligibility for reimbursement after grant approval.
 - a. Automatic Pre-Award Authority. The authorization of Urbanized Area Formula Program grant funds triggers automatic pre-award authority for design and environmental work on the project. FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the Urbanized Area Formula grant program. FTA provides automatic pre-award authority for planning and operating assistance under the Urbanized Area Formula grant program without regard to the period of the authorization. Following authorization, automatic pre-award authority for capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental record of decision (ROD), a finding of no significant impact (FONSI), or a determination that the project qualifies as a categorical exclusion (CE). Grantees may incur costs under pre-award

authority for projects that clearly meet the criteria for a CE; however, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance. If a grant applicant is concerned that a project may not clearly qualify as a CE, they are strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary. A project must also be included in the STIP prior to incurring expenses under pre-award authority.

The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Therefore, FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements before incurring expenses under automatic pre-award authority with the hope of future reimbursement.

- b. Letter of No Prejudice. For a project not covered by the automatic pre-award authority, including projects that will require Urbanized Area Formula funds not yet authorized and for which FTA has not extended pre-award authority, a grant applicant that seeks to proceed with a transit project in advance of the availability of federal funds may request that FTA issue a Letter of No Prejudice (LONP) for that project. A LONP allows a recipient to incur costs on a project using nonfederal resources with the understanding that the costs incurred after the LONP is issued may be reimbursed for eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant at a later date. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Because project implementation activities may not be initiated prior to National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a record of decision (ROD), finding of no significant impact (FONSI), or categorical exclusion (CE) determination.

Although FTA typically grants automatic pre-award authority for Urbanized Area Formula funds as discussed in subparagraph (a) under this section, a LONP is required if a recipient wishes to continue to incur costs after the life of the program's authorization. Each LONP has an expiration date, which is the date beyond which funding cannot be requested retroactively for the project. The standard expiration date of an LONP is five years, after which time the grantee may request a new LONP. In situations such as long-term leases or long-term financing, the LONP may be for an appropriately longer time period.

To obtain an LONP, a recipient must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office. FTA approval of a LONP is made in writing and determined on a case-by-case basis.

- c. Advanced Construction Authority. The statutory authority to undertake projects in advance, also referred to as advanced construction authority (ACA), allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent

reimbursement after grant approval. ACA is slightly different than the policy-driven automatic pre-award authority and LONP, which are discussed in subparagraphs (a) and (b) under this section. Under ACA, FTA has already approved the project for funding in the event funding becomes available. Under automatic pre-award authority or a LONP, FTA has not yet approved the project for funding.

- (1) ACA permits a grant applicant to incur project and financing costs such as bond interest before FTA awards a grant for the project. FTA may issue ACA under 49 U.S.C. 5307 of the Urbanized Area Formula grant program provided—
 - (a) the recipient has completed a grant application and it is on file with FTA.
 - (b) the project has met all federal requirements, including the DOL certification under Section 5333(b).
 - (c) FTA has approved the project as eligible for Urbanized Area Formula funds, although the funding is not available.

Although an ACA reserves the recipient's right to be reimbursed after FTA has approved the project, ACA does not constitute a commitment of federal funds until the project is converted to a regularly financed project. ACA expires on or before the expiration of the current authorization.

- d. Terms and Conditions Applicable to Automatic Pre-award Authority, LONP, and ACA. In general, the terms, conditions and procedures applicable to recipients having automatic pre-award authority, a LONP, or ACA are as follows:
 - (1) All federal grant requirements must be met at the appropriate time for a project having automatic pre-award authority, a LONP, or ACA to remain eligible for federal funding.
 - (2) These authorities are not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds.
 - (3) These authorities are not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (4) The recipient assumes all the risk.
 - (5) All FTA statutory, procedural, and contractual requirements must be met.
 - (6) All applicable DOT statutory and regulatory requirements must be met.
 - (7) The recipient must not take any action that prejudices the legal and administrative findings that the FTA administrator must make in order to approve a project.

- (8) Local funds expended by the recipient after the date of the automatic pre-award authority, a LONP, or ACA will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).
- (9) Local funds expended by the recipient before the date of the authority will not be eligible for credit toward local match or reimbursement.
- (10) Applicants may incur costs for credit or reimbursement under pre-award authority if certain conditions are met for activities such as land acquisition, demolition, or construction after the date of pre-award authority. FTA's policy for pre-award authority and list of permissible activities and conditions for grant programs are outlined annually in FTA's Annual Apportionment Notice.
- (11) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall cost scope of activities and the prevailing statutory provisions and congressional direction with respect to the federal/local match ratio at the time the funds are obligated.
- (12) When a grant for the project is subsequently awarded, the federal financial report in the FTA electronic award management system must indicate the use of the automatic pre-award authority, LONP, or ACA. More information and updates regarding automatic pre-award authority and LONPs can be found in FTA's fiscal year apportionment notice published in the *Federal Register*.

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VI. PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. CERTIFICATIONS REQUIRED BY 49 U.S.C. 5307. FTA recipients must annually certify that they are in compliance with federal transit law as well as federal cross-cutting requirements. FTA advises recipients to review the annual list of Certifications and Assurances, located on FTA's website (www.fta.dot.gov), and on the FTA electronic award management system website (<http://ftateamweb.fta.dot.gov>). Section 5307(d)(1) lists the conditions to which Section 5307 recipients must certify, as discussed below.

a. Consistent with 49 U.S.C. 5307(c)(1)(A), a recipient must certify that it has or will have the legal, financial, and technical capacity to carry out the program. New grantees must submit documentation of capacity prior to receiving a grant. Sample documents are available in Appendix D of this circular.

(1) Legal Capacity. Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding, FTA generally relies on the grant applicant's certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the applicant must have appropriate authority designated by state or local law or by the governing body of the applicant. Although FTA does not require recipients to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. (An Opinion of Counsel sample is available in Appendix D of this circular.) FTA also retains the discretion to require any recipient to submit a legal opinion and other supporting documentation.

(a) An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, state and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. Although the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the recipient will certify its authority to apply for subsequent grants in the annual certification process. That affirmation appears on FTA's website at www.fta.dot.gov, on the page that lists the current year Certifications and Assurances.

FTA expects the recipient to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the recipient's ability to carry out the project. Any significant change in status will require a new Opinion of Counsel.

(b) In general, the authority of those officials acting on behalf of a public body grant applicant must be demonstrated by a resolution from the governing body of the

grant applicant, a statute, or an ordinance showing that the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for all FTA recipients. A sample format of an authorizing resolution is provided in Appendix D of this circular. The authorizing resolution only has to be submitted prior to the grant applicant's first application. For subsequent grant applications, FTA will rely on the annual certifications and assurances. The designated signature authority submitted in the FTA electronic award management system on the first application must agree with the designated signature authority on subsequent applications.

- (2) Financial Capacity. Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the financial capacity to carry out the project. Specifically, an applicant for Section 5307 funds must be able to match and manage those funds, to cover cost overruns, to cover operating deficits through long-term stable and reliable sources of revenue, and to maintain and operate federally funded facilities and equipment. Financial capacity and proposed project financing must be made evident. The source of local share must be identified and assurances must be provided that adequate local funds will be available at the time federal funds are drawn down. Financial capacity is also reviewed by FTA's Financial Management Oversight contractors as deemed necessary.

FTA Circular 7008.1, "Financial Capacity Policy," defines the basis on which FTA will make determinations of a grant applicant's financial capacity to receive a Section 5307 grant. The circular refers to two aspects of financial capacity: general financial condition of the transit operator and financial capability. The general financial condition includes historical trends and current experience in financial factors affecting the ability of the grant applicant to operate and maintain the transit system at present levels of service. The information supporting an assessment of financial condition is usually available in audited annual financial statements and other financial reports that address working capital levels, cash balances, capital reserves, the presence and status of depreciation accounts, long-term debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

Financial capability addresses the sufficiency, stability, and reliability of the grant applicant's revenue sources to meet future operating deficits and to meet future annual capital and operating costs. Financial capability considers the nature of funds pledged to support operating deficits and capital programs, and changes in forecast in fare and nonfare revenues. Capital costs include replacement and rehabilitation of existing equipment and facilities and new investments. Operating and maintenance costs include those for the present system and any increases caused by capital investment and service expansion.

In considering financial capacity of the grant applicant, FTA takes into account the fact that a financial analysis must be undertaken and a financial plan must be

developed before programming a project into the TIP. That analysis, plan, and subsequent inclusion of the project in the TIP reflect the two aspects FTA considers in determining the grant applicant's financial capacity: the financial plan must demonstrate that TIP projects can be carried out while the existing transportation system is being adequately operated and maintained (financial condition); and only projects for which funds can reasonably be expected to be available may be included in the TIP (financial capability).

FTA assesses financial capacity of a Section 5307 grant applicant when FTA approves the STIP and again when FTA approves projects for Section 5307 funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending on the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, including: short-range transit plans, capital budgets, financial plans required for New Starts projects, and reports on financial operations such as periodic financial statements or single audit reports.

- (3) Technical Capacity. According to 49 U.S.C. 5307(c)(1)(A), before FTA may award a Section 5307 grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Section 5307 grant must demonstrate that it can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws and regulations, using sound management practices. Thus, FTA requires a certification that the recipient will comply with all requirements applicable to its grant application and to the grant agreement, when awarded. Guidelines for grant management practices can be found in FTA Circular 5010.1, "Grant Management Requirements."
- (4) Satisfactory Continuing Control. According to 49 U.S.C. 5307(c)(1)(B), a recipient must annually certify that it "has or will have satisfactory continuing control over the use of equipment and facilities" through operation, lease, or otherwise.

An FTA recipient must maintain control over federally funded property by ensuring the grantee uses it in public transportation service and disposes of it according to federal requirements. If the recipient leases federally funded property to another party, the lease must provide that the recipient maintains satisfactory continuing control over the use of that property. FTA determines control over FTA-funded facilities and equipment in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and nonrevenue). For more information regarding the disposing of property, and for safeguards against loss, theft, or damage, see FTA Circular 5010.1, "Grant Management Requirements."

- (5) Maintenance. According to 49 U.S.C. 5307(c)(1)(C), a recipient must certify that it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5307 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. Additional guidance is available on FTA's State of Good Repair and Asset Management website (<http://www.fta.dot.gov/13248.html>).

- (6) Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours. According to 49 U.S.C. 5307(c)(1)(D), a recipient must certify that the fares charged to seniors, individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours, for transportation using or involving a facility or equipment of a project financed under this section, are not more than 50 percent of the peak hour fare, regardless of whether the service is provided by the recipient or by another entity under contract, lease, or other arrangement. Because a Medicare card does not constitute proof of an individual's identity, it is reasonable for a transit agency to request confirmation of the individual's identity, either through secondary photo identification or by using a photographic identification card issued by the transit agency. It is also reasonable for a transit agency to verify the validity of the Medicare card being presented, and to facilitate the half-fare application process, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented.
- (7) Use of Competitive Procurements. According to 49 U.S.C. 5307(c)(1)(E), a recipient must follow procurement requirements specified under 49 U.S.C. 5323 and 49 U.S.C. 5325. This includes the requirements that a recipient utilize a competitive procurement process, comply with applicable Buy America laws, and not use a procurement that follows exclusionary or discriminatory specifications.

Recipients must use competitive procurement procedures as determined by FTA and will not use procurements employing exclusionary or discriminatory specifications. Any recipient failing to provide this certification or that is found by FTA to have procurement practices and procurement systems that do not comply with federal laws, regulations, and directives governing federally financed procurements may be determined ineligible for award of federal assistance.

There is a link between a recipient's certification that its procurement procedures follow federal requirements and a positive finding by FTA concerning the applicant or recipient's technical capacity to administer and manage a grant properly. FTA Circular 4220.1, "Third Party Contracting Guidance," sets forth the requirements and procedures applicable to third party contracts. A third party contract refers to any purchase order or contract awarded by a recipient to a vendor or contractor using federal financial assistance awarded by FTA. FTA Circular 4220.1 contains

guidelines for the general procurement requirements of the DOT Common Grant Rule, 49 CFR part 18, and also includes specific statutory procurement provisions required by FTA's enabling legislation and other special concerns to FTA. Note that both the Common Grant Rule and FTA Circular 4220.1 prohibit state or local preference provisions in procurements, except in certain restricted circumstances.

Section 5323(h)(2) prohibits the use of FTA grant funds to support exclusionary or discriminatory specifications, and Section 5323(m) provides specific pre-award and post-delivery provisions for procuring rolling stock.

In addition to procurement and audit provisions that apply to architectural, engineering, and related services, 49 U.S.C. 5325 includes provisions affecting third party procurements, including the general requirements for competition and prohibitions on the use of exclusionary or discriminatory specifications, requirements for award to other than low bidders, requirements for awards to responsible contractors, special rolling stock limitations, contract term limited to five years (seven years for rail rolling stock), access of federal officials and the comptroller general to project records, authority for design-build projects, and an express federal preemption of any state law requiring bus purchases from in-state dealers.

FTA's Best Practices Procurement Manual at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html provides another useful source of procurement information.

- (8) Domestic Preference for U.S. Property - Buy America. Pursuant to 49 U.S.C. 5307(d)(1)(E), grant applicants and sub-recipients must certify that they will comply with applicable Buy America laws as set forth under 49 U.S.C. 5323(j) in carrying out a procurement. FTA's Buy America requirements apply to all third party procurements funded by FTA. These requirements, published at 49 CFR part 661, are different from the federal Buy American regulations, published in the Federal Acquisition Regulation at 48 CFR 25.1 and 25.2, which apply to direct federal procurements. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any procurement to ensure compliance with the requirements applicable at the time the recipient will undertake the procurement. Additional information is available on the FTA Buy America website (<http://www.fta.dot.gov/buyamerica>).
- (a) General Requirement. In compliance with 49 U.S.C. 5323(j) and FTA's implementing regulation at 49 CFR part 661, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States. FTA may waive this requirement in certain circumstances, as discussed below.
- (b) Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and

bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

- (c) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin (49 CFR 661.5(d)).
- (d) Rolling Stock. All buses and rolling stock (including train control, communication, and traction equipment) acquired with FTA funds must consist of at least 60 percent domestic components by cost and final assembly must take place in the United States (49 CFR 661.11).
- (e) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
 - 1. if the FTA administrator determines a waiver is in the public interest;
 - 2. if no responsive or responsible bid offers a product manufactured in the United States;
 - 3. when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
 - 4. when including domestic material will increase the cost of the overall project by more than 25 percent (49 CFR 661.7).
- (f) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America requirements. Currently, DOT’s Common Grant Rule (49 CFR 18.36(d)) sets that threshold at \$100,000 or less. FTA bases the exemption on the total amount of the contract and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$15,000 each under a single purchase order, the \$150,000 contract would make the procurement subject to Buy America requirements (49 CFR 661.7).
- (g) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (h) Responsibilities. Under 49 CFR 661.13, a recipient’s responsibilities are:

1. to adhere to the Buy America clause in its grant agreement with FTA;
 2. to include in its bid specification for procurement within the scope of FTA's regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and
 3. to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- (9) Public Participation. According to 49 U.S.C. 5307(c)(1)(F), a recipient must certify that it has complied with the public participation requirements of 49 U.S.C. 5307(b). Chapter V, Section 6, "Program of Projects and Public Participation Requirements," of this circular discusses this requirement.
- (10) Availability of Local Funds. According to 49 U.S.C. 5307(c)(1)(G), a recipient must certify that the required local funds are available to carry out the project. See Chapter III of this circular for additional information on local share.
- (11) Compliance with Planning Requirements. According to 49 U.S.C. 5307(c)(1)(H), a recipient requesting Section 5307 program assistance must certify that it will comply with the planning requirements of 49 U.S.C. 5303 and 5304. Further detail on planning requirements may be found in FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."
- (12) Public Comment on Fare and Service Changes. According to 49 U.S.C. 5307(c)(1)(I), the recipient must certify that it has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation service.

The recipient is expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions. The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. During a triennial review, the recipient should be able to provide evidence that public comments were considered. Guidance on this requirement is available in FTA

Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”

- (13) Expenditure on Public Transportation Security Projects. According to 5307(c)(1)(J), each designated recipient of Section 5307 program funds must certify that of the amount apportioned to its UZA in a fiscal year, the recipients within the UZA will collectively expend at least 1 percent on “public transportation security projects,” or the designated recipient(s) must certify that such expenditures for security projects are unnecessary. This certification may also be provided by the MPO in coordination with eligible recipients in the UZA.

FTA monitors compliance with the Section 5307 1 percent security spending requirement during the grant review and approval process and through the triennial review process, when FTA reviews a table of Public Transportation Security Expenditures completed by the recipient.

- (14) Expenditure on Associated Transit Improvements. In large UZAs (with populations of 200,000 or more), 49 U.S.C. 5307(c)(1)(K) establishes a minimum annual expenditure requirement of 1 percent for public transportation projects and project elements that qualify as associated transit improvements under the Section 5307 program. The term “associated transit improvement” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. Eligible associated transit improvement projects are listed in Chapter III.

- (a) Requirements. When several recipients receive Section 5307 funding within a large UZA, the recipients together must spend not less than 1 percent of the UZA’s fiscal year apportionment on projects and project elements that qualify as associated transit improvements. Each individual recipient is not required to spend 1 percent of its Section 5307 program funds on associated transit improvements, provided that this requirement is met by the recipients as a whole.

The designated recipient or recipients have the responsibility for selecting (programming) all 49 U.S.C. 5307 projects including associated transit improvements, but the MPO has the responsibility for placing the project in the TIP. Where there are multiple designated recipients, they must coordinate the use of the 1 percent for associated transit improvements and include the transit improvements in the letter to FTA regarding the split of the UZA apportionment. A UZA may spend more than 1 percent of its apportionment for associated transit improvements, except that items that are only eligible as improvements—in particular, operating costs for historic facilities—may only be assisted with the associated transit improvement funds.

- (b) Associated Transit Improvement Report. The recipient must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement funds during the previous fiscal year and

the amount spent. The recipient must submit the report in the federal fiscal year's final quarterly report, using ALI codes from the approved project budget.

2. **CERTIFICATION PROCEDURES.** Before FTA may award federal funding, the applicant must provide to FTA all certifications and assurances required by federal laws and regulations. Near the beginning of each federal fiscal year, FTA publishes the certifications in the *Federal Register*, highlighting any changes or additions from the previous year. FTA sometimes publishes the certifications and assurances on the same date the formula apportionments are published.
 - a. **Action Required.** The authorized representative of the recipient and the recipient's attorney must make the requisite certifications in FTA's electronic award management system by:
 - (1) attesting to the certifications and assurances electronically with a personal identification number (PIN); and
 - (2) selecting electronically each assurance or certification category that will apply to the applicant's grants for the fiscal year; or
 - (3) selecting instead a "select all" field that signifies the grant applicant will comply with all categories of certifications and assurances that apply to it or its projects.

FTA requires a current attorney's affirmation of the recipient's legal authority to certify compliance with that fiscal year's FTA funding assistance. FTA will not accept the attorney's affirmation from a previous year.
 - b. **Timing.** FTA expects to receive the certifications and assurances electronically from each recipient that has an open grant:
 - (1) within 90 days from the date of publication of the certifications and assurances; or
 - (2) with the first grant application of the fiscal year, whichever comes first.

Absent information to the contrary, certifications and assurances, which remain valid for one year or until FTA publishes the next version, apply to all open grants.

FTA encourages grant applicants and recipients to contact the appropriate FTA regional office for more information about these requirements. Some requirements call for extensive planning that the applicant should address before submitting a grant application.
3. **FTA ELECTRONIC AWARD MANAGEMENT SYSTEM.** FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, grantees apply for grants, inquire about the status of grants, file the required federal financial status and milestone progress reports, and submit annual Certifications and Assurances in

this system. A user guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants."

The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects through the FTA electronic award management system. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the FTA electronic award management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO), which is described in Chapter VI of this circular. ECHO is a FTA Web-based application that processes FTA recipients' requests for payment. To access the FTA electronic award management system, a new applicant must complete the Grantee/Recipient User Access Request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is: http://www.fta.dot.gov/funding/grants_financing_36.html.

4. SYSTEM FOR AWARD MANAGEMENT REQUIREMENTS. The System for Award Management (SAM) is a free website that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance (<https://www.uscontractorregistration.com/>). On July 30, 2012, the Central Contractor Registration (CCR), FedReg, and the Excluded Parties List System (EPLS) were migrated into SAM.

Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA or receives its final payment under the project, whichever is later. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance.

5. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENT. Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.
6. SUB-RECIPIENTS DUNS REQUIREMENT. If it is authorized to make sub-awards under its agreement with FTA, the recipient must notify potential sub-recipients that no entity may receive a sub-award from the recipient unless the entity has provided its DUNS number to the recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.

7. ELECTRONIC CLEARING HOUSE OPERATION (ECHO) REQUIREMENTS. Grantees are required to establish an ECHO control number (ECN) before FTA is able to disburse funds to the grantee. Department of Treasury regulations, 31 CFR part 205, govern payment to recipients for financing operations under federal assistance and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA “ECHO-Web System User’s Manual for Recipients” at: <http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENT. FTA’s recipients must report the information about each first tier sub-award over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the direct recipient makes any sub-award or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign sub-recipient agreements until February, the FTA grantee would have until March 31 to report the sub-award into the federal sub-recipient reporting system (FSRS). Once the grantee submits an initial report, the grantee can revise it later to add additional sub-awards as they are made, or to change data previously submitted to reflect adjustments in sub-awards.
 - a. No report is required until the month after the grantee makes a sub-award. For example, if a recipient received a Section 5307 grant in November and listed three sub-recipients in the program of projects, but does not consider the sub-awards to be made until each sub-recipient signs a letter of agreement, the recipient would not have to report any sub-awards in December, but would report them by the end of the month after the sub-recipient signs the agreement. On the other hand, if the recipient has a standing agreement with sub-recipients and considers the sub-awards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the recipient. If the recipient allows sub-recipients to incur costs for projects in advance of obligation, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept sub-award reports before the federal obligation is recorded in the system.
 - b. FTA grant recipients that use funds to purchase vehicles from a statewide contract and then provide the vehicles to sub-recipients have a subaward relationship with these sub-recipients and should submit a subaward report for each sub-recipient that is receiving vehicles from the statewide purchase. Grant recipients should enter the cost of the vehicles being transferred to the sub-recipient as a proxy for the sub-award amount in their sub-award report. Recipients that are awarded grants directly from FTA and use these funds to purchase vehicles from a statewide contract for their own use do not have a sub-award relationship with another organization and do not need to submit FFATA sub-award reports.

- c. The required data elements in FSRS for each first tier sub-award over \$25,000 :
- (1) Name of entity receiving sub-award
Doing Business As (DBA) Name
 - (2) DUNS of the entity and its parent and DUNS+4 (is used to identify specific units within a larger entity)
 - (3) Amount of Sub-Award
 - (4) Sub-award Number (Note: assigned by recipient)
 - (5) CFDA Number (Note: The same CFDA associated with the FTA award)
 - (6) Place of performance (including congressional district)
 - (7) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds)
 - (8) Award title descriptive of the purpose of the funding action
 - (9) Location of the entity (including congressional district)
- d. The amount that is to be reported for each sub-recipient is the amount of the total sub-award, not payments to date. Payment/drawdown information is not included in the data fields requested.
- e. After the recipient reports the sub-award data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.
- f. Information and training materials about FFATA sub-award reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to [USASpending.gov](http://www.USASpending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Grantees should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff are available to help with FTA grant award information and requirements.
9. NATIONAL TRANSIT DATABASE (NTD) REPORTING. The NTD was established by Congress to be the nation’s primary source for information and statistics on the transit systems of the United States. NTD data are used to support numerous DOT programs and to “help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning” (49 U.S.C. 5335). Recipients (including sub-recipients and contractors) of Section 5307 program funds are required by statute to submit data to the NTD.

FTA’s implementing regulation can be found at 49 CFR part 630. A recipient of FTA grants that is required to report to the NTD must provide a complete report to the NTD of all transit operations, regardless of whether or not those operations are funded in whole or part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with

information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD regulation, the USOA, and the most recent versions of the NTD Reporting Manuals can be found on the NTD website at <http://www.ntdprogram.gov/>.

- a. Annual Report. Recipients or beneficiaries of Section 5307 grants must annually report financial and nonfinancial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- b. Monthly Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- c. Safety and Security Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly safety and security reports. These monthly reports include information on fatalities, injuries, collisions, derailments, fires, hazardous material spills, evacuations, arrests, and significant security events. The NTD Safety & Security Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- d. Waiver. Under certain circumstances, described in NTD reporting manuals, grant recipients may apply for reduced NTD reporting requirements. Under a small systems waiver, grantees with less than thirty vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.

VII. OTHER PROVISIONS

1. **INTRODUCTION**. In addition to the program-specific requirements, FTA recipients are held to a number of FTA-specific and other federal requirements. This chapter provides a summarized, alphabetical listing of those requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. This circular should be used in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (by using the FTA electronic award management system) to establish or renew their funding relationship with FTA.

The Master Agreement and the Certifications and Assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized throughout this chapter, as a reminder to recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement, the Certifications and Assurances on the FTA public website www.fta.dot.gov, the FTA electronic award management system's website (<http://ftateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

Recipients are encouraged to contact the appropriate FTA regional office for more details about these requirements.

2. **CHARTER BUS SERVICES**. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604, Charter Service, amended effective April 30, 2008 (73 FR 2326, January 14, 2008). Each recipient must enter into an agreement with FTA stating that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter bus service website (http://www.fta.dot.gov/legislation_law/12922.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency

to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) The ADA, as amended (42 U.S.C. 12101 *et seq.*), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a sub-recipient or under a contract or other arrangement) providing fixed route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (5) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regards to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. Department of Transportation (DOT) regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005).
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This Executive Order 13166 guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Order 5610.2, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice. The DOT Order describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ (DHHS) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE) Program. To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
- (1) The recipient agrees and assures that it will comply with Section 1101(b) of MAP-21 (23 U.S.C. 101 note), which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE’s. This 10 percent national goal is aspirational and is used by DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities .
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

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

For further guidance, refer to the federal laws, regulations, and executive orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and transportation improvement programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the MPO, and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.
6. DEBARMENT AND SUSPENSION. The purpose of the DOT governmentwide debarment and suspension (nonprocurement) regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration's (GSA) system for award management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a website, <https://www.sam.gov>, which is updated in real time as changes to the data occur.
 - a. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (e.g., those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
 - c. The awarding party must verify that the person is not excluded or disqualified by:
 - (1) Checking the SAM list of excluded parties maintained by the GSA and available at <http://www.sam.gov>. **Note:** strongly recommended by FTA;
 - (2) Collecting a certification from the prospective awardee; or
 - (3) Adding a clause or condition to the third party contract or subagreement with that awardee.

In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the these regulations.

7. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Rural Area Formula Program, and other programs as determined by the secretary are required by 49 U.S.C. 5331 to establish drug and alcohol (D&A) testing programs. In the MAP-21 legislation, although the 5316 Job Access and Reverse Commute (JARC) and 5317 New Freedom Programs (NF) were consolidated into the applicable formula programs (5307 and 5311), pursuant to Section 5331(b)(1)(A), FTA intends for those recipients solely engaged in JARC and NF activities to continue to be exempt from D&A testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4. This exemption is applicable if the recipients receive JARC and NF only.

The purpose of the Drug and Alcohol testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning D&A testing (49 CFR parts 40 and 655 respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with Parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219—for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382—for contractors with mixed transit/motor carrier/school bus), and United States Coast Guard (USCG) (46 CFR parts 4 and 16—for ferryboat) regulations concerning drug and alcohol programs.

FTA's regulation (49 CFR part 655) applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides [public] transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes sub-recipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations with effective ongoing oversight. FTA's regulation does not apply to construction phases of funded projects. Contractors that supply newly manufactured equipment are excluded, as are facility construction workers. The regulation applies to the testing, startup, and actual revenue operations of FTA-funded transit systems. Van pool drivers, as volunteers and not employees of a transit system that do not receive remuneration over their actual expenses, are exempt from testing. Also exempt are taxi operations for paratransit transportation where the patron chooses the service through a user subsidy or voucher and the service is not dispatched through the FTA recipient or sub-recipient. In addition, maintenance contractors for rural 5311 providers and providers in urbanized areas with populations of less than 200,000 are exempt as well.

FTA's regulation requires testing of employees who perform one or more of five transit safety-sensitive functions, which are defined at 49 CFR 655.4. The regulation requires the following six types of testing for illegal drug use and alcohol misuse: pre-employment (including transfer from a non-safety-sensitive position to a safety-sensitive position, and removal from the random pool for ninety days or more); reasonable suspicion; random; post-

accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in twelve months after returning to duty). Since an October 2010 amendment to 49 CFR part 40, return-to-duty and follow-up tests are required to be directly observed.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Technical assistance materials and training information to help recipients implement the rules are available at FTA's website (<http://www.fta.dot.gov/safetysecurity/12533.html>) or through contacting the FTA office of transit safety and oversight, FTA headquarters.

8. **DRUG-FREE WORKPLACE.** In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. These provisions apply only to FTA's direct recipients and do not extend to sub-recipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link:

<http://www.dol.elaws/drugfree.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and D&A testing rules are available on FTA's website (<http://www.fta.dot.gov>) or by contacting FTA's office of safety and oversight, FTA headquarters, 1200 New Jersey Ave. SE, Washington, DC 20590.

9. **EMPLOYEE POLITICAL ACTIVITY.** To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. Sections 1501–1508, and Sections

7324–7326, and U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(1)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.

10. ENERGY CONSERVATION. The recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.* The recipient, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C. Only after the completion of an energy assessment will FTA approve assistance for the construction, reconstruction, or modification of buildings for which the recipient submits an application. An energy assessment consists of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The energy assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special or innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure projected over the life of the facility and including projected costs of this fuel; and the kind of energy the recipient will use.
11. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with the National Environmental Policy Act (NEPA) implementing regulations (40 C.F.R. part 1500-1508), FHWA and FTA’s Environmental Impact and Related Procedures (23 C.F.R. part 771), Efficient Environmental Reviews for Project Decisionmaking (23 U.S.C. part 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion, environmental assessment, or environmental impact statement) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., final design and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE). Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until a ROD, FONSI, or CE is issued.
12. ENVIRONMENTAL JUSTICE. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and the FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects on our programs, policies, and activities on minority populations and/or low-income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out the executive order.

13. INTERGOVERNMENTAL REVIEW. Executive Order 12372 and DOT regulations, “Intergovernmental Review of Department of Transportation Programs and Activities” (49 CFR part 17), require that a grant applicant applying for FTA funds comply with a state’s intergovernmental review process. The requirement is to ensure that the appropriate state authorities are informed about and provided an opportunity to comment on projects for which federal assistance is being provided within the state. Many states have their own review procedures, which describe the federal programs and activities that had been selected for intergovernmental review, and how applicants satisfy the state’s intergovernmental review requirements.

If there is no intergovernmental review process in the grant applicant’s state, then programming of a project in the TIP and statewide transportation improvement program (STIP), or unified planning work program (UPWP), as appropriate, will be considered by FTA as meeting the need for intergovernmental review.

If there is an adopted state process of intergovernmental review for an FTA program or activity, FTA requires that the applicant, upon the MPO’s approval of the TIP, notify the single point of contact for the state’s intergovernmental review process that the MPO has approved the TIP and that the applicant has submitted the TIP to the governor for approval and subsequent inclusion in the STIP.

The applicant must provide the single point of contact, with the name and mailing address of the office to which it is submitting the TIP. The applicant may wish to transmit to the single point of contact, or request the MPO to transmit pertinent documents on public transportation projects from the approved TIP. Timely alerting of the single point of contact will allow that entity to review and comment on the projects in the TIP during the STIP development process, if the entity so chooses. In the FTA electronic award management system, an applicant should indicate whether Executive Order 12372 applies, and the date the state reviewed the application, if applicable.

14. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the secretary of Labor and in accordance with the Davis-

Bacon Act, as amended. The secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the Master Agreement.

- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), formerly Section 13(c) of the Federal Transit Act as amended. Those arrangements must be certified by the secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-1519, 200 Constitution Avenue NW, Washington, DC 20210; telephone 202-693-1193; fax 202-693-1344.

15. PRESIDENTIAL COIN ACT. In accordance with Pub. L. 109-145, beginning January 1, 2008, all transit systems that receive operational subsidies or any disbursement of funds from the federal government shall be fully capable of accepting and dispensing \$1 coins and must display signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.
16. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.
17. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use federal financial assistance in a project that will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C. chapter 61)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-wide regulations that apply to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR part 24 is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html or on FHWA's website at: <http://www.fhwa.dot.gov/realstate/49cfr.htm>. Also, recipients should be aware of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and Circular 5010.1.

18. **RESTRICTIONS ON LOBBYING.** Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or cooperative agreement. The state, sub-recipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

19. **SAFETY.** MAP-21 amended 49 U.S.C. 5329 to provide FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that the DOT issue a National Public Transportation Safety Plan, establish safety performance criteria for all modes of public transportation, define a "state of good repair," establish minimum safety performance standards for public transportation vehicles, and a safety certification training program. States are required to strengthen their state safety oversight (SSO) programs and submit them to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will be issuing regulations and interim guidance to implement these new requirements in consultation with public transportation industry stakeholders.

Note: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have

agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers.

20. SCHOOL BUS TRANSPORTATION. Section 5323(f) of title 49 U.S.C. prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose of FTA’s school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start Program limit the types of vehicles which may be used to transport children participating in a Head Start Program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.
21. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building it designs and constructs with federal assistance is compliant with seismic safety standards. The grant applicant is responsible to know before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with DOT implementing regulations, “Seismic Safety,” at 49 CFR 41.117(d), and must assure FTA that it will obtain a certificate of compliance with the requirements. A recipient makes this assurance through the FTA annual certification process.
22. SENSITIVE SECURITY INFORMATION. To the extent applicable, the recipient agrees to comply with 49 U.S.C. 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR part 15, and with 49 U.S.C. 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR part 1520.
23. STATE SAFETY OVERSIGHT. MAP-21 did not amend 49 U.S.C. 5330, but subsection 20030(e) of MAP-21 provided that Section 5330 would be repealed three years after the effective date of FTA’s regulation implementing the new Section 5329 requirements. Until then, the current regulations at 49 CFR Part 659 will remain in effect. The existing regulations require oversight of the system safety program plan development and implementation, internal safety and security audits, accident and hazard investigations, and corrective action plan development and implementation. Until new regulations are in effect, an oversight agency must continue to annually certify to FTA that it has complied with the requirements of 49 CFR Part 659. The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

Section 5330 and Section 5329 authorize FTA to withhold up to 5 percent of an affected state or UZA’s apportionment if FTA determines the state is not in compliance or is not making adequate efforts to comply with the rule. FTA may restore withheld formula funds if the state is in compliance within two years.

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A. APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION

1. PREAPPLICATION STAGES.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the FTA electronic management system. Applicants must have access to the system in order to enter a grant. If an applicant does not have access to the FTA electronic award management system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix F of this circular.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved statewide transportation improvement program (STIP) for capital projects or a unified planning work program (UPWP) for planning projects.
- c. Environmental Determination. The impact that a proposed FTA-assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Urbanized Area Formula Program, or any other FTA grant program, must annually submit Certifications and Assurances that are applicable to the grant applicant's active and new grants during the fiscal year. The Certifications and Assurances should be examined annually for changes, deletions, and additions.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, DBE Goals, and Americans with Disabilities Act of 1990 (ADA) Paratransit Plan. FTA's regional civil rights officer must verify that all required civil rights submissions are current at the time the grant application is submitted in the FTA electronic award management system. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. ("Civil Rights" see Chapter VII of this circular.) FTA's office of civil rights may request additional information needed to affirm that the proposed project or elements thereof are in compliance with federal civil rights requirements, and/or reports on activities and progress to address findings identified in civil rights compliance reviews and assessments.
- f. Flexible Funding Documentation (if Applicable). A grant applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once this resource of funds is included in the TIP, and incorporated into the STIP,

the grant applicant informs the state transportation agency that a grant application is in development to FTA for the use of flexible funds and requests that the state inform the Federal Highway Administration (FHWA) of the need to transfer the funds to FTA for obligation (in some states, in practice, the metropolitan planning organization [MPO] or FTA notifies the state transportation agency). Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the agency will use the funds for public transportation purposes and requests that FHWA transfer funds for the project to FTA. Information showing that these processes are under way should be included in the grant application. The grant applicant should also include the type of flexible funds, the amount, the purpose for which the funds will be used, and where they appear in the STIP.

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEMS INFORMATION). Applicants should submit their grant applications electronically. The user guide, available on the home page, provides detailed information on how to access and use FTA's system. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements; grant amendments; budget revisions; and close-out procedures. Applicants should enter the following information into the system when preparing an application:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields, including recipient address, contact information, union information, urbanized area (UZA) identification number, congressional district(s), data universal numbering system (DUNS) number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.

Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

- b. Project Information. Certain basic information required on the federal Grant Application Standard Form 424 is incorporated into the project setup fields. Applicants must identify whether the application is a new grant, or a grant amendment, the project start/end date, and, per Executive Order 12372 Intergovernmental Review of Federal Programs, review date if applicable (see additional information about EO 12372 and grant project costs in Chapter VII of this circular).
- c. Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. There is a project description field as well as a specific text field for this information associated with each activity line item (ALI). Project activities must be sufficiently described to

assist the reviewer in determining eligibility under the program. Sources of funds may also be included in the description.

- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, a grant applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the grant applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the grant applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details section.
- f. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All rolling stock procurements must include vehicle description and fuel type; expansion activities must include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for the Section 5307 program. The project budget for each grant application that includes associated transit improvement funds must include a scope code for associated transit improvements and specific budget ALIs for associated transit improvements. The grant budget may also include non-add scopes. A non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Non-add scopes are used for intelligent transportation systems (ITS), security funds, funding allocated to tribal governments, and other special emphasis areas.
- g. Determination of Sufficient Funds. All sources of funds must be identified and confirmed. The grant applicant should periodically examine the status of existing grants to make sure that unused fund balances, consisting of funds with a potential to lapse, are in fact needed to complete those grants. A grantee may deobligate any excess funds

during their period of availability so that they may be reobligated into any pending or upcoming grant application. Otherwise excess funds left at the end of the project will be deobligated at closeout and, if lapsed, will be lost to the grantee.

FTA reviews the status of a UZA's apportionment, including prior year carryover balances, as well as current year allocations, to make sure that sufficient funds exist to finance the proposed program. FTA obligates Section 5307 program funds on a first-in, first-out basis to make sure that the oldest funds are obligated before more recent funds. This process prevents the potential of funds lapsing in a given UZA, which would render them no longer available to the area for obligation.

- h. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will automatically generate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If it does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- i. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (see 23 CFR 771). Grant applicants should refer to part 771.118 for a listing of FTA's categorical exclusions. Most projects under the Section 5307 program meet the criteria for a categorical exclusion (CE) and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- j. Fleet Status. Applications submitted in requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's entire fleet including the applicant's spare ratio. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria. A Sample Fleet Status Report can be located in Appendix D of this circular. Official property records (or a Rolling Stock Status Report) must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable. The requirements for equipment records that must be maintained by the grantee are detailed in FTA C 5010.1
- k. ADA 10%. Up to 10 percent of a recipient's section 5307 program apportionment may be used towards the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143) with a federal share of up to 80 percent. To be eligible, recipients must be in compliance with applicable requirements of that Act, for both fixed route and demand responsive service. If an application includes ADA paratransit operations as a capital expense and there is more than one grant recipient in the UZA, the application should

include documentation of the designated recipient's sub-area allocation regarding the use of the ADA paratransit provision and the project budget should also include the appropriate ALI for the capital activity. FTA will reserve funds under a financial purpose code specific to the activity that will govern drawdown requests for this purpose. ADA paratransit operations remain an eligible operating expense, at a 50 percent federal share, for grantees otherwise eligible for operating assistance (e.g. those located in small UZAs or with fewer than 100 buses in maximum fixed route service).

- l. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in by the authorized official of the applicant.
- m. Department of Labor Certification. Once the grant application has been submitted by the recipient, the application is forwarded to the Department of Labor (DOL). DOL must certify all Urbanized Area Formula grants containing capital or operating expenses before FTA will approve them. See Chapter VII , "Other Provisions" of this circular for more information on DOL certification.
- n. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements and other federal requirements have been met, FTA awards and obligates funds requested in the grant.
- o. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Grants that indicate the use of pre-award activity require the submission of a federal financial report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.

3. **APPLICATION CHECKLIST.**

Applicants should use the following checklist in preparing a complete application:

Section 5307 <u>APPLICATION CHECKLIST</u>	
Part I—Recipient Information	
	Are annual Certifications and Assurances selected and pinned/signed by the authorized official and attorney?
	Is the Recipient Contact, Designated Signatory, Opinion of Counsel, Authorizing Resolution, and other information complete?
	Is UZA/congressional district information entered and accurate?
	Is union contact information entered and accurate?
	Has civil rights program documentation been approved by FTA?
	Has the applicants DUNS number been entered in the appropriate field?
Part II—Project Information	
	Does the project description include adequate detailed information of the project(s) such as an appropriate project title?
	Is information on any sub-recipient(s) and their projects included?
	Is this a new application or grant amendment?
	Does the application include an appropriate start/end date?
	If a supplemental agreement is applicable, has “yes” been selected?
	Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included?
	Are STIP/UPWP approval dates and page numbers or location identifiers included in the application?
	If pre-award authority is applicable, has “yes” been selected?
	If federal debt delinquency is applicable, has “yes” been selected? (If yes, grant applicant must explain in details section.)
	Has the EO 12372 review been completed, if applicable?
	Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements?
	Is UZA/congressional district information entered and accurate?
Part III—Budget	
	Are ALI codes entered under the appropriate scope codes and consistent with project descriptions?
	Are funding percentages and match ratios acceptable?
	Does the funding amount entered in the budget match financial information entered in the “Project Information” field for:
	a. Federal funds
	b. Local match
	Does the rolling stock (vehicle) line item contain accurate information such as:
	a. Description
	b. Fuel type
	Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? If appropriate and necessary.
	Will the applicant expend 1 percent of the Section 5307 funds in this application for security purposes? (If yes, list security-related projects in the project budget and summarize them in the non-add scopes. If no, select the reason.)
	If applicable, has the applicant expended 1 percent of Section 5307 funds for associated transit improvements in areas over 200,000 in population?
	Where applicable, have non-add scopes been added showing the funds allocated to intelligent transportation systems, security funds, tribal governments, or other special areas of emphasis?
Part IV—Project Milestones	
	Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.)
	Have estimated completion dates been entered?
Part V—Environmental Findings (NEPA)	
	Has an environmental finding been entered for each ALI or scope?
	For Categorical Exclusion II (d), EA, and EIS, has decision documentation been referenced or attached?
Part VI—Fleet Status	
	Has information pertaining to current and future revenue vehicles been entered?

	If applicable, are vehicles entered in the table consistent with the budget?
	If applicable, is the spare ratio 20 percent or less?

B. APPENDIX B

INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

1. INTRODUCTION. This Appendix provides information about the items that appear on an approved project budget and provides instruction for preparing a project budget. A Federal Transit Administration (FTA) grant obligates a recipient to undertake and complete activities defined by the purpose or purposes of a grant and the budget incorporated into the grant agreement. A grant budget is the approved financial plan that FTA and the recipient agree the recipient will follow in carrying out the purposes of the grant.

The recipient will use the FTA electronic award management system to prepare project budgets. The user's guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose. A grant program and budget may have several scopes.

2. DEVELOPING THE BUDGET. FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the scope and activity levels of information on the approved project budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system. Examples of formats for capital and operating assistance follow.

a) Format for Capital Assistance.

(1) Capital expenditures under the Section 5307 Program include those items defined as "capital" in 49 U.S.C. 5302(a). Vehicles can be purchased either for replacement or expansion purposes. Careful attention to use of the appropriate ALI codes enables FTA to report accurately on the use of formula and discretionary funds, for example in the annual statistical summary report.

For capital projects, the recipient should first select the appropriate scope code. Then for each scope, an ALI or ALIs should be selected.

EXHIBIT B-1 Project Scope—Sample No. 1

Scope	Quantity
111-010 Bus—Rolling Stock	6

Activity	Line Items	Quantity
11.12.02	Purchase 35-foot replacement buses with lifts	4
11.13.03	Purchase 30-foot buses with lifts for service expansion	2
11.12.40	Spare Parts/Assoc Capital Maintenance Items	

In the example above, a mix of rolling stock will be purchased, and the scope includes the purchase of associated capital maintenance items (spare parts). If a grant applicant wishes to include radios and fareboxes as part of this purchase, it could also list radios and fareboxes as part of the rolling stock scope. In such a case, the grant applicant would not include the quantities for the radios and fareboxes in the rolling stock total quantity under 111-01, but would indicate it in the activity level description. If a grant applicant proposes to purchase an entirely new fare collection system or radio communications system, the more appropriate classification might appear as follows:

EXHIBIT B-2
Project Scope—Sample No. 2

Scope	Quantity
114-00 Bus—Support Equipment and Facilities	45
(Note that in this example the activity code description appropriate to this Scope Code, Bus—Stations/Stops/Terminals, has been overwritten to provide a more accurate description.)	

Activity	Line Items	Quantity
11.42.06	Shop Equipment	
11.42.10	Purchase Fare Collection (mobile)	45

Scope	Quantity
116-00 Bus Signal/Communications System	70

Activity	Line Items	Quantity
11.61.01	Design Bus Signal System	
11.62.02	Acquire Communication System	
11.62.03	Purchase Bus Radios	50

From these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear. A grant applicant that operates a fixed guideway system or engages in a new start project will use scope level numbers that correspond to the fixed guideway and new start segments of the

activity code chart; for example, scope code 121-01, 02...for Rail Rolling Stock or 141-01, 02...for New Start Rolling Stock; or 123-01, 02...for Rail Stations and 143-01, 02...for New Start Stations.

- a. Sub-recipient Information. The design of the project budget can also accommodate sub-recipient information in cases where a recipient such as the state wishes to track each sub-recipient's projects separately. In the following examples, the grant applicant is purchasing rolling stock on behalf of two small operators:

EXHIBIT B-3
Presenting Sub-recipient Information—Format Option No. 1

Scope	Quantity
111-01 Purchase Rolling Stock and Related Equipment	7

Activity	Line Items	Quantity
11.12.03	Purchase replacement buses w/lifts for Allegany County	3
11.12.15	Purchase vans w/lifts for Cumberland Transit System	4

EXHIBIT B-4
Presenting Sub-recipient Information—Format Option No. 2

Scope	Quantity
111-00 Rolling Stock for Allegany County	3
Activity Line Items	Quantity
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
Scope	Quantity
111-01 Rolling Stock for Cumberland Transit System	4
Activity Line Items	Quantity
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4

Under format option number 1, FTA would base the determinations regarding budget revisions and scope changes on the quantity total of seven vehicles found at the scope level. Under format option number 2, FTA would base those determinations on the specific scope level quantity for each of the sub-recipients—that is, quantities of three and four.

- b. Two Budget Approaches to Large Capital Projects. A grant applicant can also choose which of the two format options above best suit its internal management of projects. For example, a grant applicant developing a bus rapid transit line may wish to develop separate scope level activities for each station and include the relevant activities under each, or the same grant applicant may wish to group all activity under one scope.

In either case, the project budget can easily accommodate budget revisions, since funds can be transferred between or among various scope level projects and their associated line items.

- b) Format for Operating Assistance.

(1) Scope 300 represents operating assistance. The ALI codes for operating expenses—30.09.01 and 30.80.01—appear on page eight of the ALI chart. ALI 30.09.01 is used for the 50 percent federal share of operating assistance. The ALI 30.80.01 is used for the Congestion Mitigation and Air Quality (CMAQ) Improvement Program operating assistance for new service (three-year limit) and FTA finances it up to 80 percent federal share. The scope for operating expenses is the first two digits, 300. If funding is being

requested for more than one local fiscal year for the same grant applicant, FTA suggests that the applicant break down the funding at the activity level. For example:

Scope

300-00 Operating Assistance

Activity Line Items

30.09.01 Operating Assistance for the period 7/1/13—6/30/14

30.09.01 Operating Assistance for the period 7/1/14—6/30/15

Designated recipients requesting operating assistance on behalf of more than one operator may choose to separate operating assistance funding at either the scope level or the activity level.

3. **BUDGET MODIFICATIONS.** At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The recipient is responsible for controlling and monitoring all grant activities to ensure they are implemented according to the approved budget. The manner in which the applicant initially structures a budget during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded: through a budget revision, an administrative amendment, or a grant amendment. Whether FTA permits a budget revision (with or without prior FTA approval before incurring costs) or whether the grantee will need an amendment to the project depends on the effect of the proposed change on the scope of the project. FTA's review of grant modifications will include a determination of whether or not the proposed change is significant enough to require Department of Labor (DOL) certification of employee protective arrangements. Recipients should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of modification is appropriate for the proposed action.

Grant modifications are electronically submitted, reviewed, and approved in the FTA electronic award management system.

a. **Budget Revision.**

- (1) **General.** Budget revisions may be made as long as there is no change in the recipient, purpose, scope codes, and federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved statewide transportation improvement program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new equipment must be addressed in the budget revision, as applicable.

- (2) Procedures. Grantees submit budget revisions in the FTA electronic award management system using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. The FTA reviewer will return incomplete budget revisions to the grantee for more information. For assistance with completing budget revisions, please contact the FTA regional or metropolitan office.

Recipients may request budget revisions either before or after incurring costs, depending on the nature of the request. If the budget revision meets the criteria outlined below, FTA concurrence is required before costs associated with the proposed change are incurred.

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the criteria below may result in a recommendation to undertake a grant amendment. The FTA regional or metropolitan office will make this determination during its review.

- (a) The federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
- (b) Federal funds are transferred between ALIs with different federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer.
- (c) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with Americans with Disabilities Act of 1990 (ADA) or Clean Air Act (CAA) requirements.
- (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units, for grants with less than ten vehicles, or more than 20 percent from the quantity identified in the original grant.

Note: If the change in the number of revenue rolling stock vehicles exceeds 20 percent, the revision must meet FTA’s spare ratio requirements, and a bus fleet status report should supported it.

- (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
- (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of federal funds awarded in the original grant or change the scope of the project contained in the grant.

- (g) The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

Note: If an ALI to an existing scope is added to move a facility project to the next phase of construction, the budget revision may be sent to DOL for informational purposes. In addition, FTA must confirm eligibility of the project to advance to the next phase of construction.

- (4) Financial Purpose Code Transfers. When a budget revision includes a transfer of funds between capital/operating/planning activities, FTA must make a financial purpose code (FPC) change before FTA permits the grantee to draw funds for this purpose. FPC transfers of any kind require prior FTA concurrence and regional office notification to FTA's office of accounting.
- (5) Examples. The following are examples of situations when a grantee might request a budget revision. **Note:** If the examples below meet one of the criteria outlined above, the grantee must request FTA concurrence prior to incurring the costs for the requested activities.
- (a) Budget revisions to existing activity line items (ALIs). Grant AB-90-234 includes a scope for vehicles (111-00) with the ALI to purchase 40-foot buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover added construction expenses. Following the process described above and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Budget revisions that require an FPC transfer. Grant AB-90-234 has an approved budget for \$250,000 in federal funds for operating assistance (30.09.01) at a 50 percent federal/50 percent local funding ratio, and \$50,000 in federal funds for the purchase of vans (11.12.15) at an 80 percent federal/20 percent local funding ratio. The grantee has \$5,000 in federal funds remaining under operating assistance and would like to use the remaining operating funds toward the purchase of vans, a capital line item. With prior concurrence from FTA, this can be accomplished through a budget revision. Because these two scopes have different funding ratios, the local share must be adjusted to ensure the correct funding ratio is maintained for each ALI.
- (c) Adding an ALI to an existing scope. The scope for stations stops/terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that it prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI 11.33.10 and shift the funds from

11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and has satisfied applicable NEPA requirements.

- (6) Operating Assistance Changes. A grantee may use a budget revision to reflect time period changes, adjustments, or extensions to the operating period provided the total amount of federal funds previously awarded under the grant remains unchanged.

b. Administrative Amendment.

- (1) General. An administrative amendment is usually initiated by FTA and may only be used when no change will result in the scope, amount, or purpose of the grant. FTA may use an administrative amendment to change or clarify the terms, conditions, or provisions of a grant agreement. FTA also uses an administrative amendment to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee or grantee's name, or to deobligate federal funds that the grantee no longer needs to complete the approved project scope or purpose.

c. Grant Amendment.

- (1) General. FTA requires a grant amendment when there is either a change in the scope or an addition of federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in the FTA electronic award management system using the "Create Amendment" screen. Grant amendments require a revised grant agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee does not need to resubmit the portions of the original grant application that the change did not affect. The grantee must submit a detailed description of the changes and a revised project budget. For example, in the FTA electronic award management system under the project details section of the grant, grantees should include a header (e.g., "Amendment #1") and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:
- (a) Examples.
1. A change in the quantity of items the grantee will purchase or construct that changes the purpose or intent of the approved grant.

2. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
 3. The addition of an ALI that results from an amendment to the approved TIP/STIP.
 4. Budget revisions that result in additions or deletions of scope(s) or ALIs are sent to DOL for information. Grant amendments are sent to DOL for certification.
- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of federal funds in the grant. The one exception is if the request does not change the scope of a grant and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification.
4. REGIONAL ASSISTANCE. Grant applicants should contact the appropriate FTA regional office for assistance in preparing the project budget for a Section 5307 Program grant application.

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C. APPENDIX C

OPERATING ASSISTANCE PROJECTS

1. APPENDIX CONTENTS. For applicants eligible to receive Section 5307 operating assistance, the following paragraphs present budget information to determine which operating expenses are eligible for federal funding. The discussion provides information on certain revenue and expense items of particular relevance to operating assistance projects. For further assistance, the applicant should review the cost principles and standards discussed in Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," 2 CFR part 225.

The Federal Transit Administration (FTA) reserves the authority to request any applicant to provide documentation in support of expense and other financial information indicated in an operating assistance application on a case-by-case basis. In the event that an audit reveals an overpayment or an inappropriate payment of operating assistance funds, the recipient will be required to reimburse FTA.

2. OPERATING EXPENSE WORKSHEET. FTA provides an operating expense worksheet for applicants to determine the amounts of available Urbanized Area Formula Program funds that the applicant may actually request. The use of this worksheet ensures consistency in the manner FTA calculates operating expenses and provides an audit trail, which may have long-term benefits to the recipient. FTA does not require the applicant to submit this worksheet as part of its application; however, the applicant must maintain records to support charges to a project.

The operating expense worksheet developed in support of the funding request should contain several basic line items, as follows:

- a. Eligible Operating Expenses. Eligible operating expenses are limited to direct labor, material, and overhead expenses incurred on an accrual basis by an operator to provide public transportation service in the UZA, usually during the specified project time period. Expenses for contracted services directly incidental to the management and operation of transportation services and not otherwise reimbursed are also included. Include expenses incurred to provide human services transportation under contract.
- b. Less Eliminations. These lines represent the ineligible expenses, nonpublic transportation expenses, revenue/offset items (contra-expenses), and other exclusions. Ineligible expenses include such items as entertainment, fines and penalties, and charitable donations. Additionally nonpublic transportation expenses such as charter, school bus, sightseeing, and maintenance of nontransit vehicles are ineligible expenses. Contra-expenses are revenue items that directly offset transit expenses and are therefore eliminated from total expenses. Common types of contra-expenses are earned interest, proceeds from the sale of equipment in excess of the depreciated value, cash discounts and refunds, insurance claims, and reimbursements which directly offset accrued liabilities.

- c. Eligible Operating Expenses. Eligible operating expenses form the remainder when various categories of noneligible expenses are subtracted from total expenses. (Line 1 – Line 2 = Line 3)
- d. Farebox Revenues and Revenues Applied to Eligible Expenses Not Includable as Local Share. Recipients must represent all funds used to cover eligible operating expenses in the worksheet. This line represents those revenues used to cover eligible expenses that recipients cannot include in “local share”—in other words, “nonmatchable” revenue. This category includes public transportation farebox revenues. (Line 4)
- e. Net Project Cost. This line represents the difference between lines (3) and (4)—that is, the amount of eligible operating expenses to be covered by the local and FTA shares. (Line 5)
- f. Local Share. Local share (that is, the share of project costs not financed by FTA) includes all local and state funds contributed to meeting net project cost. This includes cash from nongovernment sources other than revenue from providing public transportation services; revenues from the sale of advertising and concessions; and amounts received under a service agreement with a state or local social service agency or private social service agency. Only those funds actually applied to eligible operating expenses incurred on an accrual basis in providing public transportation services during the project period may be considered local match. (Line 6)
- g. Net Expenses Before Applying FTA Funds. This amount represents the difference between “net project cost” and “local share,” and it should represent the amount of eligible operating expenses not otherwise covered by public transportation revenues or local share funds. (Line 7)
- h. Maximum FTA Share. This is the amount determined to be the maximum FTA share, based on the worksheet. FTA share can be up to 50 percent of the net project cost. If local share is less than or equal to 50 percent of net project cost, FTA can match it dollar-for-dollar with FTA operating assistance, subject to the availability of Urbanized Area Formula Program funds, the local programming of projects, and the eligibility of operating expenses. If the local share is greater than 50 percent of net project cost, FTA operating assistance will cover only the amount in line 7, “net expenses before applying FTA funds.” (Line 8)

The worksheet should describe as fully and accurately as possible the actual or projected accrual of public transportation operating expenses, the identification of expenses eligible for FTA assistance, the application of public transportation revenues to cover such expenses, the application of state and local government funds, other sources of local share, and the resulting eligibility for FTA operating assistance.

Where an applicant applies on behalf of two or more individual public transportation operators under one operating assistance project, the worksheet should represent aggregated statements of project time period revenues and expenses.

The applicant should also retain appropriate documentation in support of the worksheet to demonstrate the proper allocation of revenues to nonoperating expenses, the availability of local share funds, and such other reconciliations as may be necessary to clarify estimates or projections of financial conditions during the project time period. FTA does not require certifications of worksheets based on estimates or projections.

In preparing the worksheets, applicants should itemize entries under each revenue and expense category. Applicants may, of course, expand the number of lines provided in the attached format whenever necessary to accommodate additional entries. It is particularly important that the itemization of revenues and expenses be sufficient to permit verification of calculations of eligible operating expenses, net project cost, local share and eligible FTA assistance during any subsequent audit pursuant to 49 U.S.C. 5307 and to OMB Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations."

SAMPLE OPERATING EXPENSE WORKSHEET

For the Period: _____

Public Transportation Operator(s): _____

Applicant: _____

Designated Recipient: _____

(A) Total Operating Expenses (Itemize)

_____\$ _____
_____\$ _____
_____\$ _____
_____\$ _____

TOTAL OPERATING EXPENSES \$_(1)

(B) Less Eliminations

(1) Less Ineligible Expenses (Itemize)

_____\$ _____
_____\$ _____

(2) Less Nonpublic Transportation Expenses (Itemize)

_____\$ _____
_____\$ _____

SAMPLE OPERATING EXPENSE WORKSHEET (cont.)

(3) Less Revenue/Offset items (Contra-Expenses) (Itemize)

\$	_____
\$	_____

(4) Less Other Exclusions (Itemize)
(e.g., costs already attributed to preventive maintenance)

\$	_____
\$	_____

TOTAL ELIMINATIONS	\$__(2)
--------------------	---------

(C)	Eligible Operating Expenses (Line 1– Line 2)	\$__(3)
-----	---	---------

(D)	Less Farebox Revenues	\$__(4)
-----	-----------------------	---------

(E)	NET PROJECT COST (Line 3 – Line 4)	\$__(5)
-----	------------------------------------	---------

(F)	Local Share (Itemize) (Human Services contract revenue)_____	
	(local sales tax)_____	
	_____	\$__(6)

(G)	Net Expenses Before Applying FTA Funds (Line 5 – Line 6)	\$__(7)
-----	---	---------

(H)	Maximum FTA Share	\$__(8)
-----	-------------------	---------

(I)	FTA Funds Requested (this amount must not exceed line 6)	\$__(9)
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D. APPENDIX D

FORMS AND REPRESENTATIVE DOCUMENTS

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Sample Authorizing Resolution	D-2
Sample Opinion of Counsel	D-4
Fleet Status Report as Seen in the FTA Electronic Award Management System (Screen Sample).....	D-5
Proceeds from Sale of Transit Assets	D-6
Like-Kind Exchange Example (Calculation Tool)	D-7
Supplemental Agreement	D-8

1. SAMPLE AUTHORIZING RESOLUTION.

Resolution No. _____

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code, or other federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the applicant, and may require the applicant to provide the local share of the project cost;

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. (If the applicant is requesting Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, either alone or in addition to other federal assistance administered by the Federal Transit Administration, the resolution should state whether the applicant is the designated recipient as defined by 49 U.S.C. 5307(a)(2), or whether the applicant has received authority from the designated recipient to apply for Urbanized Area Formula Program assistance.)
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the

(Governing Body of the Applicant) held on (Month, Day, Year)

[If the Applicant has an official seal, impress here.]

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

2. SAMPLE OPINION OF COUNSEL.

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code; and other federal statutes authorizing activities administered by the Federal Transit Administration.

(If the applicant intends to use this opinion to qualify for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, the opinion must state whether the applicant is the designated recipient as defined at 49 U.S.C. 5307(a)(2) or whether the applicant has received authority from the designated recipient to apply for and receive Urbanized Area Formula Program assistance).

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation _____

2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (cite source and provide a copy of, for example, the local ordinance passed by city council or other governing body authorizing funding for the local share)

3. I have reviewed the pertinent federal, state, and local laws, and I have concluded that there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find that there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

3. FLEET STATUS REPORT. Shown here is a screen sample of a Fleet Status Report as seen in the FTA electronic award management system.

The screenshot shows a web browser window titled "https://ftateamweb.fta.dot.gov - Fleet Status (CA-90-Y306) - Micros...". The page has a header "Fleet Status" with navigation icons. Below the header are two tabs: "Fleet Status" (selected) and "Fleet Details".

On the left, under "Fleet Type:", there are radio buttons for "Fixed Route" (selected), "Paratransit", "Light Rail", "Commuter Rail", "Heavy Rail", "Waterbourne", and "Other".

The main content area contains a table with columns "Before", "Change", and "After". The table is organized into sections: "I. Active Fleet", "II. Inactive Fleet", and "III. Total (I.C and II.C)".

	Before	Change	After
I. Active Fleet			
A. Peak Requirement	53	0	53
B. Spares	8	0	8
C. Total (A+B)	61	0	61
D. Spare Ratio (B/A)	15.1%	0%	15.1%
II. Inactive Fleet			
A. Contingency	5	0	5
B. Pending Disposal	0	0	0
C. Total (A+B)	5	0	5
III. Total (I.C and II.C)	66	0	66

The browser's status bar at the bottom shows "Internet".

4. PROCEEDS FROM THE SALE OF PUBLIC TRANSPORTATION ASSETS.

Pursuant to 49 U.S.C. 5334(h), a recipient may transfer or sell capital assets that it has acquired with FTA assistance with FTA approval. In accordance with 49 U.S.C. 5334(h)(4), the recipient must apply the proceeds from the sale of a public transportation asset that is no longer needed to a subsequent public transportation capital project. If the recipient cannot use the funds towards another eligible capital project, it must return to FTA its share of the proceeds.

When the recipient/applicant next submits a grant application to FTA, it must apply the proceeds to reduce the gross capital costs of the new public transportation project. In the FTA electronic award management system, the grant applicant should indicate the amount of the proceeds in the "Adjustment Amount" field; this shows that the proceeds from the earlier disposition are being applied to the project and that those proceeds are being used to reduce the total eligible cost. If appropriate, the grant applicant may also describe this action in the project description or extended budget description text box.

EXAMPLE.

Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. The recipient no longer needs the parcel for public transportation purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000. The recipient applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, FTA expects the recipient to report the use of the proceeds from the earlier sale of the asset in the following manner:

5. LIKE-KIND EXCHANGE EXAMPLE.

A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was federal funding whereas 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 "federal interest" in the new vehicle.

Instead of keeping the bus in service for twelve years, the useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.

Because the bus had a minimum useful life of twelve years and FTA determined its depreciation on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or \$125,000. The remaining federal interest was 80 percent of that figure, \$100,000.

Assume, for example, the recipient realized \$100,000 from the sale of the six-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.

If the recipient were to purchase a new bus in 2011 for \$270,000, the transaction would look like this:

Net project cost calculation:

Gross project cost of new bus	\$270,000
Less straight-line depreciated value of replaced bus.	- 125,000
Net project cost	\$145,000
Federal share 80%	116,000
Local share 20%	29,000

Sources of funds for new bus:

Net sales proceeds from replaced bus	\$ 100,000
New local cash	
Straight-line depreciated value shortfall	25,000
Local share of net project cost	29,000
Federal share	<u>116,000</u>
TOTAL	\$270,000

The federal interest in the new bus is \$216,000 (\$100,000 transferred from the old vehicle and \$116,000 in the new).

If the recipient had received more than \$125,000 in proceeds, all the proceeds (minus reasonable sales costs) would still have been applied as the federal share to the new vehicle. FTA is entitled to have applied to the new vehicle the greater of the straight-line depreciation or the fair market value as evidenced by the sales proceeds.

6. SAMPLE SUPPLEMENTAL AGREEMENT.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
SUPPLEMENTAL AGREEMENT
(Attachment to FTA G-15, October 1, 2008)**

It is the practice of the Federal Transit Administration to enter into a formal agreement with the designated recipient for projects that the designated recipient does not carry out directly. Under this Grant Agreement, the grant recipient is not the designated recipient. Therefore, the designated recipient hereby agrees to permit the grant recipient under this Grant Agreement to receive and dispense the federal assistance funds described in this Grant Agreement. The designated recipient further agrees that the grant recipient shall assume all responsibilities set forth in this Grant Agreement.

The federal government and the grant recipient under this Grant Agreement hereby agree that the designated recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement and is a party to this Grant Agreement only to assign the right to receive and dispense federal funds to the grant recipient as described above.

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Federal Transit Administration

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Designated Recipient

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Grant Recipient

E. APPENDIX E

PREVENTIVE MAINTENANCE

Preventive maintenance, according to Federal Transit Administration (FTA) policy, is currently defined as all maintenance. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such asset. If a recipient purchases service instead of providing the operating service itself and the contract includes maintenance for that purchased service, then the recipient may apply for preventive maintenance capital assistance under the capital cost of contracting policy.

Preventive maintenance is an operating expense that is eligible as a capital project at an 80/20 federal/local match; capital maintenance expenses are eligible under most FTA funding programs.

FTA cautions recipients not to confuse the fact that maintenance items often considered operating expenses may be eligible for FTA capital assistance. Generally accepted accounting principles and the recipient's accounting system determine those costs that the recipient is to account for as operating costs. The National Transit Database (NTD), <http://www.ntdprogram.gov/>, follows generally accepted accounting principles, so a recipient reporting to the NTD must report the operating costs the recipient has incurred as operating costs regardless of the costs' eligibility for FTA capital assistance. Recipients may not count the same costs twice.

The Uniform System of Accounts (USOA) is the basic reference document for the NTD. It contains the accounting structure required by FTA laws. The NTD consolidates seven detailed functions from the USOA as basic function 041—Vehicle Maintenance and consolidates thirteen detailed functions from the USOA as basic function 042—Nonvehicle Maintenance. All of the activities included in basic functions 041 and 042 are maintenance, and thus eligible capital assistance projects. Vehicle maintenance is all of the activities associated with ensuring revenue vehicles and service vehicles are operable, cleaned, fueled (not including fuel cost), inspected, and repaired.

There are seven detailed functions in the Maintenance Administration—Vehicles function (041).

1. Maintenance Administration—Vehicles (041)
 - a. Includes preparing maintenance records, analyzing data for vehicle performance and training vehicle maintenance personnel.
2. Servicing revenue vehicles (051)
 - a. Includes providing supervision and clerical support for servicing revenue vehicles, refueling, interior cleaning, and exterior washing of revenue vehicles.

3. Inspection and maintenance of revenue vehicles (061)
 - a. Includes performing scheduled preventive maintenance on vehicle components, vehicle overhaul, performing minor repairs, traveling to vehicle breakdowns to repair or tow revenue vehicles, rebuilding and overhauling repairable components, performing major repairs on revenue vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of revenue vehicles (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.
4. Accident repairs of revenue vehicles (062)
 - a. Includes repairing damage as a result of collisions, floods, and accidental fires.
5. Vandalism repairs of revenue vehicles (071)
 - a. Includes repairing all special damage as a resulting from willful or malicious destruction or defacement.
6. Servicing and fueling of service vehicles (081)
 - a. Includes fueling, interior cleaning, and exterior washing of service vehicles, refueling, and adding oil and water to service vehicles.
7. Inspection and maintenance of service vehicles (091)
 - a. Includes inspecting service vehicle components on a scheduled preventive maintenance basis, vehicle overhaul, minor repairs, going to vehicle breakdowns for tow or repair, rebuilding and overhauling repairable components, performing major repairs on service vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of service (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.

There are thirteen detailed functions in the basic Nonvehicle Maintenance function (042).

1. Maintenance administration—nonvehicles (042)
 - a. Including preparing transit way and structures maintenance records and providing supervision/clerical support for the administration of transit way and structures maintenance and other buildings, grounds, and equipment maintenance.
2. Maintenance of vehicle movement control systems (101)
 - a. Including inspecting, cleaning, repairing, and replacing all components of vehicle movement control systems.
3. Maintenance of fare collection and counting equipment (111)
 - a. Including inspecting, repairing, and replacing all components of fare collection and counting equipment, such as on vehicle fareboxes, ticket vending machines, fare gates, vaults and money counters, changers, and sorters.
4. Maintenance of roadway and track (121)

- a. Including inspecting, cleaning, repairing, clearing, and replacing all components of roadway and track.
5. Maintenance of structures, tunnels, bridges, and subways (122)
 - a. Including inspecting, cleaning, repairing, and replacing all components of structures, tunnels, bridges, and subways.
6. Maintenance of passenger stations (123)
 - a. Including inspecting, repairing, and replacing components of passenger station building and equipment providing custodial services for passenger station building and grounds.
7. Maintenance of operating station buildings, grounds, and equipment (124)
 - a. Including inspecting, repairing, and replacing components of operating station buildings and equipment providing custodial services for operating station buildings and grounds.
8. Maintenance of garage and shop buildings, grounds, and equipment (125)
 - a. Including inspecting, repairing, and replacing components of garage and shop buildings and equipment providing custodial services for garage and shop buildings and grounds.
9. Maintenance of communication systems (126)
 - a. Including inspecting, cleaning, repairing, and replacing all components of communication system other than vehicle movement control systems.
10. Maintenance of general administration, buildings, grounds, and equipment (127)
 - a. Including inspecting, repairing, and replacing components of buildings and equipment used for general administration.
11. Accident repairs of buildings, grounds, and equipment (128)
 - a. Including repairing all damage to buildings, grounds, and equipment resulting from collisions with stationary or moving objects, floods, accidentally ignited fires, etc.
12. Vandalism repairs of buildings, grounds, and equipment (131)
 - a. Includes repairing all damage as a result of willful or malicious destruction or defacement of buildings, grounds, and equipment.
13. Operation and maintenance of electric power facilities (141)
 - a. Includes supervising, monitoring, and operating electric power generation and distribution facilities for third rail, overhead lines, cable systems, etc.

For NTD reporting purposes, inspection and maintenance of revenue or service vehicles, work on repairable units such as engine rebuilds, and overhauls are an operating expense only if they meet the criteria established by FTA in determining when an item is an operating or a capital expenditure. If the total labor and materials necessary for the rebuild or overhaul are less than a unit value of \$5,000 or a lesser capitalization level used by the agency, such as \$3,000, then this is an operating expense reported on the operating expenses form of the NTD (F-30). If more than \$5,000, then the rebuild or overhaul expenses are a capital expenditure on the uses of capital form of the NTD (F-20).

According to FTA Circular 5010.1, "Grant Management Requirements," overhaul is maintenance that does not add to the useful life of the vehicle. This eligibility for capital assistance also applies to leasing and to contracted service. Rolling stock to be overhauled must have an accumulated at least 40 percent of its service life, as per FTA Circular 5010.1.

FTA Circular 5010.1 states that in order for a bus to be rebuilt it should be at the end of its minimum useful life and in need of major structural and/or mechanical rebuilding. Rebuilding is a recondition at the end of useful life that creates additional useful life. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. In order for a rail car to be rebuilt it must have reached the end of its minimum useful life for an end of life rebuild. The minimum extension of useful life is ten years for rail cars, as per FTA Circular 5010.1. The eligibility of this major capital rebuild work is in addition to the eligibility of vehicle overhauls.

Under 49 CFR 37.75 and 37.83, any public entity that remanufactures a bus or rail vehicle for use in fixed route service, so as to extend its useful life for five years or more, must be made readily accessible to and useable by persons with disabilities, including wheelchair users. Rebuilding a vehicle is also an eligible capital cost under the category of preventive maintenance.

A grant application for preventive maintenance must include a time period over which the recipient incurred the maintenance costs or expects to incur them. Maintenance costs can only be claimed for the current year or the immediately preceding year. FTA reserves the right to review a recipient's cost for maintenance as reported currently in the NTD when FTA receives an application for assistance with preventive maintenance.

F. APPENDIX F

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
		Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

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COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS *A4. Section 5304*

Draft August 2019

Outline

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Attachment

FTA Circular: FTA C 8100.1D: Program Guidance for Metropolitan Planning and State Planning and Research Program Grants

A4. SECTION 5304 STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING

Federal transportation planning funds are jointly administered by Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) under the Metropolitan Planning Program (Section 5303 Program) and the State Planning and Research Program (Section 5304 Program). Section 5303 Program funds are awarded to the States and allocated to Metropolitan Planning Organizations (MPO), based on a formula developed with and approved by FTA, for metropolitan or urbanized area (UZA) planning projects, in accordance with 49 United States Code § 5305. Section 5304 Program funds are directly awarded to the States for statewide and nonmetropolitan planning projects. In Colorado, the Colorado Department of Transportation (CDOT) is the designated recipient of Section 5304 Program funds.

The Section 5304 Program provides funding and procedural requirements for multimodal transportation planning that is cooperative, continuous, and comprehensive, resulting in long-range plans and short-range programs of transportation investment priorities. CDOT retains a percentage of annual Section 5304 Program funds to complete statewide planning projects, such as the State Rail Plan and Statewide Transit Plan, and sub-allocates the remaining funds to eligible subrecipients for nonmetropolitan, or rural area, planning projects.

Documents that govern how CDOT administers Section 5304 Program funds include:

- FTA Circular: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/fta-circulars/117736/program-guidance-metropolitan-planning-and-state-planning-and-research-c81001d.pdf>
- FTA website Overview: <https://www.transit.dot.gov/funding/grants/metropolitan-statewide-planning-and-nonmetropolitan-transportation-planning-5303-5304>
- FTA Fact Sheet: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/5303-5304-5305_Program_Metropolitan_and_Statewide_Planning_Fact_Sheet_FINAL.pdf

A4.1 Program Goals

The Division of Transit and Rail (DTR) awards Section 5304 Program funds to subrecipients for planning activities that address the following FTA goals:

- Support the economic vitality of the region, especially enabling global competitiveness, productivity, and efficiency.
- Increase the safety of the transportation system for motorized and non-motorized users.

- Increase the security of the transportation system for motorized and non-motorized users.
- Increase the accessibility and mobility of people and freight.
- Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and state and local planned growth and economic development patterns.
- Enhance the integration and connectivity of the transportation system, across and between modes for people and freight.
- Promote efficient system management and operation.
- Emphasize the preservation of the existing transportation system.
- Improve the resiliency and reliability of the transportation system.

A4.2 Eligible Recipients

Eligible subrecipients of Section 5304 Program funds are Transportation Planning Regions, local governmental authorities, and operators of public transportation systems. DTR generally makes Section 5304 Program funds available for and prioritizes rural area planning projects because planning projects in urbanized areas (with populations over 50,000) are eligible to receive separate funding through the Section 5303 Program.

All applicants are required to meet certain minimum (threshold) criteria to be considered for an award of funds. A new applicant (potential subrecipient) must submit a New Applicant Questionnaire that includes an overview of the agency's transit services, legal standing, financial management and capacity, technical capacity, asset management plan, procurement procedures, and civil rights policies. The agency must demonstrate that it meets minimum requirements in financial and managerial capability and capacity for managing awarded funds, as well as demonstrate that it has the resources necessary to operate the project on an ongoing basis. The applicant must also be willing to follow federal and state guidelines for third-party procurements. Should an applicant not meet these threshold criteria, DTR is available to work with the agency to meet the criteria and become eligible to apply for funds.

A4.3 Federal Share and Local Match

All projects funded through the Section 5304 Program are required to have a sufficient local match. Projects are awarded on an 80% federal, 20% local matching ratio for eligible project costs, though applicants can overmatch and provide more than 20% local match if desired. Local match funds must be cash.

A4.4 Eligible Projects

Funds from the Section 5304 Program can be used for a wide variety of transit-related support activities, including technical assistance, planning, research, demonstration projects, special studies, and other similar projects. Per FTA C 8100.1D, eligible work elements or activities for planning projects include:

- Studies relating to management, planning, operations, capital requirements, economic feasibility, performance-based planning, safety, and transit asset management.
- Evaluation of previously funded projects including Before-and-After Studies.
- Developing and updating the metropolitan planning agreements between the MPO, the State(s), and the providers of public transportation serving the metropolitan planning area.
- Peer reviews and exchanges of technical data, information, assistance, performance-based planning, and related activities in support of planning and environmental analysis among MPOs and other transportation planners.
- Work elements and related activities for planning for multimodal transportation access to transit facilities. This includes planning for improved pedestrian and bicycle access, including transit supportive land use plans.
- Systems planning, scenario planning, and corridor-level alternative analysis.
- Development of 20-year transportation plans, short-range transportation improvement programs (TIPs), and Unified Planning Work Programs.
- Safety, security, and emergency transportation and evacuation planning.
- Coordinated public transit-human services transportation planning.
- Transportation and air quality planning and conformity analysis.
- Public participation in transportation planning including development of the Public Participation Plan.
- Multimodal facilities planning.
- Plan, engineer, design, and evaluate a public transportation project.
- Computer hardware and software needed to support planning work.
- Participation in educational programs for technical staff, as well as executive and board leadership.
- Development of Long-Range Statewide Transportation Plans and Statewide Transportation Improvement Programs.
- Joint development planning.

Eligible work elements and activities do not include capital or operating expenses of public transit systems, or administrative expenses. In general, CDOT does not fund projects where existing staff members will conduct the planning activities; rather, these planning activities should be carried out by outside consultants. An applicant must obtain prior explicit approval from DTR if it wants to use existing staff to carry out the planning project.

A4.5 Application and Evaluation Process

A4.5.1 Call for Projects

DTR releases an annual Notice of Funding Availability, notifying potential applicants of the availability and anticipated amount of Section 5304 Program funds and setting forth guidelines for submitting an application, applicant and project eligibility, evaluation criteria, the purpose of the program, and regulations and processes.

A4.5.2 Evaluation Criteria

A committee of CDOT staff reviews and evaluates each project application. Project evaluation and scoring criteria include, but are not limited to:

- Minimum threshold criteria
 - Application completeness and thoroughness
 - Section 5304 program eligibility
 - Consistency with the Statewide Transit Plan or Regional Transit Plan
- Weighted criteria
 - Project need and readiness
 - Financial need and readiness
 - Consistency with FTA Program Goals
- Additional factors
 - Extent to which a project will serve minority and low-income persons
 - Equitable geographic distribution of project funds across the state

A4.6 Method of Distributing Funds

Section 5304 Program funds are distributed based on current need, as expressed by applicants in their applications, and statewide priorities established by the Colorado Transportation Commission. Awards for Section 5304 Program funds typically range from \$15,000 to \$40,000 (as of 2019), and generally do not exceed \$40,000.

A4.7 Reporting

DTR reports, on behalf of its subrecipients, the following information:

- Annual Program of Projects (POP) Status Report. An updated POP as well as any significant civil rights issues, notable accomplishments, or difficulties with projects are reported by October 30 of each year.
- Milestone Progress Reports. Revisions and status updates on projects including revised completion dates by Monthly Progress Report line item. Reports are due by October 30 annually and may be required quarterly.
- Federal Financial Report. Accrual reports for each project within the federal programs are provided by October 30 of each year and may be required quarterly.
- Disadvantaged Business Enterprise (DBE) Reports. These are the semi-annual DBE reports required of all FTA funding recipients.

A4.8 Other Provisions

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA assistance programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year. Restrictions on lobbying are included as part of the subaward agreement with the subrecipient and are reaffirmed through annual Certifications and Assurances submittals through the Colorado Transit & Rail Awards Management System (COTRAMS).

All subrecipients are required to participate in project oversight efforts conducted by DTR and their project manager. Oversight materials are adapted from the FTA's Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

- Legal (Lobbying)
- Financial Management and Capacity
- Technical Capacity
- Satisfactory Continuing Control
- Maintenance
- Procurement
- DBE
- Title VI
- Americans with Disabilities Act (ADA) General
- ADA Complementary Paratransit
- Equal Opportunity Employer
- School Bus
- Charter Bus

- Drug and Alcohol Program

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in COTRAMS. These documents are specifically requested and reviewed by Project Coordinators during the Subrecipient Information Request (SIR) and Site Review Process; however, subrecipients are expected to have updated documents in COTRAMS on an ongoing basis.

A4.9 Civil Rights

CDOT's Civil Rights and Business Resource Center's (CRBRC) mission is to promote equal access to and participation in CDOT programs and activities. Additionally, the CRBRC collaborates with CDOT Regional Civil Rights Offices and various CDOT program staff to foster equality in CDOT's transportation contracting processes.

Within the CRBRC is the role of the Title VI Specialist/Civil Rights Liaison for DTR. This position works with DTR to implement and monitor compliance with the FTA's civil rights requirements, including Title VI, Equal Employment Opportunity, and DBEs.

CRBRC and DTR monitor subrecipient compliance with FTA civil rights regulations through the following:

- Including civil rights requirements in each Call for Projects.
- Oversight of third-party contracting procedures.
- Review of subrecipient websites.
- Review of the subrecipient's programs prior to awarding funds.
- Requiring subrecipients to submit updated programs to DTR through COTRAMS annually with certifications and assurances, or as required.
- Review of program documents during scheduled SIR and Site Review Process every 3 years.
- Technical assistance and training to subrecipients in the development of and execution of their programs, including minority applicants and those serving minority or traditionally underserved populations.
- Assistance in resolving complaints.
- Filing required reports to FTA.

ATTACHMENT

FTA Circular: FTA C 8100.1D: Program Guidance for Metropolitan Planning and State Planning and Research Program Grants



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 8100.1D

September 10, 2018

**Subject: Program Guidance for Metropolitan Planning and State Planning and Research
Program Grants**

1. **PURPOSE.** This circular is a re-issuance of program guidance and application instructions for applying for grants under the Metropolitan Planning Program (MPP) and the State Planning and Research Program (SPRP) authorized at 49 United States Code (U.S.C.) 5305. This revision incorporates provisions of the Fixing America's Surface Transportation Act (FAST or FAST Act) and includes the most current guidance for the Federal public transportation programs as of the date of publication.

This circular revision also incorporates provisions of the United States Department of Transportation (U.S. DOT) regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 Code of Federal Regulations (CFR) part 1201 (referred to as the Uniform Guidance). These regulations incorporate by reference the Office of Management and Budget (OMB) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200 (referred to as the Uniform Guidance), which supersedes and streamlines the former OMB circulars on Uniform Administrative Guidance, A-102 and A-110, former OMB Cost Principles circulars A-21, A-87, and A-122, and former OMB circulars addressing Single Audit Act issues, A-133 on Single Audit Act administration and A-50 on Single Audit Act follow-up.

This circular is intended to assist recipients in applying for and administering Federal Transit Administration (FTA)-funded projects and in meeting the responsibilities and reporting requirements of FTA awards. Recipients have a responsibility to comply with regulatory requirements and to be aware of all pertinent guidance material to assist in the management of their federally assisted awards. If there is a conflict between FTA Circular 5010.1, "Awards Management Requirements," and this program-specific circular (C 8100.1D), the guidance provided herein prevails.

Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of Planning and
Environment

2. CANCELLATION. This circular cancels FTA Circular 8100.1C, “Program Guidance For Metropolitan Planning and State Planning and Research Program Grants,” dated September 1, 2008.
3. AUTHORITY.
 - a. Federal Transit Laws, 49 U.S.C Chapter 53.
 - b. 49 C.F.R. 1.51.
4. WAIVER. The FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.
5. FEDERAL REGISTER NOTICE. A *Federal Register* notice was published on May 27, 2016, for the Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning Final Rule (81 FR 34050).
6. AMENDMENTS TO THE CIRCULAR. The FTA reserves the right to update this circular due to changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. The FTA will post updates on our Web site at www.transit.dot.gov. The Web site allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Visit the Web site and click on “Subscribe to Email Updates.”
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA’s Administrative Services Help Desk at 202–366–4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original Signed by

K. Jane Williams, Deputy Administrator

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SECTION 5305 PROGRAM CIRCULAR

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CHAPTER I:

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). The FTA is one of nine modal administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, 10 regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa, and in federally recognized Indian Tribes.

As defined in 49 U.S.C. 5302, “public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes, but is not limited to, transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intra-terminal or intra-facility shuttle services. The terms “transit” and “mass transportation” are used interchangeably with “public transportation.”

The Federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. The FTA oversees thousands of awards with hundreds of State and local transit providers, primarily through its ten regional offices. Recipients and subrecipients of Federal assistance for these projects are responsible for managing their programs in accordance with Federal requirements. The FTA is responsible for ensuring that recipients and subrecipients follow Federal statutory and administrative requirements. FTA also is authorized to establish national standards and requirements, to conduct necessary safety oversight, and to issue directives to ensure the safety of the nation’s public transportation systems.

2. AUTHORIZING LEGISLATION. Most Federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. The FTA’s most recent authorizing legislation is the Fixing America’s Surface Transportation Act (FAST Act), Public Law 114-94, signed into law on December 4, 2015, which amended the Urbanized Area Formula Program and extended its statutory authorization through September 30, 2020. The effective date of the FAST Act was October 1, 2015.

The circular revision incorporates changes to Federal transit law as a result of the FAST Act and also incorporates provisions of the OMB “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (referred to as the Uniform Guidance), 2 CFR part 200.

3. HOW TO CONTACT FTA. The FTA’s regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which the recipient is located. See Appendix D, “FTA Regional and Metropolitan Contact Information,” of this circular for more information.

Visit FTA’s Web site, <http://www.transit.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
East Building
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. GRANTS.GOV. The FTA posts all competitive Federal assistance opportunities on [Grants.gov](http://www.grants.gov). [Grants.gov](http://www.grants.gov)¹ is the Web site for information on all competitive Federal assistance opportunities.
5. DEFINITIONS AND ACRONYMS. All definitions in 49 U.S.C. 5302 apply to this circular, as well as the following definitions and acronyms:
 - a. Definitions.
 - (1) Activity Line Item (ALI): An ALI means the detailed description narrative and dollar amount to more fully explain the scope of work of that activity. Every ALI is associated with a specific Scope Code; the relationship between scope codes and ALIs is outlined in FTA’s “ALI Tree.” A sufficient level of information must be provided for each ALI for FTA and the recipient to manage activities approved as part of the Award.
 - (2) Consolidated Planning Grant (CPG) Program: A CPG program means a program in which FTA and Federal Highway Administration (FHWA) metropolitan planning funds are combined in a single grant. The FTA and FHWA funding to support statewide transportation planning may also be combined in a CPG.
 - (3) Congestion Mitigation and Air Quality Improvement (CMAQ) Program: A CMAQ program means a program that provides funds for projects that reduce congestion and/or improve air quality. The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or

¹ <http://www.grants.gov>

maintenance of the national ambient air quality standards (NAAQS) for ozone, carbon monoxide (CO), and particulate matter (PM).

- (4) Designated Recipient: Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304, by the governor of a State, responsible local officials, and publicly owned operators of public transportation to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- (5) Direct Recipient: Direct recipient means an entity that receives funding directly from FTA.
- (6) Disadvantaged Business Enterprise (DBE): DBE means a for-profit small business concern that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (7) Long-range Statewide Transportation Plan: The Long-range Statewide Transportation Plan means the State's official, statewide, multimodal transportation plan covering a period of no less than 20 years, developed through the statewide transportation planning process.
- (8) Master Agreement: The Master Agreement means the official FTA document containing FTA and other crosscutting Federal requirements applicable to the FTA recipient and its grant or cooperative agreement. The Master Agreement is revised annually and each Master Agreement is effective the first day of the fiscal year (October). The Master Agreement is incorporated by reference and made part of each FTA grant, cooperative agreement, and amendment thereto.
- (9) Metropolitan Planning Agreement: The Metropolitan Planning Agreement means a written agreement between the Metropolitan Planning Organization (MPO), the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.
- (10) Metropolitan Planning Area (MPA): MPA means the geographic area determined by agreement between the MPO(s) for the area and the governor(s), which must at a minimum include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan, and may include additional areas.
- (11) Metropolitan Planning Program (MPP): MPP means the Federal financial assistance provided by FTA, under 49 U.S.C. 5305(d), to support work activities

necessary to conduct the federally required metropolitan transportation planning process.

- (12) Metropolitan Planning Organization (MPO): MPO means the policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and Transportation Improvement Programs (TIP) for metropolitan planning areas of a state.
- (13) Metropolitan Transportation Plan (MTP): MTP means the official multimodal transportation plan addressing no less than a 20-year planning horizon that is developed, adopted, and updated by the MPO for an MPA through the metropolitan transportation planning process.
- (14) Planning Funds (PL): PL means the financial assistance provided by FHWA to support work activities necessary to conduct the federally required metropolitan planning process.
- (15) Program of Projects (POP): POP means a list of projects to be funded in certain applications submitted to FTA by a designated recipient, state, or local government. The POP lists the recipients and subrecipients and indicates whether they are private non-profit agencies, governmental authorities, or private providers of transportation service. The POP also designates the areas served (including rural areas, as applicable) and identifies any tribal entities. In addition, the POP includes a brief description of the projects, the total project cost, the Federal share for each project, and the amount of funds used for program administration from the allowed percentage.
- (16) Planning Project: Planning project means all the transportation and transportation related planning work within the State for the fiscal year in which FTA has awarded an MPP or SPRP planning grant.
- (17) Project Task Budget: The project task budget means the document submitted with a State's MPP application to FTA. This document summarizes the aggregate costs of completing all work programs described in all Unified Planning Work Programs (UPWPs) submitted by MPOs within the State.
- (18) Recipient: Recipient means an entity that is awarded funds directly from FTA to carry out an activity under a Federal program. For purpose of this circular, a recipient can be a grant recipient, grantee, or a direct recipient but can also be a recipient of Federal assistance through a cooperative agreement. The term recipient does not include subrecipient.
- (19) Scenario Planning: Scenario planning means a planning process that evaluates the effects of alternative policies, plans, and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan.

- (20) State Planning and Research Program (SPRP): SPRP means Federal financial assistance provided by FTA under 49 U.S.C. 5305(e) to support work activities necessary to conduct the federally required statewide transportation planning.
- (21) State: State means a state of the United States, the District of Columbia, and Puerto Rico.
- (22) Statewide Transportation Improvement Program (STIP): STIP means a statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the Long-Range Statewide Transportation Plan, MTPs, and Transportation Improvement Program (TIP), and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.
- (23) Subagreement: Subagreement means the mechanism, such as a subgrant or another instrument, employed by the State to award or transfer MPP funds to the individual MPOs.
- (24) Subrecipient: Subrecipient means an entity that receives a subaward (or subagreement) from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- (25) Task: Task means the aggregate of all activities of a specified type of planning work undertaken by all MPOs throughout the State. This definition is particularly applicable to budgeting that uses Appendix B of this circular.
- (26) Transit Award Management System (TrAMS): TrAMS means the Web-based electronic award and management system used to apply for, administer, and manage FTA awards. TrAMS is FTA's current award-making system.
- (27) Transit Asset Management (TAM): Transit asset management means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles for the purpose of providing safe, cost-effective, and reliable public transportation.
- (28) Transportation Improvement Program (TIP): Transportation improvement program means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the Metropolitan Transportation Plan, and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. chapter 53.
- (29) Transportation Management Area (TMA): TMA means (1) an urbanized area (UZA) with a population over 200,000 (as determined by the latest decennial

census) or (2) another area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and FTA. The TMA designation applies to the entire MPA.

- (30) Unified Planning Work Program (UPWP): UPWP means a program of work identifying the planning priorities and activities to be carried out within an MPA during the next one or two-year period. At a minimum, a UPWP includes a description of the planning work and resulting products, the organization that will be responsible for performing the work, time frames for completing the work, the cost of the work, and the source(s) of funds.
- (31) Urbanized Area (UZA): UZA means an area encompassing a population of at least 50,000 people that has been designated as an urbanized area by the Bureau of the Census following the most-recent decennial census.
- (32) Work Element: Work element means the planning activity to be undertaken in the UPWP.
- (33) Work Program: Work program means a periodic statement of proposed work elements and estimated costs that document the eligible activities to be undertaken with MPP assistance during the next one- or two-year period by the State's definition above).

b. Acronyms.

ACH	Automated Clearing House
ALI	Activity Line Item
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement
CO	Carbon Monoxide
CPG	Consolidated Planning Grant
DBE	Disadvantaged Business Enterprise
DOT	Department of Transportation
ECHO	Electronic Clearing House Operation
ECN	ECHO Control Number
EIS	Environmental Impact Statement
FAST Act	Fixing America's Surface Transportation Act
FFR	Federal Financial Report
FHWA	Federal Highway Administration
FR	<i>Federal Register</i>

FSR	Financial Status Report
FTA	Federal Transit Administration
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
L RTP	Long-Range Transportation Planning
MAP-21	Moving Ahead for Progress in the 21 st Century
MPA	Metropolitan Planning Area
MPO	Metropolitan Planning Organization
MPP	Metropolitan Planning Program
MTP	Metropolitan Transportation Plan
NAAQS	national ambient air quality standards
OMB	Office of Management and Budget
PEA	Planning Emphasis Area
PL	Planning Funds
PM	Particulate Matter
POP	Program of Projects
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SPR	Statewide Planning and Research program (FHWA)
SPRP	State Planning and Research Program
SRTP	Short-Range Transportation Planning
STBG	Surface Transportation Block Grant Program
STIC	Small Transit Intensive Cities
STIP	Statewide Transportation Improvement Plan
STP	Surface Transportation Program
TAM	Transit Asset Management ???
TDP	Transportation Development Plan
TEA-21	Transportation Equity Act for the 21st Century
TIP	Transportation Improvement Program
TMA	Transportation Management Area
TrAMS	Transit Award Management System
TSM	Transportation System Management
U.S. DOT	U.S. Department of Transportation
U.S.C.	United States Code
UPWP	Unified Planning Work Program
USOA	Uniform System of Accounts

UZA

Urbanized Area

6. PROGRAM HISTORY. Since 1966, the FTA has provided financial assistance to States and local public bodies to support a variety of planning activities. The MPP and SPRP reflect the long-standing emphasis on a multimodal approach to transportation planning, program development, and funding, as well as all planning requirements of recent authorizations.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, Dec. 18, 1991) restructured FTA’s planning assistance programs. ISTEA established both statutory formula and discretionary planning assistance programs and separated planning programs for MPOs from planning programs for States. This landmark legislation emphasized the multimodal eligibility for the FTA and FHWA planning funds to be used to support any transportation planning activities. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) reorganized the location of the MPP and SPRP in Title 49 of the U.S. Code. The MPP, formerly codified at 49 U.S.C. 5303(g), and the SPRP, formerly codified at 49 U.S.C. 5313(b), are now both codified at 49 U.S.C. 5305.

The FTA and FHWA previously updated the joint FTA/FHWA Metropolitan Transportation Planning and Statewide Transportation Planning regulations that govern the MPP and the SPRP at 23 CFR part 450 (adopted by FTA at 49 CFR part 613), with a Final Rule published in the *Federal Register* (72 FR 7224, Feb. 14, 2007). The changes to the regulations also incorporate changes initiated by the Transportation Equity Act for the 21st Century (TEA–21). The revised regulations provide the procedural foundation for fully implementing the planning provisions set forth in legislation that govern the development of MTPs and TIPs for urbanized areas, long-range statewide transportation plans, STIPs, and the regulations for management and monitoring systems.

The Moving Ahead for Progress in the 21st Century (MAP-21) (Pub. L. 112-141, July 6, 2012) established a performance-based management approach to the statewide and metropolitan transportation planning process to ensure the most efficient investment of Federal transportation funds. MAP-21 established requirements that the statewide and metropolitan transportation plan must include a description of the performance measures and performance targets and a system performance report evaluating the condition and performance of the transportation system. Additionally, MAP-21 provided new emphasis on intercity transportation, including intercity buses and intermodal facilities, as well as tourism and the reduction of risk from natural disasters. The legislation clarified the selection and role of the representative of public transportation providers on the MPO Board. The performance based planning and programing requirements expanded the scope of the planning process to include resiliency and reliability of the transportation system. Finally, MAP-21 highlighted the need for States and MPOs to provide public ports, intercity bus operators, and employer-based commuting programs with a reasonable opportunity to comment on transportation plans.

The FAST Act (Pub. L No. 114-94, December 4, 2015) continued the performance-based approach to the statewide and metropolitan transportation planning process. The FAST Act requires MPOs and States to develop transportation plans and transportation improvement

programs through a performance-driven, outcome-based approach to planning. Additionally, the legislation requires States, MPOs, and operators of public transportation to establish performance targets in key national performance areas to address both the surface transportation measures set forth in 23 U.S.C 150(c) and those set forth in 49 U.S.C. 5326(c) and 5329(d) related to transit asset management and safety. For transit-related targets, States and MPOs must coordinate their selection of targets related to transit safety and transit state of good repair to the maximum extent practicable with the operators of public transportation to ensure consistency. MPO plans must include performance targets that address performance measures and standards and a system performance report. TIPs must include a description of the anticipated progress brought about by implementing the TIP toward achieving the performance targets. Under the FAST Act, MPOs continue to develop UPWPs, MTPs, TIPs, and Public Participation Plans.

On May 27, 2016, the FTA and FHWA published in the *Federal Register* the final rule on Statewide and Nonmetropolitan Transportation Planning and Metropolitan Transportation Planning (81 FR 34050) to implement the changes to the planning process established by MAP-21 and the FAST Act.

This circular uses the joint FTA/FHWA Metropolitan Transportation Planning and Statewide Transportation Planning regulations at 23 CFR part 450 as the foundation for its program guidance. Within the regulation, Subpart C addresses metropolitan transportation planning and programming, and Subpart B addresses statewide transportation planning and programming. The FTA encourages grantees and stakeholders to refer to the regulations for a complete description of the planning provisions of the metropolitan and statewide transportation planning programs and a list of Federal requirements. The online version is available at: <https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/final-rule-statewide-and-nonmetropolitan>.

7. **PLANNING EMPHASIS AREAS.** At the discretion of the Secretary of the Department of Transportation, FTA and FHWA may jointly establish a planning emphasis area (PEA) to advance national goals as established by Federal law to reflect FTA and FHWA priorities and to respond to congressional direction established through the appropriations process. PEAs are intended to highlight subjects that should be addressed in FTA and FHWA funded planning programs. PEAs are designed to encourage the application of planning assistance to studies addressing national goals and priorities, in addition to goals and priorities directly benefiting local transportation operations or otherwise serving State and local needs. Upon request, FTA regional offices and FHWA division offices will provide the most current PEAs, which remain in effect until superseded by newer PEAs.

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CHAPTER II:

METROPOLITAN PLANNING PROGRAM

1. PROGRAM OVERVIEW. The Metropolitan Planning Program (MPP) is a major source of Federal financial assistance to help urbanized areas (UZAs) plan for the development, improvement, and effective management of their multimodal transportation systems. MPP funds are available to carry out the metropolitan transportation planning process and meet the transportation planning requirements of the joint Federal Transit Administration (FTA)/Federal Highway Administration (FHWA) planning regulations. In general, MPP grants are available to assist States, authorities of the States, Metropolitan Planning Organizations (MPOs), and local governmental authorities with preparing transportation plans and programs; planning, engineering, designing, and evaluating a public transportation project; and conducting technical studies related to public transportation. In carrying out the metropolitan transportation planning process, the MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities. They must also clearly identify these responsibilities in written agreements between the MPO, the State(s), and the public transportation operator(s) serving the Metropolitan Planning Area (MPA) (23 CFR 450.314). The regulation states that, to the extent possible, a single agreement among all responsible parties should be developed.

Under the planning provisions of 49 U.S.C. § 5305, the State is the Designated Recipient and is the only entity eligible to apply for and receive MPP and State Planning and Research Program (SPRP) assistance directly from the FTA. Although FTA makes MPP grants directly to States, the State is required by law to distribute these funds to each UZA, or portion of a UZA, within the State, according to a formula developed by the State in cooperation with the MPO and approved by the FTA. Under the MPP program, only an MPO is eligible to receive MPP assistance directly from the State. The State recipient enters into subagreements with subrecipients, consistent with applicable requirements of law.

2. ELIGIBILITY.
 - a. Overview. The FTA makes MPP grants directly to States, the District of Columbia, and Puerto Rico, each of which has at least one UZA. The FTA first apportions MPP assistance to each State. The State then allocates its MPP assistance to the MPOs in its UZAs based on a formula developed by the State in cooperation with the MPOs and approved by FTA. After the State executes its MPP grant agreement with FTA, the State then transfers its MPP assistance to the MPO by a subagreement to support the MPO's transportation planning activities, as set forth in the Unified Planning Work Program (UPWP).
 - b. Eligible Grant Activities. The MPO must use its MPP assistance to support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods in the metropolitan area. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all

transportation modes, without regard to the programmatic source of Federal assistance. Eligible work elements or activities for MPP and SPRP funds include, but are not limited to:

- (1) Studies relating to management, planning, operations, capital requirements, economic feasibility, performance-based planning, safety, and transit asset management;
 - (2) Evaluation of previously funded projects including Before-and-After Studies;
 - (3) Developing and updating the metropolitan planning agreements between the MPO, the State(s), and the providers of public transportation serving the metropolitan planning area;
 - (4) Peer reviews and exchanges of technical data, information, assistance, performance-based planning, and related activities in support of planning and environmental analysis among MPOs and other transportation planners;
 - (5) Work elements and related activities for planning for multimodal transportation access to transit facilities. This includes planning for improved pedestrian and bicycle access, including transit supportive land use plans;
 - (6) Systems planning, scenario planning, and corridor-level alternative analysis;
 - (7) Development of 20-year transportation plans, short-range transportation improvement programs (TIPs), and UPWPs;
 - (8) Safety, security, and emergency transportation and evacuation planning;
 - (9) Coordinated public transit–human services transportation planning;
 - (10) Transportation and air quality planning and conformity analysis;
 - (11) Public participation in transportation planning including development of the Public Participation Plan;
 - (12) Multimodal facilities planning;
 - (13) Plan, engineer, design, and evaluate a public transportation project;
 - (14) Computer hardware and software needed to support planning work; and
 - (15) Participation in educational programs for technical staff, as well as executive and board leadership.
- c. Work Element Implementation. The MPO may use its own staff, contract with the State, or enter into third party contracts to carry out planning work elements and activities, on the condition that each third party contract complies with the requirements imposed on

States by the Uniform Guidance and the current version of FTA Circular 4220.1, “Third Party Contracting Guidance,” and any revisions to the requirements.

3. BOUNDARIES OF METROPOLITAN PLANNING AREAS. The State’s subagreement with each MPO must require the MPO to focus planning activities on the transportation needs covering the area within the established boundaries of the MPO’s MPA. The MPO and the governor determine by agreement the boundaries of an MPA. At a minimum, the MPA must include the existing UZA and the contiguous area expected to become urbanized within the next 20 years. A full discussion of factors affecting determination of the MPA is provided in 23 CFR part 450.312 adopted by FTA at 49 CFR part 613.

The Uniform Guidance’s definition of “local government” specifically covers each MPO, whether or not the MPO is incorporated as a non-profit corporation under State law. Consequently, the State is authorized to direct the MPO to follow either State procedures or to follow the Federal procedures at 2 CFR § 200.64. For further discussion of third party procurement requirements, see Chapter II, Section 7.c.(1) of this circular.

4. UNIFIED PLANNING WORK PROGRAM (UPWP). A UPWP consists of transportation planning projects within a metropolitan planning area for which Federal assistance is sought. Each MPO must develop a UPWP in coordination with the State(s) and public transportation operator(s) that includes the planning priorities facing the MPA. Typically, a UPWP is focused on a single metropolitan planning area and is developed by the MPO within that area. For a UPWP outline, see Appendix A of this circular.
 - a. If a UZA has a population of less than 200,000 and is not designated a Transportation Management Area, a simplified statement of work may be submitted in lieu of a UPWP but only if approved by the State, FTA, and FHWA. If permitted to submit a simplified statement of work, the MPO, in cooperation with the State and transit operators, must prepare the statement of work with a description of the major activities to be performed during the next one or two-year period, who (i.e., State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State’s planning work program, in accordance with 23 CFR part 420.
 - b. MPP grant assistance is based on the activities described in the UPWP. Although the MPO generally has the primary responsibility for preparing the UPWP for its metropolitan planning area, developing the UPWP is the joint responsibility of the MPO, State DOTs or other State departments, public transportation operator(s), and other planning or operating agencies authorized to carry out transportation and related planning and implementation within metropolitan areas. Transportation agencies involved in transit planning, such as State DOTs, transit authorities, and operators of major modes of transportation, must be an integral part of the planning process and participate in the development of the UPWP. A State’s grant application to FTA for MPP assistance must reflect the planning activities described in the UPWPs prepared by MPOs within the State.

- c. The UPWP should contain a detailed description of all planning activities and transportation planning work for the next one to two-year period and delineate major work elements, activities, products, and schedule for completing the activities. The UPWP should contain all multimodal comprehensive planning activities, as well as planning studies related to specific transit, highway, bike/pedestrian, aviation, freight, railway, port, and harbor activities. Transportation planning support activities, such as land use, socio-economic factors, and population estimates, also should be included.
- d. The UPWP should describe the objectives, methodology, and agency responsible for each work element. The UPWP should also use narrative and funding terms to describe the degree to which the various work elements or activities are multimodal. Work elements or activities may be accomplished by sharing the total item costs among the Federal, State, and local participants. This may result in proportional funding of an entire UPWP, provided that the MPO, State, and public transportation operators agree.
- e. The UPWP should also identify any transportation planning activities in the region to be financed with assistance derived from the SPRP, the Urbanized Area Formula Program, and other FTA programs listed previously in this chapter, or Federal assistance derived from FHWA Planning (PL) Funds and other FHWA programs (such as Congestion Mitigation and Air Quality Improvement Program (CMAQ) or Surface Transportation Block Grant Program (STBG)) to ensure that all planning in the metropolitan area for which Federal assistance is being requested is fully coordinated with the State, FTA, and FHWA.
- f. The UPWP should also clearly identify any incomplete work elements or activities financed with Federal planning assistance awarded in previous fiscal years as carryover activities, irrespective of the funding source.
- g. The FTA will review the draft UPWPs and approve them individually or as a part of the State's consolidated request for MPP assistance. In reviewing a UPWP, FTA evaluates the following:
 - (1) The UPWP's relevance to studies or planning activities needed to implement the metropolitan transportation plan (MTP) and TIP development requirements including the performance-based planning and programming requirements set forth in 49 U.S.C. 5326(c) and 5329(d);
 - (2) Eligibility of each task for FTA financial assistance; and
 - (3) Inclusion of tasks reflecting multimodal transportation planning in the metropolitan area.

5. MPP ASSISTANCE: FORMULA AND NOTIFICATION.

- a. Notification. MPP apportionments to States are published in the *Federal Register* annually, after the President has signed the DOT Appropriations Act for the fiscal year. The FTA usually publishes apportionments during the first quarter of the Federal fiscal

year. For information on FTA's annual apportionment notices, see FTA's website at: <https://www.transit.dot.gov/regulations-and-guidance/regulations-and-guidance>.

- b. Authorization. The formulas for apportioning MPP funds are established by statute. Under the formula at 49 U.S.C. 5305(g)(1), 82.72 percent of the amounts authorized for Section 5305 is allocated to the MPP.
- c. Formulas. By statute, MPP authorizations are divided into two categories; 80 percent is designated for allocation among MPOs in accordance with the formula described in 49 U.S.C. 5305(d) to support metropolitan planning, including provisions for private enterprise participation. The remaining 20 percent of the MPP authorization is designated for apportionment to States by the Secretary to provide supplemental assistance funding to MPOs. The FTA combines the basic and supplemental MPP assistance for each State when it publishes its annual apportionment notice in the *Federal Register*.
- d. Basic and Supplemental MPP Assistance and Formula Allocation Among MPOs.
 - (1) In accordance with 49 U.S.C. 5305(d), FTA apportions 80 percent of the available MPP assistance to the States, based on the ratio equal to the population in each State's UZAs, divided by the total population in UZAs in all the States, as shown by the latest available decennial census prepared by the Bureau of the Census. If necessary, FTA is required to make adjustments to that formula to ensure that each State is apportioned a minimum amount of 0.5 percent of this 80 percent basic assistance.
 - (2) Consistent with 49 U.S.C. 5305(d), FTA then apportions the remaining 20 percent of the MPP assistance to the States to supplement funding for MPP activities in MPOs in larger metropolitan areas that have more complex transportation issues and needs. The FTA's administrative formula for apportioning the remaining 20 percent focuses on the relative size of these larger metropolitan areas. Only States that have a UZA with a population greater than one million are eligible to receive supplemental MPP assistance.
 - (3) Each State must allocate its total MPP assistance (Basic and Supplemental) to its MPOs consistent with the formula the State has developed with its MPOs and the FTA has approved. Allocation of the Basic portion of MPP assistance to MPOs must take place no later than 30 days after the date of apportionment.
- e. Availability of MPP Assistance.
 - (1) Grant Awards. The funds apportioned under the MPP will remain available for the FTA to obligate to recipients for four fiscal years, which include the year of apportionment plus three more years. Any apportioned funds that remain unobligated at the end of this period will revert to FTA for reapportionment under the program (the same principles apply to SPRP assistance).

- (2) Draw Down of Federal Funds Conditioned Upon UPWP Approval. As a general rule, an applicant for financial assistance under any of FTA's grant programs must first demonstrate compliance with all applicable Federal requirements before the FTA will award a grant to that applicant. However, the FTA may make an exception for an MPP grant to a State. The FTA may award an MPP grant to a State before FTA and FHWA have approved all UPWPs within the State. The FTA does not allow the State to draw down MPP assistance obligated under the grant to support planning expenses of an MPO if their UPWP has not been approved. Once FTA and FHWA approve that MPO's UPWP, the State may draw down MPP assistance under the affected grant for reimbursement of the MPO's planning expenses.
- (3) Pre-award Authority to Spend MPP Funds. If a State has not executed a grant agreement with FTA, the State may spend its own funds under pre-award authority for MPP work contained in an approved UPWP. The MPP work will be eligible for FTA assistance after FTA approves a grant including the apportionment funding that includes the MPP work already undertaken. The FTA will allow pre-award authority only if a planning study has been approved in the UPWP. The FTA will only provide retroactive MPP assistance to support work that is eligible for MPP assistance and meets all Federal requirements. An MPO may incur costs for MPP work before receiving its MPP allocation from the State, yet remain eligible for reimbursement when its MPP assistance is ultimately made available. The same principles also apply to SPRP assistance.

6. GRANT AGREEMENT.

- a. Characteristics of the Grant Agreement. The FTA has developed a streamlined grant agreement with the following characteristics:
 - (1) Notification of Award. This section sets forth the specifics pertaining to the particular grant application. The project description will cover all MPP work elements and activities to be carried out within the State. The total project cost will cover all MPP work elements and activities within the State for which the specific grant will provide funding. The local share will be the total local share the State and local government entities are obligated to provide for all the MPP work elements and activities within the State for which the specific grant will provide funding.
 - (2) Master Agreement. Each fiscal year, FTA provides a copy of the Master Agreement to each grant applicant to use with all grant programs that may interest the grant applicant. The FTA incorporates by reference the Master Agreement for a specific fiscal year and makes it part of the grant agreement. The Master Agreement is essentially a compilation of all requirements imposed on FTA grant programs by various Federal statutes, regulations, Executive Orders, and FTA directives used for all FTA grant programs. Requirements within the Master Agreement not otherwise applicable to the MPP will not be imposed by the Master Agreement.

- (3) Special Conditions or Requirements. Any special conditions or requirements placed on a particular grant agreement will be set forth within the grant agreement in the Transit Award Management System (TrAMS) grant processing system.

Note: Failure to fulfill a special condition or requirement pertaining to a specific work element or activity can delay drawing down MPP assistance to support that work element or activity.

- b. Transmission of the Grant Agreement. The FTA and the recipient obligate and execute the grant agreement electronically through the TrAMS grant processing system.

7. ADMINISTRATION OF MPP GRANTS. Each State is responsible for ensuring that each MPO within its jurisdiction complies with those Federal requirements affecting MPO operations.

- a. Federal Role in MPP Administration.

- (1) FTA Headquarters offices are responsible for:

- (a) Providing overall MPP policy and program guidance;
- (b) Apportioning funds annually to the States;
- (c) Developing and implementing financial management procedures;
- (d) Initiating and managing program support activities;
- (e) Supporting and completing fund transfers for the Consolidated Planning Grant (CPG) program and non-CPG program; and
- (f) Conducting national program reviews and evaluations.

- (2) The FTA regional offices have the day-to-day responsibility for administering the MPP. Regional office responsibilities include:

- (a) Working with States to implement the annual or two-year planning grant program or CPG program;
- (b) Reviewing and approving the State's allocation formulas;
- (c) Reviewing and approving the State's MPP grant or CPG applications;
- (d) Approving the State's annual Certifications and Assurances;
- (e) Reviewing and approving any revisions to the planning work conducted within the State;
- (f) Obligating funds;

- (g) Providing oversight of the State's management responsibilities;
 - (h) Providing overall management; and
 - (i) Reviewing the State's management of its MPP grants as circumstances warrant.
- (3) Before making MPP assistance available to the State, FTA regional offices and FHWA division offices, consistent with the processes identified in respective memoranda of agreements, will review the draft UPWP from each MPO. The FTA and FHWA will approve the UPWPs individually or as part of the State's consolidated request for metropolitan planning assistance. The State may either submit UPWPs or simplified statements of work submitted by MPOs for areas with 200,000 or less population.

b. State Role in MPP Administration.

- (1) General Responsibilities. The State may select any entity to administer its MPP program. Normally a State DOT or another State agency manages the State's MPP grants. The State role includes:
- (a) Notifying eligible local entities of the availability of MPP assistance;
 - (b) Determining how MPP assistance should be allocated to each MPO, through a formula developed with its MPOs and approved by the FTA;
 - (c) Reviewing UPWP work tasks;
 - (d) Forwarding the MPP application to the FTA;
 - (e) Providing the necessary Certifications and Assurances;
 - (f) Ensuring compliance with Federal requirements by all subrecipients;
 - (g) Monitoring the MPOs' project activity; and
 - (h) Overseeing project audit and grant closeout.
- (2) State Subagreements with MPOs. Before providing MPP assistance to an MPO, the State and MPO must enter into a written subagreement stating the terms and conditions of the provision of MPP assistance. In general, the MPO is authorized to follow State procedures in managing its MPP work, except when Federal statutes, Executive Orders, or regulations apply. Accordingly, the State must ensure that every subagreement with an MPO includes all applicable requirements imposed by Federal statutes, Executive Orders, and implementing regulations. The Master Agreement, which the FTA incorporates by reference into the grant agreement between the FTA and the State, identifies these requirements.

At the request of the MPO, the State may carry out planning work elements or activities directly for the MPO. Additionally, the State may reimburse MPOs for work activity vouchers from FHWA and/or FTA's planning program funding.

- (3) General Management Requirements. States and Local Governments under 2 CFR part 1201 establish basic grant management requirements for the State. To the extent that State procedures do not conflict with other Federal statutes, Executive Orders, or implementing regulations applicable to the MPP, the Uniform Guidance specifically permits the State to use its own procurement, financial management, and property management procedures in administering its MPP assistance.
 - (a) The Uniform Guidance also authorizes a local government subrecipient of a State to use the State's procurement, financial management, and property management procedures. For purposes of the 2 CFR part 1201, an MPO is specifically designated as a "local government," even if the MPO qualifies as a non-profit corporation under State law. Consequently, because an MPO is the State's subrecipient of MPP assistance, the MPO is authorized to administer its MPP assistance in accordance with State procedures, but only if they do not conflict with other Federal statutes, Executive Orders, or implementing regulations applicable to the MPP.
 - (b) The Master Agreement, which FTA incorporates by reference in the grant agreement, sets forth the basic requirements pertaining to an MPP grant. Additionally, the current version of FTA Circular 5010.1, "Award Management Requirements," provides project management guidelines for nearly all FTA programs. Circular 5010.1 provides basic guidance on financial status and milestone/narrative progress reporting that is particularly useful in managing the MPP. The circular's provisions offer guidance in program management.
- c. Special Management Requirements for the MPP Program. This circular does not repeat all management requirements applicable to the MPP, but it does contain compliance guidance within the context of the MPP structure for certain management requirements of special significance to FTA.
 - (1) Third Party Contracts. A third party contract is a contract financed with Federal assistance between a Designated Recipient, pass-through recipient, or subrecipient and a third party contractor for project work elements or activities. A third party contractor may be a general contractor, a consultant, or another entity (usually in the private sector) but is not a subrecipient that receives pass-through funding from the recipient to implement its project. A third party subcontract is a subcontract entered into by the third party contractor and another contractor for project work. The current version of FTA Circular 4220.1, "Third Party Contracting Guidance," is a useful guide for third party contracting procedures.

- (a) A contractor engaged to perform project work directly for either the State or subrecipient is a third party contractor. A contractor engaged by the third party contractor is a third party subcontractor.
 - (b) In the case of the MPP, the procurement, execution, audit, and closing of third party contracts are basic MPO responsibilities, for which the State, as well as the MPO, is responsible.
 - (c) Notably, neither the State nor the MPO may impose State or local preference provisions in third party procurements. The State must also ensure that each purchase order or other third party contract includes all requirements imposed on States by specific Federal statutes, Executive Orders, and their implementing regulations.
 - (d) A subagreement in which the State (as the Designated Recipient) passes MPP assistance through to the MPO (as a subrecipient) is not a third party contract. When entering into any third party contract, however, the MPO, as the subrecipient of the State, must comply with State procurement procedures and other specific Federal statutory, Executive Order, and regulatory requirements specifically imposed on the MPP.
- (2) Disadvantaged Business Enterprises (DBE). DOT regulations on participation by DBEs in certain FTA programs require recipients and subrecipients of specific amounts of Federal transportation assistance to establish DBE goals on contracts (and third party contracts) with subcontracting opportunities. For further information on FTA's DBE requirements, see DOT's DBE regulations (49 CFR Part 26) "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- (3) Allowable Costs. OMB's Uniform Guidance at 2 CFR part 200, provides Federal guidelines for allowable costs for grantees and subrecipients that are State or local governments.

d. Financial Management.

- (1) State Financial Management Systems. The Uniform Guidance requires a State to spend and account for grant funds in accordance with State laws and procedures for spending and accounting State funds. Fiscal control and accounting procedures of the State, as well as its subrecipients and cost-type contractors, must be sufficient to:
- (a) Permit preparation of all reports required by Federal law and regulation as a result of the MPP project; and
 - (b) Permit tracking of funds to a level of spending adequate to confirm that such funds have not been used in violation of the restrictions and prohibitions applicable to the MPP program.

- (2) FTA Payment Procedure. The FTA makes all payments by the Automated Clearing House (ACH) method of payment, regardless of the amount. The State makes payments under the Electronic Clearing House Operation (ECHO) system, using its assigned ECHO Control Number (ECN). The State must comply with the ECHO requirements contained in the FTA Echo-Webs User Manual section “Guidelines for Disbursements” used for FTA projects.
<https://www.transit.dot.gov/funding/grantee-resources/echo/echo-web-user-manual>
In general:

- (a) The State may draw down cash only when project purposes require immediate disbursement of funds;
 - (b) The State must disburse the funds drawn down within three days. The FTA may revoke or suspend the State’s access to the ECHO system, or the FTA may invoke other remedies if the State fails to spend the Federal funds within three days of their receipt or return the funds to FTA within a reasonable period or if the State will not or cannot establish procedures that will reduce the amount of time between cash advances and disbursement;
 - (c) The State must report cash disbursements and balances on the annual Federal Financial Report (FFR) in the grant;
 - (d) The State must provide for control and accountability of all project funds consistent with Federal requirements and procedures for use of the ECHO system;
 - (e) The State may not draw down funds for a project that would exceed the amount obligated by FTA or the current available balance for that project; and
 - (f) The State shall limit drawdowns to eligible project costs and ensure that subrecipients also follow applicable financial requirements. If the State violates this requirement, the State must remit interest as required by U.S. Department of Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR part 205.
- (3) State Financial Records. The FTA does not maintain detailed financial records on individual MPP projects. The State (and its subrecipient MPOs) must maintain financial records, supporting documentation, and all other records pertaining to an MPP grant, and these records should be available for review by FTA and DOT. Besides specific data on project expenditures, the State’s financial records should adequately document the computation of the Federal share and the provision of the required local share for each project. These records must be kept readily available for inspection by authorized DOT representatives or the Comptroller General of the United States for a period of three years. The retention period starts on the date the State submits its final Financial Status Report (FSR) (OMB SF–269A) to the FTA and DOT. If any litigation, claim, or audit is started before the expiration of the

three-year period, the records must be retained beyond three years, until all litigation, claims, or audit findings involving the records have been resolved.

- (4) Audit. The State is responsible for ensuring that audits are performed pursuant to the requirements of the Uniform Guidance in 2 CFR part 200, subpart F.
- (5) Closeout. The State should initiate project closeout with MPOs immediately after the MPO has spent all its MPP assistance. The State should similarly initiate grant closeout with FTA immediately after the State finishes all activities covered by its (aggregate) Project Task Budget. The State is required to submit a final FFR (SF-425) and a final Award Budget at the time of project closeout.
 - (a) The State's subagreement with an MPO should specify a reasonable time (generally one year) in which the MPO must complete its planning work elements and activities. Although this circular gives the State a great deal of flexibility, it is not FTA's intention that grants be continually revised or amended in ways that will excessively prolong the life of the grant, and thereby result in a large number of active grants.
 - (b) The FTA places a high priority on closing out grants for which work or activity has ceased for more than a year after the period of performance end date in the award. If small amounts of funds (less than 5 percent of Federal funds in the grant) remain in an inactive subagreement, the State should ask the FTA to deobligate the remaining funds and close out the grant upon mutual agreement between the State and the FTA that the funds are no longer needed.
- (6) Reporting Requirements.
 - (a) Planning Status Reports. Each time an MPO submits a new UPWP for which it seeks Federal assistance to the State, FTA, or FHWA, a status report on any outstanding federally assisted planning work elements or activities should accompany that UPWP. The State then prepares a summary of these planning status reports for submission with the State's (aggregate) Project Task Budget.
 - (b) Annual Financial and Program Status Reports. Annually, the State must submit an FFR (SF-425) for each active grant along with the State's September 30 program status report. This FFR is due 30 days after the end of the Federal fiscal year. FTA may request more frequent reporting when circumstances warrant.
 - (c) Title VI Report. The current version of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," requires each State to submit a Title VI compliance report (updated every three years) to its FTA Regional Civil Rights Officer showing how the State

and its subrecipients will comply with Title VI of the Civil Rights Act of 1964, as amended.

- (d) DBE Reports. Because the State must pass through all MPP assistance to its MPOs, the State must obtain DBE programs and annual DBE goals from each MPO receiving \$250,000 or more in MPP assistance for one year. The State must submit semiannual progress reports on its DBE contracting activities and those of its subrecipients that meet or exceed the \$250,000 threshold. If the State includes in its goal calculations those subrecipients that receive less than \$250,000, the DBE contracting activities of these subrecipients must be reported annually. States and MPOs should consult DOT regulations on DBE participation in projects financed with DOT assistance, located at 49 CFR part 26, Appendix B.
 - (e) Reports on Nondiscrimination on Basis of Disabilities. The DOT regulations prohibiting discrimination on the basis of disabilities in federally assisted programs, at 49 CFR part 27, also require States to submit compliance reports.
- e. State Management of MPP Grants. The FTA apportions MPP assistance and awards grants to each State; the State then provides the MPP assistance to MPOs for transportation planning in their MPAs. For information on the role of the Federal and State governments in the administration of MPP grants, see chapter II, section 7.a. and b. (above) of this circular.
- (1) Although the State is responsible, in cooperation with the MPOs, for developing a formula for the suballocation of MPP assistance to various UZAs, the FTA must approve the formula. The FTA expects the State's MPP formula to recognize relative population size, transportation needs, and problems of individual areas, as well as ensuring a minimum amount of MPP funding for each UZA.
 - (2) If the FTA issues a single MPP grant to each State, the State assumes the role of grant applicant on behalf of its subrecipient, MPOs, in interacting with FTA. That is, the State must submit the MPP grant application to FTA on behalf of its MPOs. The State's (aggregate) Project Task Budget in its MPP grant application is usually compiled from information in the various final UPWPs. Specifically, FTA expects the State to prepare an aggregate summary of all the proposed work elements and activities in all its metropolitan areas, in accordance with the framework of Appendix B of this circular. Apart from the Project Task Budget, FTA also expects the State to submit information about how it will allocate MPP assistance to its MPOs and specify the organization that will be responsible for completing each work element or activity.
 - (3) The FTA and FHWA approves the UPWPs submitted by MPOs. Once approved by FTA and FHWA, States submit an MPP grant application on behalf of all MPOs in the State that includes or references the approved UPWPs.

- (4) If a State enters into a subagreement with each MPO, the State must distribute all MPP assistance to its MPO subrecipients in accordance with the State's federally approved formula. At an MPO's request, a State may use MPP assistance to perform selected planning work elements or activities for the MPO. Although the State may not use any MPP assistance for administrative expenses, the State may use FHWA SPRP assistance to support its costs connected with administering and managing the MPP.
- (5) The State, as the applicant to FTA for an MPP grant and later as the recipient, must comply with all grant application requirements of this circular. Consequently, the State is responsible for ensuring that each subrecipient of MPP assistance, such as an MPO, complies with those Federal requirements that apply to subrecipients. Although FTA does not specify the documentation a State must obtain from the individual MPO subrecipients, the State must show support for the certifications, assurances, and other reporting requirements it makes to FTA as a Designated Recipient.

8. ROLE OF THE DESIGNATED RECIPIENTS AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING FUNDS.

- a. Role of the Designated Recipient for Section 5307 Funds. Under FTA's Urbanized Formula Grant Program (49 U.S.C. 5307), the Designated Recipient is the entity selected by the State's Governor, responsible local officials, and publicly owned operators of public transportation. These entities "receive and apportion" the amounts made available by Congress and the FTA to a Transportation Management Area (TMA), or a State, or regional authority if the authority is responsible under the laws of the State for a capital project and for financing and directly providing public transportation. (See 49 U.S.C. 5307(a).) Section 5307 further provides that the Designated Recipient, after consideration of comments and views of the public, prepares the final program of projects for the amounts available to the Designated Recipient. (See 49 U.S.C. 5307(b).)
- b. Role of the MPO. Under 49 U.S.C. 5303(d), an MPO, designated by agreement of the Governor and local elected officials that together represent at least 75 percent of the affected population (including the largest incorporated city based on population) or in accordance with State or local law, is the forum for cooperative decision-making. Composed of local elected officials, appropriate State officials, and officials of public agencies that operate major modes of transportation in the region, including providers of public transportation, the MPO is responsible for the development and adoption of the long-range transportation plan and the shorter term TIP. The TIP must include every capital and operating project for which assistance will be requested from the FTA or FHWA. Upon approval by the MPO, the TIP must be approved by the Governor and subsequently included in a STIP that the FTA and FHWA jointly approve. (See 49 U.S.C. 5303(j), 49 U.S.C. 5304(g), and 23 U.S.C. 135(g).)

Sections 5303 and 5307 of 49 U.S.C. specify the roles of the MPO and the Designated Recipient respectively. While the MPO develops and adopts the TIP, the Designated Recipient has the primary responsibility to develop the program of projects for the

Section 5307 funds apportioned to its TMA for inclusion in the TIP. The MPO and the Designated Recipient have to work cooperatively to develop the TIP and agree on how Section 5307 funds will be spent. FTA Circular 9030.1, "Urbanized Area Formula Program: Program Guidance and Application Instructions," includes more information on the role of the Designated Recipient and MPO regarding Section 5307 funds.

- c. Role of the Designated Recipient for Section 5305 (MPP) Funds. For the purposes of this circular, the State can be the Designated Recipient of the MPP funds and must work cooperatively with the MPO to determine a formula for distributing these funds among MPOs in the State. The FTA must review and approve that formula.

9. RELATIONSHIP TO OTHER DOT PROGRAMS.

- a. FTA Programs. The following is a brief discussion of other FTA grant programs that can be used to fund metropolitan transportation planning activities.
 - (1) State Planning and Research Program (SPRP) (49 U.S.C. 5305(e)). In addition to funding State and local transportation needs, the SPRP provides funds for planning studies. Chapter III of this circular provides detailed information on this program. The SPRP can provide financial assistance through States to their MPOs to aid in the preparation of fiscally constrained plans and TIPs that guide the use of Federal capital assistance resources. The plans and programs should reflect the goals and objectives of State and local officials and citizens.
 - (2) Urbanized Area Formula Grants (49 U.S.C. 5307). Funds may be used for any planning work element or activities eligible for MPP assistance. The statute establishes the Federal match for planning assistance under this program at 80 percent of the project cost. For UZAs under 200,000 in population, the FTA makes funds available to the Governor or the Governor's designee(s) for distribution. For UZAs over 200,000 in population (designated as TMAs), funds are available to a local Designated Recipient. See the current version of FTA Circular 9030.1 for more information on this program.
 - (3) Fixed Guideway Capital Investment Grants (49 U.S.C. 5309). Capital Investment Grants provide capital assistance for fixed guideway modernization, construction, and extension of new fixed guideway systems; bus and bus related equipment; and construction projects. States and local public bodies within urbanized, or nonurbanized areas, are eligible to receive grants derived from the Capital Program but may not use the funds for planning activities. Planning is no longer an eligible activity under Section 5309, with the exception of Before-and-After Studies for New Starts and Small Starts. See the current version of FTA Circular 9300.1, "Capital Investment Program Guidance and Application Instructions," for more information.
 - (4) Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities (49 U.S.C. 5310). The Enhanced Mobility of Seniors and Individuals with Disabilities Program (Section 5310) provides Federal assistance to States,

which in turn distribute the funds to private, non-profit organizations (and in certain circumstances, public bodies). Subrecipients can use Section 5310 program funds to buy vehicles and related equipment to provide special transit services to elderly individuals and individuals with disabilities. The State may use up to 10 percent of its total fiscal year apportionment under Section 5310 to fund program administration, planning, and technical assistance. The 10 percent that is eligible to fund program administration costs, including planning, may be funded at a 100 percent Federal share. To find guidance for this program, see the current version of FTA Circular 9070.1, “Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions.” This program is part of the Coordinated Plan discussed further in Chapter II, Section 9.b., of this circular (below).

- (5) Formula Grants for Rural Areas (49 U.S.C. 5311). This program provides funds to the States for public transportation projects in small urban and nonurbanized areas. The State may use up to 15 percent of these funds for planning activities, as well as for State administration and technical assistance. See the current version of FTA Circular 9040.1, “Formula Grants for Rural Areas: Program Guidance and Application Instructions,” for more information on this program.

Note: With few exceptions, the same State agency administers both the Section 5310 and Section 5311 programs. Given that the MPP and the SPRP programs complement each other and have many parallels, FTA encourages State agencies to consider all planning, capital, and operating resources together and to coordinate the use of those resources across FTA programs.

- b. Relationship to the Locally Developed, Coordinated Public Transit–Human Services Transportation Plan (Coordinated Plan). The FTA program Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310) requires that eligible projects be derived from a locally developed Coordinated Plan. The FTA expects public transit systems funded under both the Section 5307 and Section 5311 formula programs to participate in the local planning process for coordinated public transit–human service transportation in those areas applying for funds under Section 5310.

The Coordinated Plan should be prepared through a process that is consistent with the applicable metropolitan or statewide planning process. Transit service and demographic information developed and used in the broader metropolitan and statewide processes can provide a useful starting point for the more detailed review that will take place in preparing the Coordinated Plan. Similarly, the extensive public participation and stakeholder consultation provisions of metropolitan and statewide planning can provide a useful context and basis for the more focused local public involvement in preparing the Coordinated Plan. For these reasons, FTA strongly encourages coordination and consistency between the local coordinated public transit–human services transportation plan and metropolitan or statewide transportation planning processes, as described in 23 CFR part 450 and 49 CFR part 613. For more information on the Coordinated Plan, see FTA Circular 9070.1 (Section 5310). Although the Coordinated Plan may be developed within or outside the metropolitan or statewide transportation planning processes, the

development of that plan must be consistent with applicable metropolitan or statewide transportation planning processes, as well as the MTP or Long-Range Statewide Transportation Plan. Individual projects derived from the Coordinated Plan that will request FTA or FHWA funding must be incorporated into the TIP and STIP. As appropriate, the entire Coordinated Plan should be referenced within the applicable MTP or Long-Range Statewide Transportation Plan.

- c. Related FHWA Administered Programs. The following is a brief discussion of FHWA administered flexible fund programs that can be used to support metropolitan and statewide transportation planning processes. For information on these programs, see the FHWA website at <https://www.fhwa.dot.gov/fastact/factsheets/>.
- (1) Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133, 104(b)(3), & 140). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established the Surface Transportation Program. The FAST Act renamed the program STBG but continued the program as a source of flexible funding for surface transportation planning, highway, and/or transit research. The FTA grantees may use these funds for planning purposes in support of project development. The State Department of Transportation (State DOT) and FHWA must approve the use of STBG funds for planning purposes.
 - (2) Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. 149(a)). The CMAQ Program may be used for either highway or transit projects, including planning activities, undertaken in support of projects intended to meet or maintain air quality standards. The FHWA or FTA may administer these funds for eligible transit projects. The MPO, State DOT, FTA, and FHWA must approve the use of CMAQ funds for planning purposes.
 - (3) FHWA Metropolitan Planning Program (23 U.S.C. 104(d)). The FHWA's metropolitan planning funds (PL), similar to FTA's MPP funds, may be used for all transportation planning purposes in metropolitan areas. PL and MPP funds may be combined to finance any transportation work elements or activities in an MPO's UPWP through a Consolidated Planning Grant.
 - (4) FHWA State Planning and Research Program (23 U.S.C. 505). The FHWA's Statewide Planning and Research program (SPR) is a close counterpart to FTA's SPRP. FHWA SPR funds may be used for statewide transportation planning and research for all modes and for administrative expenses associated with the State's planning program.
- d. Pooled Funds. For a discussion on pooled funds, see Chapter III, Section 5.c of this circular.

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CHAPTER III:

STATE PLANNING AND RESEARCH PROGRAMS

1. PROGRAM OVERVIEW. The State Planning and Research Program (SPRP) is a source of Federal financial assistance to the States to meet the planning requirements of the joint Federal Transit Administration (FTA)/Federal Highway Administration (FHWA) planning regulations for statewide transportation planning. This program provides financial assistance to States for statewide transportation planning and other technical assistance activities, including supplementing the technical assistance program provided through the Metropolitan Planning Program (MPP) and planning support for non-urbanized areas. The FTA makes SPRP grants directly to States as the Designated Recipient.

The Governor of each State must designate a State recipient for its SPRP funds. Generally, grants under the SPRP are available to assist States, authorities of the States, Metropolitan Planning Organizations (MPOs), and local governmental authorities with developing transportation plans and programs, planning and evaluating public transportation projects, and conducting technical studies relating to public transportation.

- a. The joint FTA/FHWA planning regulations at 23 CFR part 450 elaborate on the following fundamental requirements that apply to statewide transportation planning:
 - (1) Within each State, a Long-Range Statewide Transportation Plan must be produced.
 - (2) Within each State, State Transportation Improvement Programs (STIPs), incorporating MPOs' Transportation Improvement Programs (TIPs) or including TIPs by reference, must be produced. The scope of the Statewide Transportation Planning process is detailed at 23 CFR 450.200.
 - (3) Within each State, a Statewide Planning Work Program documenting the statewide transportation planning activities performed with funds provided under 23 U.S.C. and 49 U.S.C. chapter 53 in accordance with the provisions of 23 CFR part 420 must be produced.
- b. The FTA will review and approve the work activities in the Statewide Planning Work Program. The FTA's review of the work program is part of the TrAMS electronic grant approval.

2. ELIGIBILITY.

- a. Applicant Eligibility. The FTA apportions SPRP assistance to each State. After the State executes its SPRP grant agreement with FTA, the State may decide to transfer some of its SPRP assistance to the MPO or beneficiary by subagreement to support public transportation and public transportation-related activities.
- b. Eligible Grant Activities. SPRP grants can be used to cover the cost of administering the statewide transportation planning, MPP, or both. SPRP grants are available for direct

labor or for contracts to undertake the balanced and comprehensive planning, engineering, design, and evaluation of public transportation projects and for transportation planning studies involving modes other than transit when performed as part of the metropolitan transportation planning process. SPRP funds may be used for metropolitan planning activities authorized under 49 U.S.C. 5303.

Eligible activities include, but are not limited to:

- (1) Development of Long-Range Statewide Transportation Plans and STIPs;
 - (2) Joint development planning;
- c. See Chapter II, Section 2.b of this circular for additional activities eligible to receive SPRP funding.

3. SPRP ASSISTANCE: FORMULA AND NOTIFICATION.

- a. Notification. SPRP apportionments to the States are published in the *Federal Register* annually after the President has signed the Department of Transportation (DOT) Appropriations Act for the fiscal year. The FTA usually publishes apportionments in the first quarter of each fiscal year. For information on FTA annual apportionment notices, see FTA's website at:

<https://www.transit.dot.gov/regulations-guidance/search/notices/?keyword=apportionment&nt>

- b. Authorization. Amounts authorized for the SPRP program are established by statutory formula. Under the formula established by statute, 17.28 percent of the amounts authorized for Section 5305 are allocated to the SPRP. A State may authorize part of the amount made available under the SPRP to be used to supplement the amounts made available under the MPP for that State.
- c. Formulas. The FTA apportions SPRP assistance to the States based on the ratio equal to the population in each State's urbanized areas (UZAs), divided by the total population in UZAs in all the States, as shown by the latest available census prepared by the Bureau of the Census. However, a State must receive at least 0.5 percent of the amount annually apportioned.
- d. Availability of SPRP Assistance.
- (1) Grant Awards. The funds apportioned under the SPRP will remain available for FTA to obligate to recipients for four fiscal years. The four-year window is the year of apportionment plus the following three fiscal years. Any apportioned funds that remain unobligated at the end of this period will revert to FTA for reapportionment under the program (the same principles apply to MPP assistance).
 - (2) Pre-award Authority. If a State has not executed a grant agreement with FTA, the State may expend its own funds under pre-award authority for SPRP work

contained in an approved Statewide Planning Work Program. The SPRP work will be eligible for FTA assistance after FTA approves a grant including the apportionment funding. The FTA will only provide retroactive SPRP assistance to support work that is eligible for SPRP assistance and meets all Federal requirements. A State may incur costs for SPRP work before receiving its SPRP allocation from FTA, yet remain eligible for reimbursement when its SPRP assistance is ultimately made available.

4. STATE PLANNING AND STATEWIDE PLANNING ACTIVITIES.

- a. Subrecipient Eligibility. For the purposes of 49 U.S.C. 5305, MPOs, local governmental authorities, and operators of public transportation systems are eligible subrecipients for grants to fund statewide planning activities.
- b. FTA Review. The State Department of Transportation (State DOT) shall include the State's work program in its planning grant application to FTA. In reviewing a State's work program, FTA evaluates the following:
 - (1) Relevance of the proposed activities to develop and maintain the appropriate technical and policy level needed to implement the State's 20-year transportation plan and STIP requirements; and
 - (2) Eligibility of each task for FTA financial assistance.
- c. Funding Ratio. The Federal share for eligible planning activities is 80 percent. The locality or the State must provide the remaining 20 percent cost in cash or in-kind contributions.
- d. Budget Scope and Activity Line Item (ALI) Codes. The scope code for statewide planning is 441-00. For a sample project budget scope with ALI codes, see Appendix B of this circular. Line item codes remain the same for both statewide and metropolitan planning.

5. RELATIONSHIP TO OTHER FTA AND FHWA PROGRAMS.

- a. FTA Programs. The following is a brief discussion of FTA programs that can be used to fund statewide transportation and planning activities:
 - (1) Metropolitan Planning Program (49 U.S.C. 5305(d)). The MPP provides financial assistance through States to their MPOs to aid in the preparation of plans and fiscally constrained TIPs that guide the use of Federal capital assistance resources. The plans and programs reflect a variety of State and local objectives, as well as national priorities. The MPP provides funds for planning studies to address State and local transportation needs. Chapter II of this circular provides detailed information specifically on this program.
 - (2) Urbanized Area Formula Grants (49 U.S.C. 5307). See Chapter II, Section 9.a of this circular for program description.

- (3) Formula Grants for Rural Areas (49 U.S.C. 5311). See Chapter II, Section 9.a of this circular for program description.
- (4) Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. 5310). See Chapter II, Section 9.a. of this circular for program description.

Note: With few exceptions, the Section 5310 and Section 5311 programs are administered by the same State agency. Because the MPP and SPRP programs complement each other and have many parallel provisions, FTA encourages State agencies to consider these two planning assistance programs together and to coordinate them to the extent possible.

- (5) Relationship to the Locally Developed Coordinated Public Transit–Human Services Transportation Plan (Coordinated Plan). The 5310 program requires a locally developed Coordinated Plan for project funding. See Chapter II, Section 9.b of this circular for program description.
- b. Related FHWA Administered Programs. The following is a brief discussion of flexible FHWA administered programs. Funding for these programs can be used for Statewide Planning and Research Programs (SPR). For information on these programs, see the FHWA website at: <http://www.fhwa.dot.gov/safetealu/factsheets.htm>.
- (1) Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133, 104(b)(3),140). See Chapter II, Section 9.c of this circular for program description.
 - (2) Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. 149). See Chapter II, Section 9.c of this circular for program description.
 - (3) FHWA Metropolitan Planning Program (PL) (23 U.S.C. 104(f)). See Chapter II, Section 9.c of this circular for program description.
 - (4) FHWA State Planning and Research Program (SPR) (23 U.S.C. 505). See Chapter II, Section 9.c for program description.
- c. Pooled Funds. To promote transportation systems that maximize mobility and accessibility and minimize transportation impacts on the human and natural environment, State transportation planning agencies may, in cooperation with MPOs, choose to pool funds. These pooled funds can be used to fund research that is of mutual interest and benefit and addresses the transportation needs of areas with critical needs or that support a broader, more comprehensive, statewide need. National pooled fund studies focus on solving problems of national significance. Usually FTA or FHWA headquarters offices administer these studies either in cooperation with States, MPOs, or both.

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CHAPTER IV:

CONSOLIDATED PLANNING GRANTS

1. CONSOLIDATED PLANNING GRANT (CPG) PROGRAM. The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) offer States the option of participating in the CPG program. The CPG program allows the States and Metropolitan Planning Organizations (MPOs) to merge funds from the FTA Metropolitan Planning Program (MPP) and State Planning and Research Program (SPRP) with FHWA Planning (PL) and SPRP funds into a single consolidated planning grant. States or MPOs have the option to transfer planning funds to either FTA or FHWA to be awarded and administered for metropolitan or metropolitan and statewide planning purposes. This CPG program fosters a cooperative effort between the Federal agencies and the participating States and MPOs to streamline the delivery of their planning programs to provide flexibility in the use of planning funds.

The FTA and FHWA distribute metropolitan planning and statewide planning funds according to each agency's statutory formulae. The States will distribute metropolitan planning funds to MPOs by formulae developed by each State in consultation with the MPOs, which FTA or FHWA must approve for their respective programs.

States and MPOs will decide whether planning funds will be consolidated for administration under FTA or FHWA. The designated "Lead Grant Agency" (FTA or FHWA) will have day-to-day responsibility for grant administration, such as work program changes, allowable cost determination, or audit processing. In all cases, the "Lead Grant Agency" will coordinate and solicit input from the other agency on major issues, such as work program approval and grant closeout. The FTA metropolitan and statewide planning funds to be used in FTA administered CPG grants must be transferred from the regular metropolitan and statewide planning program codes to the appropriate metropolitan and statewide CPG codes designated in the Transit Award Management System (TrAMS).

Under the CPG program, States can report metropolitan planning expenditures (to comply with the Uniform Guidance, 2 CFR part 200, subpart F) for both FTA and FHWA under the Catalog of Federal Domestic Assistance (CFDA) number for FTA's Metropolitan Planning Program (MPP) (20.505). FTA funds used for metropolitan planning in a CPG are allowed to have the same match ratio as the FHWA PL funds. In this instance the requirement for a 20 percent local match can be waived to allow FTA to use the same higher FHWA Federal match ratio in a CPG state. For some States, this Federal match rate can exceed 90 percent.

The FHWA August 12, 2013, Memorandum, "INFORMATION: Fund Transfers to Other Agencies and Among Title 23 Programs," at

<https://www.fhwa.dot.gov/legregs/directives/orders/45511.cfm>,

provides links to sample transfer request forms and more detailed instructions.

States interested in transferring planning funds between FTA and FHWA should contact their FTA Regional Office or FHWA Division Office for more detailed procedures.

2. BENEFITS OF THE CPG TO THE STATES AND MPOS .

- a. No SF-424 (standard Federal application) is required. The FTA and FHWA will accept the metropolitan (and statewide) planning work programs as the grant application for both FTA planning funds. FTA will not require a separate SF-424 from the State under the CPG.
- b. Elimination of separate FTA and FHWA budget detail. Under the CPG, FTA will not require a separate FTA and FHWA budget document with activity line items (ALIs) for work program activities, such as long-range planning or Transportation Improvement Program (TIP) development. When needed for programmatic, not budget review purposes by FTA or FHWA, this activity information will be obtained from the work program documents. Financial data (scope level) will come from the funding summaries at the end of the Unified Planning Work Program (UPWP), thereby eliminating the potential for budget revisions. This also saves the States and MPOs from having to prepare individual budgets.
- c. Expedited authorization of work. States and MPOs will have to wait for only one source of funds, not both, to be made available at the beginning of their program period. As long as any planning funds (FTA or FHWA) are available to the “Lead Grant Agency,” those funds can be used for any of the work. Work will be authorized based on availability of combined FHWA and FTA funds. This should lessen, if not eliminate, the need to use FTA’s Letter of No Prejudice or FHWA’s Advance Construction provisions, given that some funds (FHWA or FTA) should always be available at the beginning of the work program period.
- d. Elimination of multiple budget ALIs in TrAMS. TrAMS will show only the combined FHWA/FTA funding programmed for each State. Budget ALIs will be reported for total funding. By using data at this aggregate level, it will not be necessary for transfers among work program line items to be entered into TrAMS.
- e. Simplified work activity, accounting, and billing. The State/MPO will not need to identify which categories of fund(s) are budgeted for specific work program activities in the UPWP. Similarly, UPWP expenditures will not need to be tracked by source of funds and work program line items. The MPO requests for reimbursement will not need to indicate the source (FTA or FHWA) of the Federal funds claimed. The State’s bill will need to specify only a metropolitan or statewide funding source to be drawn down.
- f. One Federal oversight agency. The “Lead Grant Agency” will have responsibility for day-to-day grant program support activities. Draft and final work programs and progress and financial reports will need to be submitted to the “Lead Grant Agency” only, which will also handle other administrative matters, such as work program changes, allowable cost determination, and audit processing. The FTA and FHWA will retain their responsibility for program management and oversight, including the review of the UPWP

and UPWP amendments. The FHWA Division Office and the FTA Regional Office will coordinate review of the final reports and mutually determine whether the grant is ready to be closed out. Therefore, States and MPOs will need to work with only one Federal agency on administrative issues.

- g. Simplified procedures for fund carryover/grant extension options. In non-CPG States, FHWA funds in previous grants (work programs) may be released and reprogrammed, upon request of the State, in new work programs at any time. Unexpended balances from FTA grants that exceed the four-year period of availability will lapse to the State if deobligated. The FTA will work with States that elect to participate in the CPG on a case-by-case basis to close out previous FTA planning grants without the lapsing of funds. In CPG States, FHWA funds transferred to FTA will be administered by FTA and will remain in an open grant in the TrAMS system until the funds are disbursed. Any funds not spent will be deobligated. The goal of the CPG program is to have only one combined FTA/FHWA grant to which all incurred costs will be charged during the State's or MPO's program period. This will reduce the number of open grants and the associated accounting and paperwork burden. States' participants in the CPG have the option to treat the CPG grants as one-year grants with a new project and grant created for each year's work program, or they can amend the original grant to include several successive years' work programs. For example, the original grant could, through successive amendments, extend over the life of the reauthorization legislation.
 - h. Consolidated reporting. The State will submit periodic progress and financial reports to only the "Lead Grant Agency" instead of to both FHWA and FTA. Reporting annually is the required minimum, but it could be more frequent as agreed to by the field offices. Under the CPG program, progress and financial reports submitted by the State and MPO just need to specify the amount of total Federal funds that have been expended on specific activities and will not have to specify how much FHWA and FTA funds have been spent on activities. MPO reports will be submitted through States in accordance with State procedures. Similarly, products produced with the consolidated funds would only need to be submitted to the lead administrative Federal agency.
 - i. Continuing/combined subgrant agreements. States can enter into continuing agreements with MPOs that cover FTA and FHWA funded planning and then issue annual letters requesting transfer of each year's funding. This eliminates the need for annual negotiations and legal review of subgrant agreements.
 - j. Single Federal match ratio. States with differing FTA and FHWA match ratios have the option to use the higher matching ratio.
 - k. Consolidated single audit reporting. Expenditures of FHWA funds transferred to FTA can be reported under FTA's CFDA number(s), and expenditures of FTA funds transferred to FHWA can be reported under FHWA's CFDA number.
3. PROJECT BUDGET INFORMATION. When FTA administers the CPG program, the format of the budget should include: scope code, description, and project budget. (For additional information on combined FHWA/FTA funding, see Appendix B of this circular.)

4. CONTACT INFORMATION. States interested in participating in the CPG program between FTA and FHWA should contact their FTA Regional Office or FHWA Division Office for more detailed procedures.

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CHAPTER V:

APPLICATION INSTRUCTIONS

1. GENERAL. Following enactment of the annual Department of Transportation (DOT) Appropriations Act, the Federal Transit Administration (FTA) apportions Metropolitan Planning Program (MPP) and State Planning and Research Program (SPRP) assistance to each State, which the State in turn distributes to its recipients. Until FTA awards an MPP or SPRP grant to the State, the State cannot obtain that MPP or SPRP assistance. Because the State obtains MPP and SPRP assistance directly from FTA, the State must submit its application and all supporting documentation directly to FTA.

The FTA does not impose requirements on the State in selecting the entities to apply for the State's MPP or SPRP grant. The State DOT administers the State's MPP and SPRP grant. The FTA also does not mandate uniform procedures by which States must process requests for assistance. To expedite MPP and SPRP grant awards, however, FTA recommends that all application procedures conform to the guidance in this chapter pertaining to grant applications and reviews. The FTA's Transit Award Management System (TrAMS) is used for processing grant applications and approvals.

2. MPO APPLICATION TO THE STATE. The MPOs and other entities seeking planning assistance should submit applications for MPP or SPRP assistance to the State along with sufficient documentation for the State to make the Certifications and Assurances required for an MPP and SPRP grant award to the State. An MPO seeking MPP assistance for planning work elements or activities involving an urbanized area (UZA) of more than 200,000 population or a nonattainment or maintenance area for transportation pollutants must also submit a copy of its draft and final Unified Planning Work Program (UPWP) to the appropriate FTA Regional Office and Federal Highway Administration (FHWA) Division Office for review and approval, as well as to the State. Each State has its own process for reviewing MPO applications for MPP assistance.
3. APPLICATIONS TO FTA.
 - a. The State agency designated as the MPP and/or SPRP recipient must submit its application electronically to the appropriate FTA Regional Office.
 - b. FTA encourages States to submit one combined application for both the MPP and SPRP annually. This will result in a single planning grant that includes both metropolitan and State planning activities.
 - c. Project Task Budget for Planning.
 - (1) The project budget should summarize the approved planning tasks and budgeted amounts from the UPWPs submitted by State. The tasks included should reflect all MPP and SPRP funded activities from the metropolitan UPWPs for which assistance is being sought.

- (2) When a State submits a project budget, it should include planning activities undertaken in non-urbanized areas of the State, which will constitute the basis for an applicant incurring obligations and FTA making disbursement of project assistance. This budget should broadly identify tasks in order to minimize the need for post-grant approval actions such as budget revisions and grant amendments.
 - (3) The sample project budget and task descriptions in Appendix B represent a uniform set of categories. The States must prepare the aggregate project budget in a format similar to that of Appendix B. This may require aggregation of UPWP tasks for budget preparation.
- d. Project Budget. The funds for planning will have individual scope codes and must be in separate budgets with the associated Activity Line Item (ALI) for the State's application to FTA (see Appendix B for samples). Appendix B provides ALI codes in sample budgets. The most current codes for all project scopes and activities can be viewed on the FTA website at:
- <https://www.transit.dot.gov/funding/grantee-resources/teamtrams/federal-transit-administration-scope-codes-activity-line-items>
- e. Cost Allocation Plan/Indirect Cost Proposal. If indirect costs (overhead) are to be charged to the project, the State must provide a cost allocation plan or indirect cost proposal to support those cost charges. Before FTA may reimburse the State for indirect charges, the plan or proposal must be provided and approved by the cognizant Federal agency assigned to the State (which is not FTA). The State should notify FTA if the State intends to charge indirect costs to a project but has not prepared a cost allocation plan/indirect cost proposal. Information on preparing the cost allocation plan or indirect proposal is contained in the current version of FTA Circular 5010.1, "Award Management Requirements," which is available at:
- <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e>
- f. Local Share. Unless an exception is made to the State's share requirement, the State must make a commitment in the application to provide the entire 20 percent local share of the total project cost of its entire MPP or SPRP grant request. Each commitment must specify whether the local matching share consists of cash, in-kind services, or a combination of both.
- g. Transit Award Management System (TrAMS). The FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Designated Recipients may inquire about the status of grants, file their required Federal financial status and milestone progress reports, and submit annual Certifications and Assurances through the TrAMS system.

- h. Certifications and Assurances. To receive a grant under Section 5305, the designated State agency must annually assure FTA that the State and subrecipients meet certain requirements. In this regard, the State applicant is responsible to FTA for both its own and its subrecipients' compliance with the requirements of the Certifications and Assurances applicable to the specific project, even though some requirements must be fulfilled by the subrecipient or another entity. For this reason, the State applicant should obtain sufficient documentation from all subrecipients to support those Certifications and Assurances the State must provide to FTA. The State should maintain adequate files documenting the basis for all assurances that it makes to FTA.

Each fiscal year, FTA publishes the required Certifications and Assurances in the *Federal Register* and updates them in the TrAMS system. This notice indicates which Certifications and Assurances apply to all grantees or to certain kinds of awards, and which are required for grants under specific sections.

As noted in Chapter V, Section 3.g., of this circular, grant recipients can provide, electronically in TrAMS, each Certification and Assurance that will apply to the applicant's grants for the particular year. The Certifications and Assurances appear in TrAMS where a grant applicant's authorized representative may "pin" and submit the certifications appropriate to the applicant.

4. ACKNOWLEDGMENT OF APPLICATION. The FTA's transit award management system will provide notification if the application has been successfully submitted. Because FTA cannot assign a grant number until it has determined that the application is complete, the State should also notify FTA that a submission has been made.
5. GRANT APPROVAL. When a grant application has been approved, FTA notifies the applicant electronically through the TrAMS system. Chapter II of this circular discusses this grant agreement more fully.

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APPENDIX A:

OUTLINE OF THE UPWP

This outline is not intended to be all-inclusive or prescriptive. Rather, it provides one possible general framework for the description of work elements and activities to be accomplished in the implementation of the local planning process in the Unified Planning Work Program (UPWP).

The following outline suggests a general structure for a UPWP:

- (1) Introduction. The introduction should include a discussion of items such as the purpose of the UPWP, the agencies participating in the UPWP, the time frame(s) used in the UPWP, and generally how the UPWP was developed and unified for the entire metropolitan area. The UPWP should include a discussion in broad terms of the status of all planning in the metropolitan planning area (MPA), both comprehensive and transportation, how the planning emphasis areas were considered, if applicable, and major overall issues and objectives. Finally, the UPWP should list the specific products to be undertaken.
- (2) Overview of the UPWP Work Element Objectives. The UPWP should address the various planning work elements to be accomplished in the MPA and based upon the metropolitan plan. This discussion should include the following:
 - (a) A discussion of the planning priorities facing the MPA;
 - (b) A description of all proposed transportation and transportation-related planning work elements or activities, including related State Department of Transportation (State DOT) or transit authority corridor planning work elements or activities, regardless of funding sources; and
 - (c) A description of transportation-related air quality planning work elements or activities, regardless of funding sources and regardless of the entity that conducts the work elements or activities.
- (3) The UPWP should address both current and long-term planning issues for each work element or activity and should, where appropriate, consider the interaction of short- and long-range issues. Particular attention should be given to the impact of short-term decisions on long-term costs and benefits. Within the overall framework of the work program, the elements of the program must meet the requirements of the individual Federal operating administrations to be eligible for funding.
- (4) The UPWP should include any active work elements or activities carried forward from prior years, as well as any work elements or activities to be financed from the Urbanized Area Formula Program (49 U.S.C. 5307) or other Federal Transit Administration (FTA) or Federal Highway Administration (FHWA) programs.
- (5) The UPWP should include a description of specific work elements and activities to be performed during the next one or two years. For each work element or activity, the following items should be discussed:

- (a) Description and objectives of the work element or activity;
 - (b) Previous Work;
 - (c) Methodology;
 - (d) Schedule for completing the activities or work elements;
 - (e) Tangible products expected within the time frame of the UPWP;
 - (f) Entity responsible for work element or activity;
 - (g) Cost and funding source (financial responsibility); and
- (6) Proposed budget using the format of the project task budget in Appendix B of this circular.

The project task budget should show the total project budget and all amounts of Federal assistance funds, including carryover funds, and local share funds from State and local sources that are allocated to each work element or activity included in the UPWP. It should also include amounts the MPO intends to provide to other entities, such as transit operators and local county governments. Appendix B provides a sample format and an explanation of the technical activities.

APPENDIX B:

SAMPLE BUDGETS AND ACTIVITY LINE ITEMS

MPP Sample Project Task Budget

<u>SCOPE CODE</u>	<u>ALI</u>	<u>ACTIVITY</u>	<u>PROJECT BUDGET</u>²
442-00		Metropolitan Transportation Planning	
	44.21.00	Program Support and Administration	\$117,400
	44.22.00	General Development and Comprehensive Planning	127,400
	44.23.00	Long Range Transportation Planning	157,200
	44.24.00	Short Range Transportation Planning	165,000
	44.25.00	Transportation Improvement Program (TIP)	20,000
	44.27.00	Other Activities	0
		TOTAL	\$587,000

² Federal Transit Administration (FTA) funds plus State and local match.

SPRP Sample Project Task Budget

<u>SCOPE CODE</u>	<u>ALI</u>	<u>ACTIVITY</u>	<u>PROJECT BUDGET³</u>
441-00		Statewide Planning	
	44.21.00	Program Support and Administration	\$97,000
	44.22.00	General Development and Comprehensive Planning	127,400
	44.23.00	Long Range Transportation Planning (to include EIS)	77,600
	44.24.00	Short Range Transportation Planning	165,000
	44.25.00	Transportation Improvement Program (TIP)	20,000
		TOTAL	\$487,000

CPG Sample Project Task Budget²

<u>SCOPE CODE</u>	<u>ALI</u>	<u>DESCRIPTION</u>	<u>PROJECT BUDGET⁴</u>
443-00		Consolidated Planning Grant	
	44.32.80	FHWA Metropolitan Planning	\$2,469,172
	44.33.90	FTA Metropolitan Planning	584,513
	44.32.81	FHWA Statewide Planning	590,117
	44.33.91	FTA Statewide Planning	152,617
		TOTAL	\$3,796,419

³ Federal Transit Administration (FTA) funds plus State and local match.

⁴ State aggregate budget for all FTA and FHWA Metropolitan and Statewide planning.

FTA's Transit Award Management System (TrAMS) is available on FTA's website.

Activity Line Items

The following Activity Line Item (ALI) codes are used for both metropolitan and State planning in non-CPG grants.

1. Program Support and Administration (44.21.00). Include basic overhead, program support, and general administrative costs directly chargeable to the FTA project. Examples include direct program support, administration, interagency coordination, citizen participation, public information, local assistance, and Unified Planning Work Program (UPWP) development. (If direct program administrative and support costs are included in each work plan or activity, do not enter them a second time in this category).
2. General Development and Comprehensive Planning (44.22.00). Include only the costs of activities specifically emphasizing regional policy and system planning for non-transportation functional areas, plus the development and maintenance of related data collection and analysis systems, demographic analysis and non-transportation modeling, and forecasting activity. Examples include land use, housing, human services, environmental and natural resources, recreation and open space, public facilities, and utilities.
3. Long-Range Transportation Planning (LRTP)—Metropolitan & Statewide (44.23.00).
 - a. Long-Range Transportation Planning (LRTP)—System Level. Include only the costs of activities specifically emphasizing long-range transportation system planning and analysis. Examples include long-range travel forecasting and modeling, including appropriate data base development and maintenance for transportation in the entire metropolitan area or State; system analysis; sketch planning; system plan development; reappraisal or revision; and all long-range Transportation System Management (TSM) activities.
 - b. Long-Range Transportation Planning (LRTP)—Project Level. Include only the costs of activities emphasizing corridor and subarea studies, cost effectiveness studies, feasibility and location studies, and the preparation of related draft environmental impact studies.
4. Short-Range Transportation Planning (SRTP) (44.24.00). Include only the costs of activities specifically emphasizing short-range transportation system or project planning and analysis proposed in the next three to five years. Examples include management analyses of internal operations such as management/administration, maintenance, personnel, and labor relations; service planning including appropriate data base development and maintenance; Transportation Development Plan (TDP) preparation; financial management planning, including alternative fare box policies; and all short-range Transportation System Management (TSM) activities including vanpool/ridesharing, high occupancy vehicles, parking management.

5. Transportation Improvement Program (TIP) (44.25.00). Include only the costs of activities specifically emphasizing TIP development and monitoring.
6. Other Activities (44.27.00). Include only the costs of those activities whose primary emphasis is unrelated to the specific types of activities described above.

APPENDIX C:

REFERENCES

- a. Federal Transit Laws, 49 U.S.C. Chapter 53.
- b. Federal-Aid Highway and Surface Transportation Laws, Title 23, U.S.C.
- c. Fixing America’s Surface Transportation Act (FAST Act) (Pub. L. 114-94, December 4, 2015).
- d. Moving Ahead for Progress in the 21st Century (MAP-21) (Pub. L. 112-141, July 6, 2012).
- e. “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201 (referred to as the Uniform Guidance).
- f. “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200.
- g. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005).
- h. Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998).
- i. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, Dec. 18, 1991).
- j. Federal Public Transportation Act of 1978 (Pub L. 95–599, Nov. 6, 1978).
- k. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq.
- l. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
- m. Clean Air Act, as amended, 42 U.S.C. 7401 et seq.; specifically, limitations on Federal assistance added by the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c).
- n. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.
- o. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
- p. Section 106 of the National Historic Preservation Act, 54 U.S.C 306108.
- q. Single Audit Act of 1984, 31 U.S.C. 7501 et seq.

- r. Lobbying disclosure provisions of 31 U.S.C. 1352.
- s. Federal Highway Administration (FHWA) regulations, “Planning and Research Program Administration,” 23 CFR part 420.
- t. Joint FHWA/FTA regulations, “Planning Assistance and Standards,” 23 CFR Part 450, and “Metropolitan and Statewide and Nonmetropolitan Planning,” 49 CFR part 613.
- u. Joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR part 771.
- v. Executive Order 12898 on “Environmental Justice” (February 11, 1994).
- w. Department of Labor Guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 CFR part 215.
- x. Department of Housing and Urban Development regulations, “Community Development Block Grants,” 24 CFR part 570.
- y. Department of Treasury regulations, “Rules and Procedures for Efficient Federal–State Funds Transfers,” 31 CFR part 205.
- z. Environmental Protection Agency regulations, “Requirements for Preparation, Adoption, and Submittal of Implementation Plans,” 40 CFR part 51 (specifically, subpart T, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 U.S.C. or the Federal Transit Laws”).
- aa. Environmental Protection Agency regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR part 93.
- bb. DOT regulations, “New Restrictions on Lobbying,” 49 CFR part 20.
- cc. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” (DBE regulations), 49 CFR part 26.
- dd. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 27.
- ee. DOT regulations, “Nonprocurement Suspension and Debarment” 2 CFR part 1200.
- ff. DOT regulations, “Procedures for Transportation Workplace Drug Testing Programs,” 49 CFR part 40.
- gg. DOT regulations, “Seismic Safety,” 49 CFR part 41.
- hh. FTA regulations, “Capital Leases,” 49 CFR part 639.

- ii. FTA regulations, “Buy America Requirements,” 49 CFR part 661.
- jj. OMB Circular A–87, “Cost Principles for State, Local, and Indian Tribal Governments,” codified at 2 CFR part 225, Aug. 31, 2005.
- kk. FTA Circular 4220.1, “Third Party Contracting Guidance.”
- ll. FTA Circular 4702.1, “Title VI Requirements and Guidelines for FTA Recipients.”
- mm. FTA Circular 4703.1, “Environmental Justice Policy for FTA Recipients.”
- nn. FTA Circular 4704.1, “Equal Employment Opportunity Act Guidance.”
- oo. FTA Circular 5010.1, “Award Management Requirements.”
- pp. FTA Circular 9030.1, “Urbanized Area Formula Program: Program Guidance and Application Instructions.”
- qq. FTA Circular 9040.1, “Formula Grants for Rural Areas: Program Guidance and Application Instructions.”
- rr. FTA Circular 9070.1, “Enhanced Mobility of Seniors and Individuals with Disabilities Program.”
- ss. FTA Circular 9500.1, “Intergovernmental Review of FTA Planning, Capital and Operating Programs and Activities.”
- tt. FTA Notice “Policy Statements on Local Share Issues,” 57 FR 30880 (1992).
- uu. General Services Administration (GSA), “Excluded Parties List System.”
- vv. FTA Master Agreement.
- ww. FTA ECHO-Web User Manual,
https://ftaecho2.fta.dot.gov/echoweb/manuals/ECHOWeb_User_Manual.pdf

APPENDIX D:

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
<u>Region I</u>	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Telephone: 617-494-2055 Fax: 617-494-2865
<u>Region II</u>	New York and New Jersey	One Bowling Green Room 428 New York, NY 10004-1415 Telephone: 212-668-2170 Fax: 212-668-2136
<u>Region III</u>	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Telephone: 215-656-7100 Fax: 215-656-7260
<u>Region IV</u>	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and U.S. Virgin Islands	230 Peachtree Street NW Suite 1400 Atlanta, GA 30303 Telephone: 404-865-5600 Fax: 404-865-5606
<u>Region V</u>	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 West Adams St Suite 320 Chicago, IL 60606 Telephone: 312-353-2789 Fax: 312-886-0351
<u>Region VI</u>	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	Fritz Lantham Federal Building 819 Taylor St, Room 14A02 Fort Worth, TX 76102 Telephone: 817-978-0550 Fax: 817-978-0575

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust Street, Suite 404 Kansas City, MO 64106 Telephone: 816-329-3920 Fax: 816-329-3921
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	Byron Rogers Federal Building 1961 Stout Street, Suite 13-301 Denver, CO 80294 Telephone: 303-362-2400 Fax: 303-292-5904
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	San Francisco Federal Building 90 Seventh Street, Suite 15-300 San Francisco, CA 94103-6701 Telephone: 415-734-9490 Fax: 415-734-9489
Region X	Alaska, Idaho, Oregon, and Washington	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Telephone: 206-220-7954 Fax: 206-220-7518
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Telephone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2170 Fax: 212-668-2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7100 Fax: 215-656-7260
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 320 Chicago, IL 60606 Telephone: 312-353-2789 Fax: 312-886-0351

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 2170 Los Angeles, CA 90017-5467 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW, Suite 510 Washington, DC 20006 Telephone: 202-219-3562 and 202-219-3565 Fax: 202-219-3545
Puerto Rico Metropolitan Office	Puerto Rico Metropolitan Area	350 Avenue Carlos Chardon Suite 1236 San Juan, PR 00918 Telephone: 787-771-2528

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COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS

A5. Section 5307

Draft August 2019

Outline

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Attachments

Urbanized Area Formula Program: Program Guidance and Application Instructions
FY 2019 5307 Full Year Apportionment

A5. FTA SECTION 5307 – URBANIZED AREA FORMULA GRANTS

The Urbanized Area Formula Funding program (49 United States Code 5307) makes federal resources available to urbanized areas (UZA) and to governors for transit capital and operating assistance in UZAs and for transportation-related planning. An UZA is an incorporated area with a population of 50,000 or more that is designated as such by the United States Department of Commerce, Bureau of the Census.

Documents that govern how the Colorado Department of Transportation (CDOT) administers Section 5307 funds include:

- Federal Transit Administration (FTA) Circular 9030.1E
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FINAL_FTA_circular9030.1E.pdf
- FTA website Overview: <https://www.transit.dot.gov/funding/grants/urbanized-area-formula-grants-5307>

A5.1.1 Program Goals

FTA apportions Urbanized Area Formula Program funds to UZA and to states to support the continuation and expansion of public transportation services in the United States. Section 5307 supports public transportation by:

- Assisting in the planning, engineering, design, construction, evaluation, and maintenance of public transportation projects, equipment, and facilities.
- Facilitating cooperation between public transportation companies and private companies engaged in public transportation to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development.
- Encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.
- Providing financial assistance to states and local governments to help carry out national goals related to mobility for all, including elderly individuals, individuals with disabilities, and economically disadvantaged individuals.
- Investing in bus and bus-related activities such as replacement, overhaul, and rebuilding of buses.
- Investing in crime prevention, public transportation safety, and security equipment.

A5.1.2 Eligible Recipients

The small UZAs in Colorado eligible for Section 5307 funds are Boulder, Grand Junction, Greeley, Lafayette-Louisville-Erie, Longmont, and Pueblo.

A5.1.3 Eligible Projects

Section 5307 funds can be used for capital projects, operating assistance, job access and reverse commute projects, and transportation-related planning.

A5.1.4 Transfer of Funds

CDOT/ Division of Transit and Rail (DTR) may transfer funds from the Section 5307 Program for non-UZAs to the Section 5311 Program. Funds from the Section 5311 Program may also be transferred to small urban Section 5307 systems.

DTR staff determine the need for flexibility in utilizing both funding sources. DTR consults affected area transit providers when considering transfer decisions. When Section 5307 funds are transferred to Section 5311, any capital or operating assistance limitations applicable to the Section 5307 apportionment apply to the transferred funds.

Section 5307 funds are passed through to identified agencies through a signed letter from the Governor appointee (the current Executive Director of CDOT). CDOT is notified of full year apportionments from the FTA and CDOT has one month's time to return the notification to the FTA. Any changes to the Federal Register's apportionments can be done at this time.

A5.2 Reporting

DTR can report, on behalf of its subrecipients, the following information:

- Transit Asset Management Plan.
- Safety and Security Plans.
- Disadvantaged Business Enterprise (DBE) Reports. These are the Semiannual DBE reports required of all FTA funding recipients.

Subrecipients are required to report directly to the National Transit Database on a yearly basis.

ATTACHMENTS

Urbanized Area Formula Program: Program Guidance and Application Instructions

January 16, 2014

**Subject: URBANIZED AREA FORMULA PROGRAM: PROGRAM GUIDANCE
AND APPLICATION INSTRUCTIONS**

1. PURPOSE. This circular is a reissuance of guidance on the administration and preparation of grant applications for the Urbanized Area Formula Program under 49 U.S.C. 5307. This revision incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141 (2012)), and includes the most current available guidance as of the date of publication.
2. CANCELLATION. This cancels FTA Circular 9030.1D, "Urbanized Area Formula Program: Grant Application Instructions," dated May 1, 2010.
3. AUTHORITY.
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on January 16, 2014 (79 FR 2930), addressing comments received during the development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "Connect with FTA" for more information.
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original signed by _____

Peter M. Rogoff
Administrator

Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of Program
Management

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SECTION 5307 PROGRAM CIRCULAR

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I. INTRODUCTION AND BACKGROUND

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA).** The Federal Transit Administration (FTA) is one of ten modal administrations within the U.S. Department of Transportation (DOT), and is headed by an administrator appointed by the president of the United States. The FTA functions through a headquarters office in Washington, DC, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes.

Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intraterminal or intrafacility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. **AUTHORIZING LEGISLATION.** Most federal transit laws are codified at Title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law as well as changes required by other laws that have become effective since the circular was last published in May 2010.
3. **HOW TO CONTACT FTA.** FTA's regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA's headquarters offices. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which the recipient is located. See Appendix F, "FTA Regional and Metropolitan Contact Information," of this circular for more information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
East Building
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. DEFINITIONS. All definitions in 49 U.S.C. 5302 and 5307 apply to this circular, as well as the following definitions:
- a. Applicant. In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.”
 - b. Associated Capital Maintenance. A category of capital project activities that is defined as equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.
 - c. Associated Transit Improvement. With respect to any project or area to be served by a project, an Associated Transit Improvement is a project designed to enhance public transportation service or use and that is physically or functionally related to transit facilities. As defined in 5302(1), eligible projects are: historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service; bus shelters; landscaping and streetscaping, including benches, trash receptacles, and street lights; pedestrian access and walkways; bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles; signage; or enhanced access for persons with disabilities to public transportation.
 - d. Bus Rapid Transit System. A bus transit system in which the majority of each line operates in a separated right-of-way dedicated for public transportation use during peak periods; and includes features that emulate the services provided by rail-fixed guideway public transportation systems, including (i) defined stations; (ii) traffic signal priority for public transportation vehicles; (iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and (iv) any other features the secretary of the Department of Transportation may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail-fixed guideway public transportation systems.
 - e. Capital Asset. Facilities or equipment with a useful life of at least one year.

- f. Capital Lease. Any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.
- g. Capital Project. A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter IV of this circular.
- h. Clean Fuel Bus. A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, propane, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or other low or zero emissions technology that the administrator of the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions.
- i. Coordinated Plan. See “Locally Developed, Coordinated Public Transit–Human Services Transportation Plan.”
- j. Cost of Project Property. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty, or in-transit insurance, should be treated in accordance with the grantee’s regular accounting practices, in the same or as separate line items.
- k. Designated Recipient. The term “designated recipient” means: (i) an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- l. Direct Recipient. For purposes of this circular, a direct recipient is an eligible entity authorized by a designated recipient or state to receive Urbanized Area Formula Program funds directly from FTA.
- m. Electronic Clearing House Operation (ECHO) System. ECHO is an FTA Web-based application system that processes payment requests from FTA grantees.
- n. Electronic Award Management System. A system that grantees and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by grantees to submit financial status reports and milestone progress reports and to submit grant modification requests; this term includes FTA’s transportation electronic award and management (TEAM) system and its successor.
- o. Equipment. An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes,

or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.

- p. Fixed Guideway. The term “fixed guideway” means a public transportation facility (i) using and occupying a separate right-of-way for the exclusive use of public transportation; (ii) using rail; (iii) using a fixed catenary system; (iv) for a passenger ferry system; or (v) for a bus rapid transit system.
- q. Fleet Management Plan. The management plan includes an inventory of all buses among other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- r. Fleet Status Report. A report in FTA’s electronic award management system that identifies rolling stock to be replaced, retired, or disposed. Appendix D of this circular contains a sample Fleet Status Report.
- s. Force Account. The use of a grantee’s own labor force to accomplish a capital project. Force account does not include grant or project administration, preventive maintenance, mobility management, or other nontraditional capital project types. Further guidance on force account work is available in FTA Circular 5010.1D.
- t. Governor. The term “governor” means the governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- u. Grant. An award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient. Used interchangeably with Grant Agreement.
- v. Grant Application. A complete application for an award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient.
- w. Growing States. States forecasted to expand in population size based upon annual population estimates and estimates determined by the decennial census. See 49 U.S.C. 5340(c)(1).
- x. High Density States. States with population densities in excess of 370 persons per square mile. See 49 U.S.C. 5340(d)(1).
- y. Intelligent Transportation Systems (ITS). Intelligent transportation systems refers to the use of electronics, communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system.

- z. Job Access and Reverse Commute Project. A category of reimbursable project expenses that includes activities identified under 49 U.S.C. 5302(9), as explained in Chapter IV of this circular.
- aa. Large Urbanized Area. An urbanized area (UZA) with a population of at least 200,000 at the time of the last decennial census.
- bb. Local Governmental Authority. The term “local governmental authority” includes a political subdivision of a state; an authority of at least one state or political subdivision of a state; an Indian tribe; and a public corporation, board, or commission established under the laws of a state.
- cc. Locally Developed, Coordinated Public Transit–Human Services Transportation Plan. A plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.
- dd. Low-Income Individual. The term “low-income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved.
- ee. Master Agreement. The official FTA document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its project(s). The Master Agreement is incorporated by reference and made part of each FTA grant, and amendment thereto.
- ff. Metropolitan Planning Area. The geographic area determined by agreement between the metropolitan planning organization (MPO) for the metropolitan area and the governor of the state, within which the metropolitan transportation planning process is carried out.
- gg. Metropolitan Planning Organization (MPO). The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and transportation improvement programs for metropolitan planning areas of a state.
- hh. Mobility Management. Mobility management is a capital project activity that consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or sub-recipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. Chapter 53 (other than 49 U.S.C. 5309). Mobility management is a type of capital project.
- ii. National Transit Database (NTD). The NTD is FTA’s primary source for information and statistics collected from transit systems that receive FTA formula funding under the Urbanized Area Formula Program (Sec. 5307) or Rural Area Formula Program (Sec.

- 5311). Public transportation systems receiving funds from these programs are required by statute to report to the NTD.
- jj. Net Project Cost. The part of a project that reasonably cannot be financed from revenues. See 49 U.S.C. 5302(12). Revenues, in this instance, means farebox revenues.
- kk. New Bus Model. The term “new bus model” means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been used in public transportation in the United States, but is being produced with a major change in configuration or components.
- ll. Operating Expenses. Operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.
- mm. Overhaul. Overhaul is a capital expense performed as a planned or concentrated preventive maintenance activity and intended to enable the rolling stock to perform to the end of the original useful life.
- nn. Passenger Ferry. A passenger ferry is a vessel providing regular and continuing shared-ride service that regularly accommodates walk-on passengers not traveling in motor vehicles. Passenger ferries may or may not also accommodate private passenger vehicles with the walk-on passengers. A passenger ferry is a type of fixed guideway public transportation and excludes sightseeing service.
- oo. Preventive Maintenance. All maintenance costs related to vehicles and nonvehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- pp. Private Nonprofit Organization. A corporation or association determined by the secretary of Treasury to be an organization qualifying under 26 U.S.C. 501(c) as exempt from taxation under 26 U.S.C. 501(a), or which has been determined under state law to be private nonprofit and for which the designated state agency has received documentation certifying the status of the private nonprofit organization.
- qq. Program of Projects (POP). A program of projects (POP) is a list of projects proposed by a designated recipient in cooperation with a metropolitan planning organization to be funded from the urbanized area’s Section 5307 apportionment. The POP includes a brief description of the projects, including any sub-allocation among public transportation providers, total project costs, and federal share for each project.
- rr. Public Transportation. The term “public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter

- 243 (or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.
- ss. Rebuild. Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock's useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- tt. Recipient. For purposes of this circular, the term "recipient" means an entity that receives a grant of Urbanized Area Formula Program funds directly from FTA. In this circular, the word "recipient" is used interchangeably with "direct recipient," and "grantee."
- uu. Rural Area. The term "rural area" means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an "urbanized area" by the secretary of the Department of Commerce.
- vv. Senior. The term "senior" means an individual who is 65 years of age or older.
- ww. Shared Use. Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- xx. Small Transit Intensive City (STIC). An urbanized area with less than 200,000 in population at the time of the last decennial census that provides public transportation service FTA has determined meets or exceeds the industry average for all UZAs with a population of at least 200,000 but not more than 999,999 in one or more of the following performance criteria: passenger miles traveled per vehicle revenue mile; passenger miles traveled per vehicle revenue hour; vehicle revenue miles per capita; vehicle revenue hours per capita; passenger miles traveled per capita; and passengers per capita. See 49 U.S.C. 5336(j)(1).
- yy. Small Urbanized Areas. As used in the context of FTA formula grant programs small urbanized areas are UZAs with a population of at least 50,000 but less than 200,000.
- zz. State. The term "state" means a state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- aaa. Statewide Transportation Improvement Program (STIP). A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans (MTPs), and transportation improvement program (TIP), and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- bbb. Sub-Recipient. An entity that receives FTA funds via a pass-through agreement with a direct recipient or designated recipient, whereby the original recipient remains responsible for compliance with all terms, conditions, and requirements associated with the grant.
- ccc. Transit. The term “transit” means public transportation.
- ddd. Transportation Improvement Program (TIP). A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
- eee. Triennial Review. The process by which FTA meets its statutory obligation to review and evaluate completely every three years the performance of a recipient of Urbanized Area Formula Program funds and how the recipient meets statutory and administrative requirements, especially those requirements included in the annual certifications and assurances. In addition to evaluating compliance with federal law, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements.
- fff. Unified Planning Work Program (UPWP). A program of work identifying the planning priorities and activities to be carried out within a metropolitan planning area (MPA) during the next one- or two-year period. At a minimum, a UPWP includes a description of the transportation planning work and resulting products, the organization that will be responsible for performing the work, time frames for completing the work, the cost of the work, and the source(s) of funds.
- ggg. Uniform System of Accounts (USOA). The USOA is a structure of categories and definitions used for NTD reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.
- hhh. Urbanized Area (UZA). An area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of the Department of Commerce.
- iii. Useful Life. The expected lifetime of project property, or the acceptable period of use in service. Useful life is used interchangeably with “service life.” **Note:** Land does not depreciate and therefore does not have a useful life.
5. PROGRAM HISTORY. Section 103(a) of the National Mass Transportation Assistance Act of 1974, Pub. L. 93-503, amended former Section 5 of the Urban Mass Transportation Act to authorize funding for the “Urban Mass Transit Program,” a formula program for UZAs that provided federal assistance for both capital and operating projects, with a “maintenance of effort” requirement on the recipient as a prerequisite for access to operating assistance. The Surface Transportation Assistance Act of 1978, Pub. L. 95-599, continued funding for capital and operating assistance under this program, and amended the maintenance of effort

requirement to permit reductions in state and local funding of operating expenses if those reductions were offset by an increase in operating revenues through fare increases without reducing service levels.

The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, amended Section 9 of the Urban Mass Transportation Act to establish a new Block Grant Program providing federal assistance by formula to UZAs for capital and operating projects. Because the Act did not authorize additional funding for the Section 5 Urban Mass Transit Program, the new Block Grant Program essentially superseded, without repealing, the Section 5 Urban Mass Transit Program. Unlike the Urban Mass Transit Program, Block Grant funds used for operating expenses did not have a “maintenance of effort” requirement, but there was a limit on the percentage of Block Grant funding that could be used for operations.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, authorized Block Grant Program assistance to designated recipients for capital and operating projects in UZAs. STURAA imposed limits on a grantee’s use of its apportionments for operating expenses based on the 1982 apportionments.

The Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, retained the STURAA restrictions on use of apportioned funds for operating expenses. However, ISTEA permitted increases in amounts available based in part on the Consumer Price Index, and provided greater increases for all UZAs. ISTEA also designated 1 percent of funds be used for transit enhancements.

In 1994, Pub. L. 103-272 codified Section 9 of the Urban Mass Transportation Act, “Block Grants,” at 49 U.S.C. 5307. Upon enactment of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, in 1998, the heading for 49 U.S.C. 5307 was changed to “Urbanized Area Formula Grants.” Under this program, funding was no longer available to support operations in UZAs with a population of 200,000 or more. For UZAs with a population of less than 200,000, there was no limitation on the amount of a recipient’s apportionment that could be used for operating expenses. Subsequent legislation authorized operating expenses in a few limited exceptions for certain UZAs and parts thereof with populations of 200,000 or more. This continued under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

In 2005, the enactment of SAFETEA-LU expanded eligible activities. Capital investments in bus and bus-related projects such as replacement of buses, overhaul of buses, acquisition of crime prevention and security equipment, mobility management, and construction of passenger and maintenance facilities became eligible reimbursable expenses under the Urbanized Area Formula Program (Section 5307). Capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software were also eligible reimbursable expenses under the program. Further, the program also considered all costs involving preventive maintenance, certain crime prevention activities, security-related activities, and some Americans with Disabilities Act of 1990 (ADA) complementary paratransit service expenses as capital costs.

In 2012, MAP-21 modified the program's formula for the apportionment of funds by increasing the amount of funding apportioned under the Small Transit Intensive Cities formula from 1 percent to 1.5 percent of the funds made available for the program. It also added a new apportionment component based on a UZA's low-income population, in an amount equal to 3.07 percent of the amount made available for the program. Operating assistance remained eligible in UZAs with populations less than 200,000; however, previously authorized exemptions for specific UZAs over 200,000 were repealed and replaced with a single nationwide exemption for fixed route transit operators that operate fewer than one hundred buses in peak service. Qualifying operators are eligible for operating assistance in an amount based on an individual operator's percentage of all public transportation service in the UZA.

MAP-21 also expanded eligible activities to include job access and reverse commute projects, which provide nontraditional transportation services intended to serve the employment-related transportation needs of welfare recipients and low-income individuals. These projects were previously eligible under the repealed Section 5316 Job Access and Reverse Commute Program. In addition, MAP-21 created a discretionary passenger ferry grant program under Section 5307.

In addition to the changes made by MAP-21 to the Urbanized Area Formula Program, MAP-21 directed FTA to establish and implement broad public transportation safety and asset management regulations, which will apply to all recipients of FTA funding once finalized.

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II. PROGRAM OVERVIEW

1. **STATUTORY AUTHORITY**. The Urbanized Area Formula Program, codified at 49 U.S.C. 5307 (“Section 5307”), is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. Under this program, the secretary may make grants to assist states and local governmental authorities in financing capital and planning projects, job access and reverse commute projects, associated transit improvements, and certain operating costs, as described in Chapter IV of this circular. Certain provisions of Section 5307 may also be incorporated in the program circulars for the Section 5337 State of Good Repair Program and the Section 5339 Bus and Bus Facilities Program. The Catalog of Federal Domestic Assistance (CFDA) number for the Urbanized Area Formula Program is 20.507.
2. **PROGRAM GOALS**. Pursuant to 49 U.S.C. 5307, FTA apportions Urbanized Area Formula Program funds to urbanized areas (UZAs) and to states for public transportation capital projects, operating assistance, job access and reverse commute projects, and for transportation-related planning. To support the continuation and expansion of public transportation services in the United States, Section 5307 supports public transportation by:
 - a. assisting in the planning, engineering, design, construction, evaluation, and maintenance of public transportation projects, equipment, and facilities;
 - b. facilitating cooperation between public transportation companies and private companies engaged in public transportation to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development;
 - c. encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development;
 - d. providing financial assistance to states and local governments to help carry out national goals related to mobility for all, including elderly individuals, individuals with disabilities, and economically disadvantaged individuals;
 - e. investing in bus and bus-related activities such as replacement, overhaul, and rebuilding of buses; and
 - f. investing in crime prevention, public transportation safety, and security equipment.
3. **PROGRAM MEASURES**. The Government Performance and Results Act (GPRA), Pub. L. 103-62, (1993), requires FTA and other federal agencies to “establish performance goals to define the level of performance” and to “establish performance indicators to be used in measuring relevant outputs, service level, and outcomes” for each of its programs. The performance measures described below are designed to fulfill FTA’s obligations under GPRA.

FTA reports on program measures in conjunction with GPRA. The following indicators are targeted to capture overarching program information as part of the annual report that each grantee submits to FTA.

The measures FTA established for the Urbanized Area Formula Program are:

- a. Ridership: Average percent change in public transportation boardings per public transportation market of the 150 largest public transportation localities.
 - b. Accessibility: Percent of bus fleets and rail stations that are in compliance with the Americans with Disabilities Act of 1990 (ADA).
 - c. Condition: Improvement in the average condition of bus and rail fleets.
4. CENSUS DESIGNATION OF URBANIZED AREAS. FTA apportions Urbanized Area Formula Program funds for public transportation in UZAs. UZAs are designated by the U.S. Bureau of the Census based on the results of each decennial census, and represent concentrated geographic areas with populations of at least 50,000. The Urbanized Area Formula Program provides grants for public transportation in urbanized areas, and establishes distinct requirements and eligibilities for UZAs over and under 200,000 in population.

UZAs generally correspond to U.S. cities and their densely populated suburbs. Most urbanized areas include multiple independent jurisdictions, and some include multiple cities, if those cities are linked by a densely populated area. The criteria for qualification as a UZA are based on geographic and demographic factors determined by the Bureau of the Census. The specific factors used to determine which adjacent areas are included in a UZA are subject to change in each decennial census.

Once published, these population counts and boundaries are used by FTA for funding apportionments and program eligibility determinations until the Census Bureau designates new UZAs as a result of the next decennial census.

As a result of the 2010 census, the total number of UZAs increased from 465 in 2000 to 497 in 2010. The 2010 census population counts resulted in five UZAs crossing over one million in population, one UZA falling under the one million population threshold, twenty-seven UZAs crossing into the 200,000 to 999,999 population category, thirty-six UZAs that became newly qualified UZAs with populations between 50,000 and 199,999, and four former UZAs that are now areas under 50,000 in population.

Category	Census 2010 Number of UZAs	Census 2010 Total Population
UZAs over 1 million	42	135,639,208
UZAS 200,000-999,999	137	56,845,584
UZAs 50,000-199,999	318	30,817,308
Total	497	223,302,100

5. FTA ROLE IN PROGRAM ADMINISTRATION.

a. FTA's headquarters office in Washington, DC, serves a broad, program level role in the administration of the program. FTA headquarters:

- (1) provides overall policy and program guidance for the Urbanized Area Formula Program;
- (2) apportions funds annually to states and designated recipients;
- (3) develops and implements financial management procedures;
- (4) initiates and manages program support activities; and
- (5) conducts national program reviews and evaluations.

b. FTA's regional offices are responsible for the day-to-day administration of the program. Regional offices:

- (1) review and approve grant applications for designated and direct recipients;
- (2) obligate funds for approved grant applications;
- (3) work with recipients to implement the annual program;
- (4) provide technical assistance;
- (5) receive recipient certifications and amendments to the program of projects;
- (6) monitor and close grants; and
- (7) conduct triennial reviews and state management reviews every three years or as circumstances warrant, and other reviews as necessary.

6. DESIGNATED RECIPIENT ROLE IN PROGRAM ADMINISTRATION. FTA apportions funds for urbanized areas to states and designated recipients, which are responsible for receiving and apportioning FTA funds to eligible projects within the applicable urbanized area or areas.

The state or designated recipient has the principal authority and responsibility for administering Urbanized Area Formula Program funds within a UZA. A state is responsible for administering the program on behalf of all UZAs under 200,000 in population, or portions thereof, that are located within its boundaries. A designated recipient is responsible for administering the program on behalf of a UZA with a population of 200,000 or more.

The state or designated recipient's responsibilities include:

- a. Allocating the relevant apportionment among recipients in the urbanized area or areas based on local needs and arrangements, and in coordination with the MPO(s);
- b. Identifying and selecting the projects (capital, operating, job access and reverse commute, or planning) that the MPO or state department of transportation (state DOT) will include in a metropolitan transportation plan, transportation improvement program (TIP), long-range statewide transportation plan, statewide transportation improvement program (STIP), and/or unified planning work program (UPWP);

- c. Submitting a grant application for the Section 5307 program of projects (POP) and/or authorizing other eligible applicants to apply for all or part of the apportionment, and notifying FTA of such authorizations;
- d. Ensuring that the annual POP complies with the requirements that at least 1 percent of the apportionment is used for associated transit improvements and that at least 1 percent is used for public transportation security projects unless all security needs are certified to have been met; and
- e. Each designated recipient must verify that appropriate documentation of designation is on file with FTA and, if not, provide such documentation.

For UZAs with populations of at least 200,000, a designated recipient must be selected in accordance with the local planning process, as detailed in the following section.

7. RECIPIENT DESIGNATION PROCESS. As described above, a requirement for funding under Section 5307 is the selection of a designated recipient for Section 5307 in a UZA. The recipient(s) so designated in each UZA must be a governmental authority and have the legal authority to receive and dispense federal funds in the UZA.
- a. FTA encourages the designation of a single designated recipient for each UZA 200,000 or more in population, including such UZAs that span more than one state, in order to streamline the administration of the program and foster coordination. However, nothing precludes the designation of multiple designated recipients.
 - b. The governor of a state or the governor's official designee may also designate a single recipient for multiple contiguous large UZAs. In cases where a UZA extends into more than one state, and the public transportation providers are also located in more than one state, the governor of each state must participate in the process to designate a recipient.
 - c. The governor or the governor's designee performs the role of the designated recipient for UZAs under 200,000 in population, and for the state's portion of any multi-state UZAs under 200,000 in population. Although the governor may authorize a local entity, such as a metropolitan planning organization, to develop and recommend funding allocations, the governor must approve the final allocation of program funds for these areas. Additionally, the governor may authorize eligible public transportation operators to apply directly to FTA for grants as direct recipients.
 - d. Designations for UZAs of 200,000 or more in population become effective when the governor of a state officially notifies the appropriate FTA regional administrator(s) in writing of that designation, and remains in effect until changed by the governor of a state by official written notice of re-designation to the appropriate FTA regional administrator. The written designation notice must include:
 - (1) A letter expressing the governor's concurrence; and

- (2) Documentation of concurrence in the selection of the designated recipient by the providers of publicly owned public transportation service in the UZA, and an appropriately certified resolution of the metropolitan planning organization (MPO) concurring in the designation.
- e. For each designated recipient, the state must submit an Opinion of Counsel certifying the entity's legal capacity to perform the functions of a designated recipient.

8. DIRECT RECIPIENT AND SUB-RECIPIENT ELIGIBILITY

- a. Applicants Other than Designated Recipients. A state or designated recipient may authorize another public entity to be a "direct recipient" for Section 5307 funds. A direct recipient is a public entity that is legally eligible under federal transit law to apply for and receive grants directly from FTA. The designated recipient may make this authorization one time or at the time of each application submission, at the option of the designated recipient.

The designated recipient must inform FTA of the arrangement in a "split letter," which establishes the allocation of Section 5307 funds in a large UZA. A state must inform FTA of such arrangements in an annual apportionment letter for funds attributable to small UZAs. Once an agency has been authorized to apply to FTA as a direct recipient, it is not necessary to repeat this authorization upon each future allocation of program funds.

A public agency other than the designated recipient may apply for some or all of the UZA's Section 5307 apportionment if:

- (1) The state or designated recipient authorizes the public agency to do so;
- (2) The public agency submits an independent grant application; and
- (3) Upon award of the grant, the designated recipient and the public agency execute a supplemental agreement, which releases the designated recipient from any liability under the grant agreement. The supplemental agreement permits the grant recipient (e.g., direct recipient) to receive and expend the federal funds and sets forth that the grant recipient assumes all responsibilities of the grant agreement. This supplemental agreement is required for all grantees in UZAs under 200,000 in population, as well as for all recipients in UZAs with populations of at least 200,000 that are not a designated recipient. A sample supplemental agreement is provided in Appendix D of this circular.

The amount of funds available to direct recipients is determined cooperatively by public transit providers, the MPO, and the designated recipient(s) for the UZA, in adherence with federal planning requirements and communicated to FTA by the designated recipient. FTA can only make grants to direct recipients after the designated recipient provides a split or suballocation letter to the FTA regional office.

- b. Sub-Recipient Arrangements. A Section 5307 recipient, whether a designated recipient or direct recipient, may choose to pass its grant funds through to another entity (sub-recipient) to carry out a project eligible under Section 5307.

For example, sub-recipient arrangements may be utilized to allocate funding to projects undertaken by a smaller cooperating agency on behalf of a designated or direct recipient, or to a private nonprofit organization that is responsible for a job access and reverse commute project within or near the service area of a designated or direct recipient.

Unlike supplemental agreements between a direct recipient and FTA, a sub-recipient arrangement does not relieve the original recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

(1) Eligible sub-recipients:

- (a) are public entities otherwise eligible to become direct recipients under Section 5307, or
- (b) may be private nonprofit operators for purposes of carrying out eligible job access and reverse commute projects.

(2) To establish a sub-recipient arrangement, the recipient must:

- (a) enter into a written agreement with the sub-recipient that assures FTA that the sub-recipient will comply with its obligation to satisfy the requirements of the grant agreement;
- (b) inform the FTA regional office of the arrangement in its grant application or through other documentation; and
- (c) inform FTA of any changes in that arrangement during the life of the project.

If public transportation service within a UZA is provided by a private nonprofit organization, an FTA designated or direct recipient may choose to enter into a contracted service arrangement to fund the service using Section 5307 funds. This situation may occur after the Census Bureau revises its UZA boundaries as a result of the decennial census. For example, the revised boundaries may result in a formerly rural transit service being incorporated into a UZA. Such an arrangement would be subject to federal procurement laws and regulations, including the requirement for a competitive procurement. Further information on competitive procurement requirements is available in FTA Circular 5010.

9. FTA OVERSIGHT. Congress has charged FTA with conducting reviews of recipients or requiring that recipients have independent audits conducted on their programs to determine whether the recipients have met the program's requirements and certifications.

FTA performs a triennial review at least once every three years to evaluate the performance of each recipient of Section 5307 funds. FTA must ensure that the recipient is carrying out its program in compliance with federal statutory and administrative requirements. Triennial reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made.

FTA may also conduct procurement, financial management, civil rights, drug and alcohol, safety, security, and other compliance reviews and audits, in addition to the triennial review. When FTA evaluations or independent audits identify compliance deficiencies, FTA provides technical assistance to the recipient to facilitate compliance with federal requirements. FTA may reduce or withdraw financial assistance as a result of review findings or withhold further grants until the grantee comes into compliance.

The Single Audit Act of 1984, as amended in 1996 (31 U.S.C. 7501 *et seq.*), and OMB Circular A-133 (“Audits of State, Local Governments, and Non-Profit Organizations”) provide audit requirements for ensuring that funds granted by the federal government to nonfederal entities are expended properly.

All nonfederal entities that expend \$500,000 or more of federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, (31 U.S.C. 7502), OMB Circular A-133, the OMB Circular Compliance Supplement and Government Auditing Standards. A single audit is intended to provide a cost-effective audit for nonfederal entities in that one audit is conducted in lieu of multiple audits of individual programs.

10. RELATIONSHIP TO OTHER PROGRAMS. Other federal transportation programs may provide support for Section 5307 projects, and Section 5307 projects may in turn enhance the effectiveness of these programs. The following is a brief discussion of existing programs, including programs that were repealed, but for which funding remains available, and those newly authorized under MAP-21.

- a. Repealed Programs: MAP-21 repealed a number of public transportation programs that existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of each of these repealed programs to the Urbanized Area Formula Program is described below.

(1) Clean Fuels Grant Program (Section 5308).

The Clean Fuels Grant Program was a former grant program that assisted in financing the acquisition of clean fuel rolling stock and clean fuel-related facilities for agencies providing public transportation and operating in an urbanized area designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act, (42 U.S.C. 7407(d)), or a maintenance area for ozone or carbon monoxide.

The program was established under the Transportation Equity Act for the 21st Century (TEA-21) and was repealed under MAP-21. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation unless Congress rescinds or redirects them to other programs. Funds available to carry out this program are subject to the program rules and requirements at the time they were appropriated.

Eligible recipients were designated recipients in UZAs 200,000 or more in population, and states for UZAs with populations of less than 200,000—for areas that are designated as nonattainment or maintenance areas for ozone or carbon monoxide. Nonurbanized areas were not eligible recipients under this program.

(2) Section 5309 Bus and Bus Facilities Program.

The Section 5309 Bus and Bus Facilities Program was a former discretionary grant program for bus transit projects. Allocations of funding under this program were made either through congressional direction (“earmarks”) or through a competitive discretionary solicitation of proposals. This program was repealed under MAP-21 and replaced with the Section 5339 Bus and Bus Facilities Formula Program.

From 2010 through 2012, FTA allocated discretionary funding under this program to proposals solicited through several notices of funding availability (NOFAs). The NOFAs identified eligible project types and discretionary selection criteria and were based on specific policy initiatives, including:

- (a) State of Good Repair Initiative;
- (b) Bus Livability Initiative; and
- (c) Veterans Transportation and Community Living Initiative.

Funds awarded in response to these NOFAs are available for obligation to the project selected until they lapse, and are subject to the program terms and requirements at the time of allocation. Additional information on the Section 5309 Bus and Bus Facilities Program is available in the most current version of FTA Circular 9300.1.

(3) Job Access and Reverse Commute Program (JARC) (Section 5316).

The Section 5316 Job Access and Reverse Commute Program (JARC) was a former formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and nonurbanized areas to suburban employment opportunities. MAP-21 repealed this program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects the funds to other programs. Funds remain subject to the program requirements at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Program funds are available for capital, planning, and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although the Section 5316 JARC program was repealed under MAP-21, job access and reverse commute projects are now an eligible project activity under the Urbanized Area Formula Program. Please see Chapter IV, Eligible Project Types and Requirements, for a list of project types and requirements under Section 5307.

Guidance for funds apportioned under the Section 5316 JARC Program is contained in FTA Circular 9050.1, “The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions.”

(4) Paul S. Sarbanes Transit in Parks Program (Section 5320).

The Paul S. Sarbanes Transit in Parks Program was a former discretionary grant program that provided funding for “alternative transportation” projects within or in the vicinity of federal lands. The goals of the program were to enhance the protection of America’s national parks, refuges, forests, and other federal lands and to increase the enjoyment of visitors. This program was established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (Pub. L. 109-59, SAFETEA-LU) and repealed by MAP-21.

FTA announced the final allocation of discretionary Transit in Parks funds in February 2013. Unobligated funds under this program remain available for obligation until Congress rescinds or redirects them to other program, and are subject to the program requirements at the time they were made available. Projects undertaken outside of federal lands must comply with all metropolitan and statewide and nonmetropolitan planning requirements.

FTA carries out the Transit in Parks program in consultation with the Department of the Interior (DOI) and other federal land management agencies. Funding for projects previously eligible under the Transit in Parks program is now available under the Federal Lands Access Program and the Federal Lands Transportation Program, which are managed by the Federal Highway Administration. These programs are described in additional detail below.

In addition, Section 5307 funds may be used to support projects previously funded under the Transit in Parks program. For example, an UZA may contain a national park, monument, memorial, or historic sites, a national wildlife refuge, or another federal land unit that has received funding for a public transportation project or a qualifying associated transit improvement activity under this program.

(5) New Freedom Program (Section 5317).

The New Freedom Program (Section 5317) was a formula grant program that provided funding for capital and operating expenses to support new public transportation services and new public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (ADA). The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing Americans with disabilities seeking integration into the workforce and full participation in society.

MAP-21 repealed the New Freedom Program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects them to other programs. Program funds are subject to the requirements existing at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Local transit providers are expected to participate in the development of this transportation plan. Program funds are available for capital and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although MAP-21 repealed the Section 5317 New Freedom Program, similar project activities are eligible under the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program. Program information is available in FTA Circular 9070.1.

Guidance for funds apportioned under the Section 5317 New Freedom Program is contained in FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions.”

(6) Alternatives Analysis Program (Section 5339).

The Alternatives Analysis Program (Section 5339) was a discretionary grant program that provided funding for the evaluation of public transportation and multimodal alternatives and general alignment options for identified transportation needs in a particular travel corridor. The transportation planning process of Alternatives Analysis included an assessment of a wide range of public transportation or multimodal alternatives, which provided information to enable the secretary to make a finding of project justification and local financial commitment and supported the selection of a locally preferred alternative.

Grants under the Alternatives Analysis program were intended to enable the local metropolitan planning organization to adopt a locally preferred alternative as part of the long-range transportation plan, and to enable recipients to fulfill project

development requirements under FTA's Section 5309 Fixed Guideway Capital Investment Program. This discretionary grant program was established under SAFETEA-LU and repealed by MAP-21.

a. New and Revised Programs Under MAP-21.

(1) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (Section 5309)

The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that funds the construction of new fixed guideway systems or extensions to existing fixed guideway systems and, as amended by MAP-21, projects that will expand the core capacity of existing fixed guideway corridors. States and local governmental authorities are eligible applicants for Section 5309 funds.

Eligible projects include rapid rail (heavy rail), commuter rail, light rail, hybrid rail, trolley bus (using overhead catenary), cable car, passenger ferries, and bus rapid transit system (BRT). The Small Starts program also includes corridor-based bus rapid transit systems. The majority of the BRT must operate in a separated right-of-way dedicated for public transportation use during peak hours. BRT features must emulate the services provided by rail-fixed guideway including defined stations, traffic signal priority, and short headway bidirectional services for a substantial part of weekdays and weekend days. The Core Capacity Improvement program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent.

Projects become candidates for funding under this program by successfully completing steps in the process defined in Section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multiyear federal commitment to the project. Small Starts projects receive construction funds through a single year grant or an expedited grant agreement that defines the scope of the project and specifies the federal commitment to the project.

Section 5307 funds may be used to complement funding awarded under the Fixed Guideway Capital Investment Program, as well as to support the continued capital investment needs of completed projects.

Additional information about the Fixed Guideway Capital Investment Program is available in the most current version of FTA Circular 9300.1.

(2) Bus and Bus Facilities Formula Program (Section 5339).

The Section 5339 Bus and Bus Facilities Program is a formula grant program that provides funding to states and UZAs for bus-related capital projects. This program was established under MAP-21, which concurrently repealed the Section 5309 Bus and Bus Facilities discretionary grant program.

Under the Section 5339 Bus and Bus Facilities formula program, a portion of the funds are allocated through an initial national distribution to states. The remaining funds are apportioned consistent with the formula under 5336 (other than subsection (b) to states and UZAs on the basis of population, vehicle revenue miles and passenger miles. Section 5307 requirements apply to Section 5339 grants. The governor of a state or the governor's designee may transfer funds apportioned under the nation distribution to supplement amounts apportioned under the Rural Area (Section 5311(c)) or Urbanized Areas Formula (5307) programs. However, the law does not allow Section 5339 funds apportioned pursuant to the Section 5336 formula to be transferred to the Section 5307 or 5311 programs.

Additional information on the Section 5339 Bus and Bus Facilities Formula Program, including transfer provisions to Section 5307, can be found in the successor to FTA Circular 9100, which is expected to be published as FTA Circular 5100.

(3) Public Transportation Emergency Relief Program (Section 5324).

MAP-21 authorized the Section 5324 Public Transportation Emergency Relief Program (ER program). The ER program allows FTA to make grants to public transportation agencies that have experienced serious damage to transit assets as a result of an emergency. Emergency is defined as a natural disaster that affects a wide area, such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide, or a catastrophic failure from an external cause, as a result of which the governor of a state has declared an emergency and the secretary has concurred, or the president has declared a major disaster.

FTA may make grants under the ER program for capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system that the secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of a declared emergency. In addition, FTA may reimburse operating expenses that are outside the scope of an affected recipient's normal operations, including but not limited to evacuations; rescue operations; bus, ferry, or rail service to replace inoperable service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

(4) Grants under this program, or those made under Sections 5307 or 5311 to address a declared emergency, are subject to the terms and conditions that FTA determines are

necessary. FTA will not provide funding for any expenses that are reimbursed by the Federal Emergency Management Agency (FEMA). This program is implemented by regulation under 49 CFR 602. State of Good Repair Formula Program (Section 5337).

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to UZAs with fixed guideway systems and high intensity motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and rehabilitation projects for existing fixed guideway systems and high intensity motorbus systems that have been operating for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization formula grant program.

The state of good repair funds must be used for capital projects intended to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions state of good repair funds to designated recipients in the UZAs according to a statutory formula. The high intensity fixed guideway formula is applicable to fixed guideway projects using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a BRT system and comprises: (1) a modified version of the formula used under the now repealed fixed guideway rail modernization program, and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High intensity motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program is available in a separate FTA Circular.

(5) Rural Area Formula Program (Section 5311).

The Rural Area Formula Program is a formula grant program that provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000, where many residents often rely on public transportation to reach their destinations. FTA apportions these funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible sub-recipients include private nonprofit organizations and operators of public transportation or intercity bus service that receive funds indirectly through a recipient.

The Tribal Transit Program is funded from amounts made available to carry out the Section 5311 program. Tribal Transit Program funds are allocated by formula and on a discretionary or competitive basis. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are allocated based on criteria established for the program. Eligible direct recipients are federally recognized Indian tribes in rural areas. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transportation services and rural intercity bus service.

The Appalachian Development Public Transportation Assistance Formula Program is also funded from amounts made available to carry out Section 5311. This program provides formula funds to support public transportation for states in the Appalachian region. Funds are allocated for any purpose eligible under Section 5311. Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(6) Transit-Oriented Development Planning Pilot Program

The Transit-Oriented Development Planning Pilot Program is a new FTA program that was established by Section 20005(b) of MAP-21. This program provides funding to advance planning efforts that support transit-oriented developments (TOD) associated with new fixed guideway and core capacity improvement projects. TOD focuses growth around transit stations to promote ridership, affordable housing near transit, revitalized downtown centers and neighborhoods, and encourages local economic development. Funds from Section 5307 may be used to support planning projects that receive funding under this program, or may be used for capital projects relating to transit-oriented development projects.

(7) Transportation Alternatives Program (FHWA – 23 U.S.C. 213(b))

The Transportation Alternatives Program (TAP) was authorized under Section 1122 of Moving Ahead for Progress in the 21st Century Act (MAP-21) (23 U.S.C. 213(b), 101(a)(29)). The TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving nondriver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; projects for the planning, design, or construction of boulevards and other roadways largely in the right-of-way of former interstate system routes or other divided highways; and workforce development, training, and education activities that are in accordance with 23 U.S.C. 504(e).

The TAP is administered by the Federal Highway Administration (FHWA). Funds are allocated to states based on each state's proportional share of fiscal year 2009

transportation enhancements funding. States are responsible for administering the program within the state and for allocating funds to urbanized and rural areas according to a statutory formula based on population. In UZAs with a population of 200,000 or more, projects are selected by the MPO. In rural and small urbanized areas, projects are selected by the state through a competitive process.

(8) Federal Lands Access Program (FHWA – 23 U.S.C. 204)

The Federal Lands Access Program is a grant program established under MAP-21 and administered by the Federal Highway Administration. This program provides funding to states and local governments for projects to improve transportation facilities that provide access to, are adjacent to, or are located within federal lands, and for which ownership or maintenance responsibility is vested in the state or local government.

The Access Program provides funding to supplement state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators. The program is designed to provide flexibility for a wide range of transportation projects in the fifty states, the District of Columbia, and Puerto Rico. Funds are allocated according to a statutory formula, which is based in part on the proportion of federal lands that exist within each state. A programming decisions committee (PDC) within each state makes programming decisions and is responsible for developing a multiyear program of projects.

The PDC in each state is comprised of a representative from FHWA, the state, and of affected local governments. The PDC is required to consult with public transit agencies that operate in the vicinity of federal lands in developing its list of projects. Eligible transit projects include all planning, capital, and operating assistance projects eligible under FTA's grant programs.

The Access Program complements the FHWA Federal Lands Transportation Program (FLTP), which provides funding for transportation facilities owned or maintained by federal land management agencies.

(9) Federal Highway Administration "Flexible" Programs

Certain FHWA transportation programs, such as the Surface Transportation Program (STP) or Congestion Management and Air Quality Program (CMAQ), allow recipients to transfer funds to FTA for public transportation projects that are eligible under the FHWA program and under Section 5307. When such "flexible" fund transfers are made for eligible transit projects, FTA will administer these funds in a separate Section 5307 grant. Guidance on the eligibility of these funds for transfer and associated requirements is provided in Chapter V of this Circular, "Availability of FHWA 'Flexible' Funds for Transit Projects."

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III. GENERAL PROGRAM INFORMATION

1. APPORTIONMENT OF PROGRAM FUNDS. Section 5338 of Title 49, U.S.C. authorizes funding for the Urbanized Area Formula Program from the mass transit account of the highway trust fund. Each fiscal year, FTA apportions urbanized area funds to states and designated recipients according to a statutory formula using the latest available U.S. decennial census data and other information reported by the Bureau of the Census and the National Transit Database. FTA publishes Section 5307 apportionments in the *Federal Register* along with formula apportionments and allocations for other FTA programs.

The funds made available for Section 5307 for a given fiscal year under Section 5338(a)(2)(c) are allocated, apportioned, or set aside as follows:

- a. Of the total made available, \$30,000,000 is set aside for discretionary Passenger Ferry Grants in accordance with Section 5307(h);
- b. Of the total made available, 3.07 percent of the total is allocated to UZAs based on the number of eligible low-income individuals, in accordance with Section 5307(j).
- c. Of the amounts not apportioned under (a) and (b) above, 1.5 percent is set aside for allocation to UZAs according to the Small Transit Intensive Cities (STIC) provision;
- d. Of the total made available, 0.5 percent are set aside for allocation to states for the State Safety Oversight Program in accordance with Section 5329(e)(6); and
- e. Of the total made available, 0.75 percent are set aside for oversight pursuant to Section 5338(i)(1)(B).
- f. Of the amounts not allocated or set aside under (a) through (e) above, the remainder of Section 5307 appropriations is apportioned among two basic categories as follows:
 - (1) 90.68 percent to UZAs of at least 200,000 in population, and
 - (2) 9.32 percent to UZAs less than 200,000 in population.

In addition to the funds apportioned above, FTA also apportions funds to states and UZAs based on the Section 5340 Growing States and High-Density States formula. FTA publishes a single combined apportionment for Sections 5307 and 5340.

2. APPORTIONMENT DATA. For UZAs with populations of fewer than 200,000, the formula is based on total population and population density according to the most recent decennial census. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, fixed guideway route miles, fixed guideway passenger miles, as well as population and population density.

UZAs under 200,000 in population may also receive funding under the small transit intensive cities (STIC) provision, which allocates funds based on a set of performance factors. To qualify for STIC funding, a UZA must have transit service that meets or exceeds the industry average in one or more performance categories for all UZAs with a population of at least 200,000 but not more than 999,999.

FTA also apportions funds to states and UZAs on the basis of low-income population. These funds are apportioned based on the proportion that a UZAs population bears to the total low-income population for all large or small UZAs. Low-income population totals are published annually by the Census Bureau based on the most recent American Community Survey (ACS) counts. The ACS is the Census Bureau's ongoing sample-based study of the population, which supplements the decennial census. In addition to the funds made available under Section 5307, FTA apportions funds to states for use in urbanized areas according to the Section 5340 Growing States and High-Density States. FTA combines these Section 5340 funds and the low-income allocation together with the funds apportioned by the Section 5307 formula into a single Section 5307 apportionment.

FTA obtains population and population density data from the most recently available decennial census at the time of apportionment. FTA obtains all other data used for formula apportionments from the latest report year of validated data reported in the National Transit Database (NTD). For purposes of the formula, FTA may not use data that is submitted late or data that FTA cannot validate. Transit providers making data submissions should refer to the current editions of the NTD Reporting Manuals and Uniform System of Accounts in reporting to the NTD. Copies of these publications and other NTD policy statements and reporting guidance can be found on the NTD website at <http://www.ntdprogram.gov/> and from the following address: FTA Office of Budget and Policy, 1200 New Jersey Avenue SE, Washington, DC 20590; or by telephone at 202-366-4050. FTA's Office of Budget and Policy provides annual workshops on the NTD for persons reporting to the database on behalf of recipients.

3. AVAILABILITY OF FUNDS. Section 5307 funds are available for obligation during the federal fiscal year for which they were apportioned plus five additional years. For example, funds appropriated in fiscal year 2013 are available until September 30, 2018. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all UZAs together with funds made available for the next fiscal year.
4. PASSENGER FERRY DISCRETIONARY PROGRAM. MAP-21 established a new Passenger Ferry Grant program under 49 U.S.C. 5307(h). A total of \$30 million is set aside each fiscal year 2013 and 2014 from the Urbanized Area Formula Program to support passenger ferry projects. Funding will be awarded based on a competitive selection, based on criteria published in a Notice of Funding Availability (NOFA) in the *Federal Register*. FTA will publish additional guidance specific to the Passenger Ferry Discretionary Grant Program in the future.

FTA posts all competitive grant opportunities on the federal government's centralized source for information on discretionary grants, Grants.gov. More information about Grants.gov is available at <http://www.grants.gov/>.

5. TRANSFER OF APPORTIONMENTS.

- a. From the State's Apportionment: Consistent with 49 U.S.C. 5336(f)(1), the governor may transfer any part of the state's Urbanized Area Formula Program apportionment for small UZAs with less than 200,000 in population to nonurbanized areas including Indian tribes in nonurbanized areas to supplement funds apportioned to the state under the Rural Area Formula Program, 49 U.S.C. 5311(c)(3). Consistent with 49 U.S.C. 5336(f)(1), the governor may make such transfers only after consultation with responsible local officials and publicly owned providers of public transportation service in each area to which FTA originally apportioned the funding. In addition, the governor may transfer such amounts apportioned to UZAs under 200,000 in population to and among other UZAs within the state with populations of under 200,000.
- b. Lapsing funds: The governor may use any 5307 program funds from the governor's apportionment that remain available for obligation beginning ninety days before the expiration of their period of availability in any area within the state (including large UZA's) for purposes eligible under the Urbanized Area Formula Program without prior consultation.
- c. From the Formula Grants for Rural Areas Program to Supplement the Urbanized Area Formula Program. The governor may transfer funds from the state's apportionment under the Formula Grants for Rural Areas Program (Section 5311) to supplement funds apportioned to the state under the Urbanized Area Formula Program for small UZAs under 200,000 in population. A recipient may use amounts so transferred for any expenditures capital and operating assistance eligible under the Rural Area Program.
- d. From Larger Urbanized Areas to the Governor of the State. A designated recipient in a large UZA with a population of 200,000 or more may transfer its Urbanized Area Formula Program or a portion of it, to the governor, who in turn is to allocate it to large and small UZAs in the state for eligible purposes under the Urbanized Area Formula Program. Note that there is no statutory provision allowing the transfer of funds apportioned to a large UZA directly to another UZA without going through the governor's apportionment. To transfer funds from a large UZA 200,000 or more in population to the governor, the following process is applicable:
 - (1) The designated recipient, after consultation with all potential recipients in the UZA, writes to the FTA regional office of the designated recipient's intent to transfer a part of its apportionment to the governor. This letter must identify the amount of the apportionment the designated recipient will transfer; the fiscal year FTA apportioned the funds; and confirm that the designated recipient has consulted with all potential recipients of the originally apportioned funds. All the designated recipients in a UZA must sign this letter;

- (2) The governor and the designated recipient, either separately or together, notifies the FTA regional office in writing of the governor's willingness to accept the apportionment; confirms that the governor will use the apportionment only according to Urbanized Area Formula Program requirements; and
 - (3) After receipt of these letters and verification that the apportionment is available for transfer (i.e., the funds have been apportioned, have not been otherwise committed, etc.), FTA, in writing, notifies both the designated recipient and the governor that the apportionment is available to the governor for allocation in compliance with the Urbanized Area Formula Program upon FTA's receipt of an appropriate grant application.
- e. Limitations: Transfers of apportionments are subject to the capital and operating assistance limitations applicable to the original apportionment of such amounts.
 - f. Notification to FTA: Federal requirements do not mandate prior FTA approval, but the governor must provide notification to FTA of a transfer for each transaction, so that FTA can accurately reflect the transfer decision in overall program budget levels and UZA apportionment records prior to grant award. The grant application project budget must show the amount of transferred funds.

6. FEDERAL SHARE OF PROJECT COSTS.

- a. Planning and Capital Projects. Except as provided for in b. below, the federal share for planning and capital projects that receive funding under the Section 5307 Program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the grantee's revenues.
- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA, CAA, and certain bicycle projects as follows:
 - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*). A revenue vehicle that complies with 49 CFR part 38 may be funded at 85 percent federal share.
 - (2) Vehicle-Related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or required by the ADA, is 90 percent.

FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.

The grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with ADA or CAA. The federal share is 90 percent of the cost for these itemized elements.

- (3) Bicycle Facilities. As provided by 49 U.S.C. 5319, the federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:
 - (a) provide access for bicycles to public transportation facilities,
 - (b) provide shelters and parking facilities for bicycles in or around public transportation facilities, or
 - (c) install equipment for transporting bicycles on public transportation vehicles.
 - (4) Bicycle Enhancement Projects. When the project involves bicycle access to public transportation and the grant or any portion of the grant is made with the funds required to be expended under the 1 percent for “associated transit improvement” requirement as provided by 49 U.S.C. 5307(c)(1)(K), the federal share will be 95 percent.
 - c. Operating Assistance. The federal share may not exceed 50 percent of the net operating cost, which is determined after deducting fares and other system-generated revenues and ineligible costs as described in Chapter IV, Section 4, of this circular.
7. LOCAL SHARE OF PROJECT COSTS. After the appropriate federal share is established, the applicant must provide the local share of the net project cost in cash (or in-kind) and must document in its grant application the source of the local match.

Title 49 CFR part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government,” (the common grant rule) at Section 18.24, “Matching or Cost Sharing,” describes detailed rules for eligibility, valuation, and accounting for the local matching share.

The local match may include:

- a. Cash from nongovernmental sources other than revenues from providing public transportation services;
- b. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue;
- c. Amounts received under a service agreement with a state or local social service agency or private social service organization;
- d. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

- e. Amounts appropriated or otherwise made available to a department or agency of the government (other than the Department of Transportation) that are eligible to be expended for transportation; and
- f. In-kind contribution such as the market value of in-kind contributions integral to the project may be counted as a contribution toward local share. See more specific discussion of use of real property as an in-kind contribution in section 8(i), below.

8. ADDITIONAL SOURCES OF LOCAL SHARE

- a. Revenue Bond Proceeds as Local Share. A recipient of Section 5307 funds may use the proceeds from the issuance of revenue bonds as part of the local match for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Use of the proceeds of revenue bonds as local share will be approved only if FTA finds that the aggregate amount of financial support for public transportation in the UZA provided by the state and affected local governmental authorities during the next three fiscal years, as programmed in the STIP, is not less than the aggregate amount provided by the state and affected local governmental authorities in the UZA during the preceding three fiscal years.
- b. Transportation Development Credits (formerly referred to as Toll Revenue Credits). A state may use, as a credit toward a project's local share, certain expenditures it has made with toll revenues. The amount of credit toward local share to be earned by a state is based on revenues generated by toll authorities within the state that are used by the authorities to build, improve, or maintain highways, bridges, or tunnels that serve interstate commerce. A recipient wishing to apply the provisions of 23 U.S.C. 120(i) should discuss with its state department of transportation (state DOT) the availability of transportation development credits for use as local share in matching FTA grants, and should obtain a letter from the state DOT indicating that TDCs are available for a project prior to submitting a grant application in FTA's electronic award management system. FHWA oversees the determination of transportation development credits within each state.

FTA will not approve a retroactive application of transportation development credits.

The effect of utilizing transportation development credits means that FTA, in essence, provides 100 percent of the total net project cost. For example, if the actual cost of the asset the applicant will purchase is \$500,000, FTA's share at 80 percent equals \$400,000. The remaining \$100,000 match is transportation development credits, so additional federal funds are needed to equal \$500,000 or 100 percent of the net project cost. Note, however, Section 120(i) does not make federal funds available above the amount for which the grantee is eligible.

FTA calculates a project using transportation development credits as shown in the example below:

Actual cost of the asset \$500,000

=====	
Federal share (80%)	\$400,000
Local share (20%)	<u>\$100,000</u> (from toll revenue credits)
	\$500,000
=====	

In FTA's electronic award management system, the recipient will enter the following:

Total project cost	\$500,000
Federal Share	\$500,000

FTA requires the recipient to state within the comment section of the FTA electronic award management system that transportation development credits will, in this example, provide \$100,000 for the local share.

- c. Use of Program Income as Local Share. Recipients may use program income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use program income as the local share for the grant that generated the income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations, program income does not include interest on grant funds; nor does program income include rebates, credits, discounts, refunds, and interest earned on any of them.

FTA Circular 5010.1, "Grant Management Requirements," discusses program income in some depth, as does 49 CFR 18.25. FTA Circular 5010.1 notes that recipients may retain program income so long as they use it for public transportation purposes—that is, for allowable capital and operating expenses. For additional information on program income, please refer to FTA Circular 5010.1.

The recipient's accounting system must be capable of identifying program income and the purpose for which the recipient used it. The recipient must account for program income in its accounting system, which FTA subjects to audit. The Federal Financial Report requires the reporting of program income.

In a grant application requesting operating assistance, the applicant must deduct farebox revenues from operating costs to arrive at the net project cost of an operating assistance project. See Appendix C, "Operating Assistance Projects," of this circular for assistance in calculating the net project cost of a grant requesting operating assistance. In no event may the applicant use farebox revenue as local share for the project that generated those revenues, although the applicant may use farebox revenue to support bonds issued to finance capital projects.

- d. Funds Other Than Program Income. Revenue derived from an activity that is not federally assisted is not program income.

Generally, FTA does not consider sales proceeds from the disposition of FTA-funded equipment and excess real property to be program income. Recipients may retain sales proceeds as program income only if the sale of the asset, as in some joint development activities, achieves the purpose of the grant. Recipients may retain sales proceeds to undertake a like-kind exchange also (see Appendix D of this circular), but the sales proceeds are not program income and recipients must not use them as local share.

With prior FTA approval, grantees may exercise the provisions of 49 U.S.C. 5334(h)(4), Proceeds from the Sale of Transit Assets, retain the proceeds from the sale of federally funded assets that they no longer need for public transportation purposes, and reduce the gross project cost of subsequent federally assisted public transportation capital projects. Thus, recipients may not use such proceeds as local share. The provisions of 49 U.S.C. 5334(h)(4), however, do not apply to vehicles that have not reached their minimum useful life. See FTA Circular 5010.1, "Grant Management Requirements," for further discussion regarding use of such proceeds.

- e. Proceeds Related to Social Security Act Funds as Local Share. Section 403(a)(5)(C)(vii) of the Social Security Act, codified at 42 U.S.C. 603(a)(5)(C)(vii), Welfare-to-Work grant prohibits the use of Temporary Assistance for Needy Families (TANF) block grant funds as local share for other federally assisted projects. Consistent with 49 U.S.C. 5307(d)(4), however, federal transit law expressly authorizes recipients to use TANF funds as the local share for Section 5307 projects.
- f. Funds Made Available Under the Federal Lands Transportation Program (FLTP). The FLTP program, as authorized under 23 U.S.C. 203, provides funding directly to federal land management agencies, including the National Park Service, the USDA Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Army Corps of Engineers, for transportation projects on or near federal lands. Eligible projects include capital projects and operating assistance for facilities or equipment, including federally owned roads and transit systems. Funds apportioned under this program may be used as a form of local match for other FHWA and FTA programs. For example, a recipient may partner with the Forest Service or National Park Service to install bus shelters or other transit improvements on federal lands within the recipient's service area.
- g. Providers of Public Transportation by Vanpool. Section 5323(i)(2) permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. This excludes any amounts received from federal, state, or local governments for the purchase of the rolling stock.

A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient that are in excess of the provider's operating costs to acquire rolling stock, provided that the

recipient and provider have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area.

The effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted toward a recipient's local match requirement under a capital cost of contracting grant agreement. If an applicant intends to utilize this provision in a grant, the applicant must inform FTA in advance of submitting the grant and must attach the required agreement to the application in FTA's electronic award management system. The agreement must specify the amount intended to be counted as local match and must identify any amounts under that agreement that have already been applied as local match on any other previous grants. FTA reserves the right to request any additional information necessary to justify the use of this provision in a grant application.

The term "private provider of public transportation" means a private entity providing vanpool service in the service area of a recipient of Section 5307 funds using a commuter highway or vanpool vehicle. These types of vehicles must have the seating capacity of at least six adults (not including the driver) and at least 80 percent of the vehicle's mileage can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

- h. Other Federal Funds. In addition to funds from Section 403 of the Social Security Act, in a very limited number of situations, other federal funds may be eligible for inclusion in the local match. Such use is dependent upon agreement by the federal agency. As an example, Community Development Block Grant (CDBG) funds administered by the Department of Housing and Urban Development (HUD) may be used to provide the local share of federal public transportation projects so long as the public transportation activities are:

- (1) Eligible for assistance under the Community Development Block Grant Program; and
- (2) In compliance with HUD regulations, "Community Development Block Grants," 24 CFR part 570. See 42 U.S.C. 5305(a)(9) and 24 CFR 570.201(g).

Profit from operations not related to public transportation may be included in the local match to the extent that such revenues are applied to cover eligible operating expenses.

Federal and local matching funds may only be applied to eligible operating expenses incurred on the accrual basis of accounting in providing public transportation services during the project period.

- i. Joint Development: "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- j. In-Kind Contributions of Real Estate Property. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office. FTA must review and concur on in-kind contributions of any value before federal funds are expended or the value is used as local match.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match and the remaining sub-parcel is intended to be used at a future date for future match, the grantee is cautioned to clearly indicate the limits of the sub-parcel to be used as local match and the appraised amount associated with the sub-parcel. The remnant sub-parcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess sub-parcel as over-match, eligibility of the over-match sub-parcel may be lost. If federal funds were used to purchase the property, only the nonfederal share of such property may be counted as the value of the in-kind contribution, see 49 CFR 18.24(f). Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," at Section 18.24, "Matching or Cost Sharing," describes detailed rules for eligibility, valuation, and accounting for the local matching share.

9. DEFERRED LOCAL SHARE. A recipient may request on a case-by-case basis that all or a portion of the local share for a project be deferred until up to 100 percent of the federal funds have been drawn down or other period. A request for the deferral must accompany the grant application. A recipient that intends to use deferred local share must receive FTA approval prior to the obligation of the grant. FTA will specify the terms and schedule for the deferral.

Approval is contingent upon the deferral resulting in benefits to transit and upon the recipient's demonstrating that it has the financial capacity to complete the project. Local share cannot be deferred indefinitely. When FTA approves the use of deferred local share, the local funds must be available and used to match drawn-down federal funds in the time period specified by FTA's approval.

Generally, FTA will not approve retroactive deferral of local share. In exceptional circumstances, FTA may approve retroactive deferral of local share—for example, in

response to a catastrophic event such as a hurricane or flood where sources of local funds are temporarily disrupted.

10. **ALTERNATIVE FINANCING.** Section 5307 recipients, especially those wishing to undertake major capital projects, are encouraged to explore alternative methods of financing transit projects, in addition to grant funding. Alternative financing can involve combining multiple, nontraditional sources of funding as well as federal, state, local, and private funding, in support of transit capital needs.

a. Approaches recipients might investigate include:

- (1) capital leasing arrangements;
- (2) joint development;
- (3) state economic development or revolving loan funds;
- (4) state infrastructure bank loans;
- (5) state and federal tax credit programs;
- (6) special tax districts, such as transportation development districts, special benefit districts, and tax increment financing;
- (7) exchanges of real property; and
- (8) in-kind contributions.

b. Recipients with a dedicated funding source (e.g., sales tax proceeds, transportation development district proceeds, tax increment financing proceeds, and other revenue sources including user fees) may wish to consider a direct loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 2002 of MAP-21 (23 U.S.C. 601 *et seq.*). Eligible projects include any transit capital project which is anticipated to meet the threshold size. Threshold sizes for projects are:

- (1) \$50 million; or
- (2) \$25 million for rural projects and those in cities of 250,000 or less in population; or
- (3) \$15 million for intelligent transportation system (ITS) projects; or
- (4) 33 ⅓ percent of the most recently completed fiscal year's FHWA formula apportionment for the state in which the project is located.

TIFIA direct loans or loan guarantees must be repaid with nonfederal funds. Multiple related projects constituting a program of projects may be grouped in order to meet the cost threshold as long as the credit assistance is secured by a common pledge of revenues.

- c. The TIFIA program is administered by FHWA's Office of Innovation Program Delivery formerly known as the TIFIA Joint Program Office. FTA provides staff support to this office for transit transactions. All transactions begin by submitting a letter of interest to office identified in the annual Notice of Funds Availability. Projects are processed on a first-come, first-served basis. Funding decisions are made by the secretary following Credit Council recommendation.

Contact:

Innovative Program Delivery Office
TIFIA Joint Program Office (HITJ)
US Department of Transportation
1200 New Jersey Avenue, SE
Room E64-462
Washington, DC 20590
Fax: 202-366-0828
TIFIACredit@dot.gov

<http://www.fhwa.dot.gov/ipd/tifia/index.htm>

IV. ELIGIBLE PROJECTS AND REQUIREMENTS

1. **PLANNING PROJECTS.** Section 5307 funds are available for the planning, engineering, design, and evaluation of public transportation projects and for other technical transportation-related studies. Eligible activities include, but are not limited to: studies relating to management, operations, capital requirements, and economic feasibility; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment; plans and specifications; evaluation of previously funded projects; job access and reverse commute projects; and other similar or related activities before and in preparation for the construction, acquisition, or improved operation of public transportation systems, facilities, and equipment.

FTA encourages recipients to use Section 5307 funds for technical studies of special interest to the transit agency, such as maintenance plan development, operational service planning, transit asset management plans, public transportation safety plans, and management and operation planning studies. FTA also encourages recipients to use program funds to supplement regular formula planning funds when the planning resources authorized by 49 U.S.C. 5305(d) are insufficient to meet such needs. Similarly, where the federal government proposes a high-cost study, such as one for major capital investments, recipients may use Section 5307 funds to supplement available formula planning funds and Federal Highway Administration (FHWA) planning funds.

All planning projects carried out within the metropolitan transportation planning process that use FTA or FHWA funds must be included in the unified planning work program (UPWP), as approved by the MPO. The UPWP must include a list of the proposed planning projects, project scopes, and related costs.

For more information on planning activities, please refer to FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."

2. **CAPITAL PROJECTS.** Capital projects eligible under the Urbanized Area Formula Program include all projects included under 49 U.S.C. 5302(3), as explained below. In general, capital project expenses involve purchasing, leasing, constructing, maintaining, or repairing facilities, rolling stock, and equipment for use in a public transportation system. Capital project costs may include all direct costs and indirect costs associated with the project (provided that the grantee has an approved cost allocation plan or indirect cost proposal).

The examples of eligible activities, below, indicate the breadth of capital projects eligible under the Section 5307 Program. This list is intended to be illustrative, not exhaustive. Please contact the appropriate FTA regional office regarding the eligibility of other projects.

Projects eligible for capital funding include but are not limited to:

- a. **Bus and Bus-Related Activities.**

- (1) Replacement of buses;
 - (2) Overhaul of buses (includes paratransit vehicles);
 - (3) Rebuilding of buses;
 - (4) Expansion of bus fleets;
 - (5) Purchase and installation of service and support equipment;
 - (6) Accessory and miscellaneous equipment such as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment;
 - (7) Construction of maintenance facilities, including land acquisition, design, engineering, and demolition;
 - (8) Rehabilitation of maintenance facilities, including design and engineering, land acquisition, and relocation;
 - (9) Construction of other facilities, for example, transfer facilities, intermodal terminals and bus shelters, including design and engineering, and land acquisition;
 - (10) Construction, renovation, and improvements of intercity bus and intercity rail stations and terminals;
 - (11) The introduction of new technology, through innovative and improved products, into public transportation; and
 - (12) Capital support equipment, including computer hardware, software, bus diagnostic equipment, and other equipment that enhances operating efficiency.
- b. Fixed Guideway Systems.
- (1) Rolling stock, including rail cars, locomotives, work trains, bus rapid transit vehicles, and ferryboats;
 - (2) Overhaul of vehicles;
 - (3) Rebuilding of vehicles;
 - (4) Track;
 - (5) Line equipment;
 - (6) Line structures;
 - (7) Passenger stations, depots, and terminals, including ferry terminals;
 - (8) Signals and communications;

- (9) Power equipment and substations;
 - (10) Projects to improve safety and security;
 - (11) Operational support, including computer hardware and software;
 - (12) Systems extensions or new system construction, including engineering, demolition, etc.; and
 - (13) Land acquisition, design, and construction for fixed guideways.
- c. Associated Transit Improvements. The term “associated transit improvements” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. This category of projects was formerly known as “transit enhancements.”
- (1) The following public transportation projects and project elements qualify as associated transit improvement projects:
 - (a) Historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service;
 - (b) Bus shelters;
 - (c) Landscaping and streetscaping, including benches, trash receptacles, and street lights;
 - (d) Pedestrian access and walkways;
 - (e) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;
 - (f) Signage; or
 - (g) Enhanced access for people with disabilities to public transportation. Associated transit improvement projects or elements of projects designed to enhance access for people with disabilities are required to exceed the minimum requirements of the ADA.
 - (2) Bicycle and pedestrian paths within a certain distance from a transit stop or station are eligible capital projects and qualify as associated transit improvements. Pedestrian paths located within 0.5 miles of a transit stop or station and bicycle paths located within three miles of a transit stop or station are eligible capital projects. Projects outside this distance may be eligible if they are within the distance that a person could be expected to safely and conveniently walk or bicycle to the particular stop or station.

- (3) MAP-21 amends the definition of transit enhancements (now “associated transit improvements” under 49 U.S.C. 5302) so as to remove public art from the eligible projects specifically listed in law. However, art can be integrated into facility design, landscaping, and historic preservation, and funded as a capital expense. Art also can be integrated through the use of floor or wall tiles that contain artist-designed and fabricated elements, use of color, use of materials, lighting, and in the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses. Procuring sculptures or other items not integral to the facility is no longer an eligible expense.
- (4) The following requirements are associated with associated transit improvements:
 - (a) In a large UZA (population of 200,000 or more), the designated recipient must certify that not less than 1 percent of the amount apportioned to the UZA for a given fiscal year is spent on projects that qualify as associated transit improvements; and
 - (b) In a large UZA with more than one recipient, it is the designated recipient’s responsibility to work with other public transportation operators to ensure that 1 percent of the UZA’s apportionment is used for associated transit improvements. Recipients are not individually required to expend 1 percent of their suballocation for associated transit improvements, provided that this requirement is met collectively by the recipients within the UZA. A designated recipient’s sub-area allocation documentation should identify the use of funds for eligible associated transit improvements and how this requirement will be met.
- d. Vehicle-Related Equipment to Comply with the Americans with Disabilities Act of 1990. Examples of vehicle-related equipment for compliance with the Americans with Disabilities Act of 1990 (ADA) include:
 - (1) Low floor vehicles and components that allow for level boarding of all passengers.
 - (2) Lifts, ramps, and other level-change mechanisms attached to or within the vehicle. **Note:** Throughout 49 CFR part 38, reference is continually made to “level-change mechanisms (e.g., lift or ramp).” A kneeling mechanism by itself is not a level-change mechanism; however, it may be necessary in order to minimize the slope of a vehicle boarding ramp in order to meet ADA requirements.
 - (3) Securement devices (nonrail vehicles only). **Note:** Securement devices are not required for rail vehicles.
 - (4) Seats that fold to create wheelchair space. **Note:** Folding seats are permitted in the securement area; however, the securement area may be devoid of seating. Per 49 CFR 38.23(d)(2), “Securement areas may have fold-down seats to accommodate other

- passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.”
- (5) Audible communication systems at doors and within seating areas.
 - (6) Visual monitoring systems at doors and within seating areas to observe when assistance is requested or necessary for the use of securement systems, ramps, and lifts per 49 CFR 37.165(f).
 - (7) Call systems for alerting drivers and other employees to provide assistance.
 - (8) Variable passenger information displays at doors and within seating areas.
 - (9) For railcars equipped with restrooms, restroom features specific to accessibility (dimensions, fixtures).
 - (10) Features specific to accessibility (signs, barriers between cars, handrails).
 - (11) Other vehicle-related equipment specifically required by 49 CFR part 38.
- e. Facility and Vehicle Projects to Comply with the Americans with Disabilities Act of 1990. Applications to FTA requesting a federal share of 90 percent for purchasing vehicle-related equipment or facilities for ADA compliance must separately account for the project elements that provide for the compliance with the requirements. The application must also account for the other vehicle-related equipment or facility project elements that the recipient does not directly attribute to ADA compliance. Examples of vehicle-related equipment or facilities projects for compliance with ADA include, but are not limited to:
- (1) Level boarding passenger platforms to enter a vehicle (applies to full platforms);
 - (2) Lifts and ramps at a station, either attached or mobile;
 - (3) Passenger elevators on a path of travel within a station;
 - (4) Platform edge and pathway markings;
 - (5) Accessible passenger ticketing elements;
 - (6) Accessible doors and door systems;
 - (7) Audible communication systems;
 - (8) Variable passenger information displays;
 - (9) Fixed passenger signage with accessible features;
 - (10) Passenger rest room features that are specific to accessibility;

- (11) Station features that are specific to accessibility; and
 - (12) ADA-related features of other facilities, including administrative facilities and vehicle maintenance facilities.
- f. Extended warranty is an eligible capital cost. FTA's Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment acquisitions cost in order to make a good business decision.
- g. Mobility management is intended to build coordination among public transportation providers and other transportation service providers carried out by a recipient or sub-recipient through an agreement (see 49 U.S.C. 5302(K)(i)). Mobility management does not include the costs of operating public transportation services, fuel, driver salaries, and other nonadministrative operating expenses directly related to the operation of vehicles.

Mobility management includes:

- (1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, older adults, and low-income individuals;
- (2) Support for short-term management activities to plan and implement coordinated services;
- (3) The support of state and local coordination policy bodies and councils;
- (4) The operation of transportation brokerages to coordinate providers, funding agencies, and customers;
- (5) The provision of coordination services, including employer-oriented transportation management organizations, transportation management associations, business improvement districts or other like organizations, and human service organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;
- (6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- (7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system (GPS) technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems.

h. Acquisition and Reconstruction of “Associated Capital Maintenance” Items. The acquisition and reconstruction of associated capital maintenance items are capital expenses, subject to the following provisions:

- (1) Equipment, tires, tubes, and material must cost at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.
- (2) The type of rolling stock for which the recipient is procuring the equipment and material determines the threshold minimum cost of each item eligible for acquisition. This definition is equally applicable to all rolling stock, whether highway or rail operated.

For example, if a recipient desires to purchase associated capital maintenance items for a fleet of 40-foot, heavy-duty public transportation buses with an average fleet age of four years, the cost of each item requested can be no less than 0.5 percent of the straight line depreciated value of an average vehicle of the agency’s 40-foot heavy-duty bus fleet, or comparable four-year-old bus.

Assuming that an average fleet bus or comparable four-year-old bus costs \$300,000 when new, then its depreciated value is \$200,000 [$\$300,000 - (4/12 \times \$300,000)$], and the cost of each associated capital maintenance item must be equal to or exceed \$1,000 ($.005 \times \$200,000$).

- (3) The word “item” refers to a specific unit which a supplier customarily offers, such as an engine, transmission, generator, axle assembly, or compressor. This definition also includes repair or rebuild kits.
- (4) Repair, rebuild, or refurbishing kits that are readily available from suppliers are eligible for acquisition with FTA funding under this provision if the cost of the complete kit meets the 0.5 percent test.
- (5) FTA treats acquisition of sets or groups of like items similarly to acquisition of kits, described above. Recipients may procure sets of brakes, seats, windows, or other like items providing the total cost of the set meets the 0.5 of 1 percent test.
- (6) Associated capital maintenance items relate to items for revenue rolling stock only and do not include facilities, facility equipment, or nonrevenue vehicles. Rolling stock means buses, vans, cars, rail cars, trolley cars and buses, ferryboats, and vehicles used for guideways and inclined planes.
- (7) Reconstruction or rebuilding of equipment and material, each of which after reconstruction must have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

(8) In some instances, a recipient may have the personnel and facilities available to manufacture or reconstruct a replacement item in-house. Such activities are eligible for FTA capital assistance under the associated capital maintenance provisions provided that:

- (a) manufacturing the item in-house, including material, burden labor, and overhead, is cost-effective when compared with purchasing the item from a commercial source; or
- (b) the required part is unavailable commercially, or obtaining it from an outside source requires an excessively long lead time that the recipient cannot tolerate.

Otherwise the recipient should acquire such items by contract.

(9) An eligible capital activity includes a recipient's rebuilding of any item of equipment, such as generators, starters, and so forth, for use on rolling stock provided that, after rebuild, the item meets the 0.5 percent threshold test.

(10) A grant applicant may find that it can simplify its application by applying for FTA assistance under the preventive maintenance category rather than applying for capital assistance for associated capital maintenance items. The choice of how best to structure the grant application rests with the grant applicant. FTA cautions the grant applicant not to count the same costs twice.

- i. Preventive Maintenance. Preventive maintenance costs are all maintenance costs related to vehicles, equipment, and facilities. Please see Appendix E for a description of eligible preventive maintenance activities.
- j. Transit-Oriented Development. FTA encourages land use policies that promote investment in transit-oriented development (TOD) projects, which are compact, mixed-use development near transit facilities with high-quality walking environments. TOD projects help create sustainable communities where people of all ages and incomes have transportation and housing choices, and increasing location efficiency where people can walk, bike, and take transit.

Eligible activities that could foster TOD include but are not limited to: construction, renovation and improvement of intercity bus or rail facilities; transportation-related furniture, fixtures, or equipment; transit facilities that incorporate community services; walkways; incorporation of open space in facility designs; real estate acquisition for transit projects; project development activities; and other related professional services. TOD benefits transit by increasing ridership, reducing congestion, and providing value for both the public and private sectors while creating a sense of community and place.

- k. Joint Development Projects. "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public

entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- l. Technology Introduction. Recipients may use Section 5307 funds for capital projects that introduce new technology. FTA encourages suppliers to produce and public transportation providers to introduce new technology in public transportation service, in the form of innovative and improved products.
- m. Projects to Comply with the Clean Air Act (CAA). The following projects are eligible in any area of the country, and are specifically eligible in order to comply with CAA for nonattainment or maintenance areas and include:
 - (1) purchasing or leasing clean fuel buses including buses that employ a lightweight composite primary structure;
 - (2) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses;
 - (3) constructing new or improved existing public transportation facilities to accommodate clean fuel buses; and
 - (4) at the discretion of the secretary, may include projects located in nonattainment or maintenance areas relating to clean fuel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

The vehicles must be powered by clean natural gas (CNG), liquefied natural gas (LNG), batteries, or by hybrid electric or fuel cell systems.

- n. ADA Complementary Paratransit Service. Recipients operating fixed route systems may use up to 10 percent of their annual formula apportionment (the 10 percent applies to annual formula apportionments under Sections 5307 and 5311), at the capital project 80/20 federal/local share ratio, to pay for complementary paratransit services in accordance with 49 CFR part 37, Subpart F, for grant recipients that are in compliance with U.S. DOT regulations at 49 CFR parts 27, 37, and 38 implementing the transportation provisions of the Americans with Disabilities Act of 1990 (ADA).

- (1) **ADA Compliance:** Eligibility for using this expanded definition of capital depends on compliance with ADA requirements. FTA recipients must certify compliance with the ADA annually, and are subject to compliance review activities conducted by FTA to monitor compliance and correct deficiencies. Entities whose compliance is in question, due to volume of complaints, compliance review findings, or triennial review findings, will be subject to review and approval prior to using capital funds to operate ADA paratransit service.
 - (2) **UZAs with More than One Recipient:** When a UZA has more than one recipient, it is the designated recipient's responsibility to work with public transportation operators to allocate the 10 percent of the UZA's apportionment that may be used for ADA paratransit purposes. Recipients' subarea allocation documentation should include language regarding the use of the ADA paratransit provision.
- o. **Leasing Capital Assets.** A recipient may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Recipients with preaward authority must conduct the cost comparison before entering into the lease and should contact the appropriate FTA regional office regarding the cost comparison. Recipients must comply with 49 CFR part 639 including these specific procedures:
- (1) Section 639.11 requires the grantee to demonstrate that the lease of a capital asset is more cost effective than the purchase or construction of the asset.
 - (2) Section 639.23 requires the calculation of the purchase or construction cost and Section 639.25 requires the calculation of the lease cost. These two calculations are used to determine which approach is the most cost effective.

Leasing costs eligible for capital assistance include finance charges, including interest; ancillary costs such as delivery and installation charges; and maintenance costs. For additional information about leasing capital assets see FTA Circular 5010.1, "Grant Management Requirements."

Recipients should submit the cost comparison to the appropriate FTA regional office for review before entering into the lease or before approval of the grant which supports the lease. The cost comparison should be retained on file for later review or audit. Some types of capital leases call for more than a single up-front payment but still load the payment into the early years of an extended lease. If the payment is made over several years instead of in a single lump-sum, the recipient must be able to complete the acquisition with local funds in the event FTA funds are not available in later years.

When a recipient receives funding for a project and proposes to enter into a capital lease for some element of the project, the recipient should submit the cost comparison for FTA approval as part of the grant application. Recipients should review the Office of Management and Budget (OMB) Circular A-94 for the necessary discount rate to be used in making the cost effectiveness determination. The circular can be found at <http://www.whitehouse.gov/omb/circulars/index.html>.

- p. Capital Cost of Contracting. Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor providing vehicles for public transportation service, the capital consumed is equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.”

Only the costs attributable to the privately owned assets are eligible under this policy. With one exception, items purchased with federal, state, or local government assistance are not eligible. The exception is a public transportation vehicle privately owned in which the recipient has invested FTA funds from the Over-the-Road Bus Accessibility Program to finance incremental capital costs of complying with ADA. Capital consumed for service or maintenance in the provision of service outside the public transportation portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which is defined as all maintenance. In some instances, the recipient contracts with outside sources for both maintenance and public transportation service, and the contractor provides both maintenance and vehicles. In such cases, both FTA’s capital cost of contracting and preventive maintenance standards will apply.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. EXHIBIT IV-1, below, shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the National Transit Database (NTD). Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, paratransit, or demand-responsive service.

EXHIBIT IV-1
PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE
WITHOUT FURTHER JUSTIFICATION

Bus and Paratransit-Related Contract Services	Percent of Contract Eligible for 80 Percent Federal Share
Type of Contract	
1. Service Contract (contractor provides maintenance and transit service; recipient provides vehicles)	40 percent
2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance)	0 percent
3. Vehicle Maintenance Contract (contractor provides maintenance; recipient provides vehicles and transit service)	100 percent
4. Vehicle Lease Contract (contractor provides vehicles; recipient provides maintenance and transit service)	100 percent
5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service)	100 percent
6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent
7. Vehicle/Service Contract (contractor provides vehicles and transit service; recipient provides maintenance)	10 percent

Some of the calculations above in EXHIBIT IV-1 are based on the assumption that the contractor (or someone other than the recipient) provides the assets. For example, if a contractor provides maintenance, FTA assumes in the calculations that the contractor does so in a facility provided by the contractor. For another example, in a contractor-operated vanpool program that qualifies under a Turnkey Contract (see type 6), a vanpool driver may provide the service rather than a contractor employee, but because the recipient does not provide the service, these costs are treated as part of the contract.

A recipient may request FTA participation at a higher percentage of the contract than FTA shows in Exhibit IV-1, but must provide substantiation of the actual costs in order to do so.

A recipient applying for assistance with costs that contain any of the capital costs of contracting permutations listed in EXHIBIT IV-1 may list costs for the contracted

service in the capital cost of contracting budget category, or the recipient may use both that category and another appropriate category such as preventive maintenance or leasing, so long as the total of the costs do not exceed the amount of the contract.

In the case where the grantee owns the facilities (constructed with FTA funds) from which the contractor operates, the vehicles (purchased with FTA funds) are maintained by the contractor, and the service contractor is responsible for maintenance of the facility and vehicles within the scope of the service contract, the grantee will need to calculate the proportion of the contract that actually represents allowable capital costs. These include (1) all vehicle maintenance costs, and (2) all costs to maintain the grantee's facilities, because such costs are eligible as preventive maintenance. In this case, because the facility is already owned by the grantee, depreciation of the facility cannot be included as an eligible cost, because to do so would be double counting because FTA and grantee funds have already been used to cover the capital costs of the maintenance facility itself. Because the facility is owned by the grantee, although capital cost of contracting does apply, the eligible amount will have to be determined based on the contract. The amount of the contract costs attributed to the vehicle maintenance and facility maintenance is eligible for federal capital funds at 80 percent as an eligible preventive maintenance expense.

Costs of a contract which remain after application of capital cost of contracting are operating expenses and may, depending on the size of the UZA, recipient, or purpose of the service, be eligible for federal operating assistance. For example, in a UZA with a population of under 200,000, 50 percent of a turnkey contract (type 6) would be eligible for federal capital assistance at a matching ratio of 80 percent federal. The remaining 50 percent of the costs of the contract, less any fares received, would be eligible for federal operating assistance at a matching ratio of 50 percent federal. The same costs of a contract may not be double counted and receive both capital and operating assistance. Thus, if a maintenance/lease contract (type 5) is treated as a capital expense under capital cost of contracting, none of these expenses would be reimbursable as an operating expense.

- q. Rail Trackage Agreements. Capital portions of rail trackage rights agreements are eligible for Section 5307 capital assistance.
- r. Crime Prevention and Security Projects. Eligible capital projects related to crime prevention and security activities include, but are not limited to:
 - (1) Increased lighting in or adjacent to a public transportation system.
 - (2) Increased camera surveillance of an area in or adjacent to a public transportation system.
 - (3) Providing emergency telephone lines in or adjacent to a public transportation system to contact law enforcement or security personnel.

(4) Any other capital project intended to increase security and safety of public transportation.

- s. Project Administration. Administrative activities of an organization pertaining to the immediate accomplishment or oversight of a project are eligible. Project administration costs must be directly associated with administering the capital project. Although there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable federal costs principles and properly supported. For further guidance on costs principles, see 2 CFR part 225 for states and local governments, and 2 CFR part 230 for private nonprofit organizations. Eligible project administration costs must be identified in a grant application. General administrative expenses that a designated recipient or state incurs to implement the program (as contrasted with the eligible costs directly related to administering a capital project) are not eligible as a direct cost under the Section 5307 program.

3. EMPLOYEE TRAINING EXPENSES.

- a. Education and Training. Pursuant to 49 U.S.C. 5322(d), up to 0.5 of 1 percent of Section 5307 and 5309 funds are available to a state or public transportation authority recipient in a fiscal year to use for tuition and direct educational expenses at the National Transit Institute for education and training of state and local transportation employees, at a federal share not to exceed 80 percent.

States, but not other recipients, may also use these funds for tuition and direct educational expenses through grants and contracts with public and private agencies, and other institutions and individuals.

Direct educational expenses include supplies, tuition, and travel to and from training. Overtime pay is an employment expense, not an educational expense and is not an eligible expense. The grant applicant should include proposed training activities it will support with Section 5307 funds in its Section 5307 application. In addition, the MPO must reflect proposed training in the transportation improvement program (TIP) and the statewide transportation improvement program (STIP).

Recipients are also advised that training and educational expenses, such as travel expenses relating to staff attendance at FTA-sponsored workshops, may also qualify for reimbursement as an operating expense at a 50 percent federal share.

- b. Public Transportation Safety Certification Training. Recipients of 5307 and 5311 funds may expend not more than 0.5 percent of their formula funds for the costs of participating in a Public Transportation Safety Certification Training Program established under Section 5329(c) by employees who are directly responsible for safety oversight. These costs require a 20 percent local matching share.

4. OPERATING ASSISTANCE. FTA provides funding to eligible recipients for costs incurred in the operation of public transportation service. In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating

expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

a. Eligible Recipients of Operating Assistance.

- (1) Recipients in Small UZAs: Recipients in UZAs with populations of less than 200,000 may use Section 5307 funds for operating assistance. There is no limitation on the amount of their apportionment that recipients in these UZAs may use for operating assistance.
- (2) Recipients in Large UZAs: Recipients in UZAs with populations of 200,000 or more may not use Section 5307 funds for operating assistance unless identified by FTA as being eligible under Section 5307(a)(2).

Under Section 5307(a)(2), public transportation operators that operate 100 or fewer buses in fixed route service during peak service hours may use a variable percentage of their UZA's 5307 apportionment for operating assistance. Eligible agencies may use program funds for operating assistance, excluding rail-fixed guideway, up to the amount published by FTA for a given fiscal year. The use of program funds for operating assistance is subject to metropolitan and statewide planning requirements and requires that funds be allocated to a recipient for this purpose by the designated recipient for a UZA. If an agency provides public transportation across multiple UZAs, that agency will receive an operating cap for each UZA. Operating assistance caps for eligible operators are published by FTA in the *Federal Register*.

The amount available to the eligible operators is based on the following:

- (a) Systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak hour service may receive operating assistance in an amount not to exceed 50 percent of the share of the apportionment that is attributable to such systems within the UZA as measured by vehicle revenue hours.
- (b) Systems that operate 75 or fewer buses in fixed route service during peak hour service may receive operating assistance in an amount not to exceed 75 percent of the share of the apportionment that is attributable to such systems within the UZA as measured by vehicle revenue hours.

The amount available (operating cap) is calculated by dividing the UZA's apportionment by the total number of vehicle revenue hours reported in the UZA from all public operators and multiplying this quotient by the number of total vehicle revenue hours operated in the UZA by the eligible system, and then by either 50 or 75 percent as indicated above.

- b. Expenses Eligible for Operating Assistance. Eligible operating expenses are direct labor, material, and overhead expenses incurred during a specified project period, most often one local fiscal year. Costs are calculated on the accrual basis of accounting by the

operator providing public transportation services in the UZA. Expenses for contractual services directly related to the management and operations of public transportation services, which are otherwise not reimbursed, are included. Cost principles established in 2 CFR part 225 (formerly OMB Circular A-87) must be used as guidelines for determining the eligibility of specific types of expenses. The following are representative of operating expenses eligible for FTA operating assistance:

- (1) Fuel, wages, and other expenses incurred in the operation of public transportation services to or within the UZA;
 - (2) Pension benefits and contributions to a pension plan, only if actually paid and only up to a maximum of the current year accrual;
 - (3) Self-insurance costs are limited to the extent of actual contribution to a reserve for an approved self-insurance program;
 - (4) Purchase of service contracts for public transportation services (except that certain portions of a service contract may be treated as a capital expense under the Capital Cost of Contracting);
 - (5) Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses. The recipient must properly document the loan agreement and open it to audit;
 - (6) Operating expenses associated with special public transportation services for people with disabilities (some of these costs may be supported with capital funds);
 - (7) Amortization of leasehold improvements may be eligible; recipients should discuss this with the FTA regional office;
 - (8) For private operators, a reasonable return on investment (profit) is an eligible expense; and
 - (9) Eligible public transportation security operating assistance projects (for UZAs with a population of 200,000 or less) include, but are not limited to:
 - (a) staff salaries for personnel exclusively involved with security;
 - (b) contracts for security services; and
 - (c) any other operating projects intended to increase the security and safety of an existing or planned public transportation system.
 - (10) Indirect costs provided that there is an approved cost allocation plan before incurring costs.
- c. Operating Expenses Not Eligible for FTA Assistance. To find standards for determining eligible and ineligible expenses, see 2 CFR part 225, formerly OMB Circular A-87, "Cost

Principles for State and Local Governments.” In practice, when recipients apply for FTA Urbanized Area Formula Program funding, eligible operating expenses are derived as the remainder when various categories of ineligible expenses are subtracted from total operating expenses.

Ineligible expenses are actual or estimated expenses during the project-specified time period for activities not related to the provision of public transportation or within the recipient’s UZA. Recipients may not include ineligible expenses in the computation of net project cost. Such activities in UZAs might include, but are not limited to, the following:

- (1) Charter bus operations;
- (2) Sightseeing services;
- (3) Freight haulage;
- (4) School bus operations (i.e., operations for the exclusive transportation of school students, not the carrying of students in regularly scheduled public transportation services);
- (5) Intercity transportation other than commuter service;
- (6) Public transportation services wholly outside of the UZA;
- (7) Expenses for contingencies including contributions to a capital reserve account or fund;
- (8) Capitalized costs or expenses recognized as part of and reimbursable under another FTA project;
- (9) Expenses incurred by a governor, a designated recipient, or other agency in its capacity as an intermediary for providing Urbanized Area Formula Program funds between FTA and the public transportation operating entity;
- (10) Indirect public transportation-related functions or activities of state, regional, or local entities performed as a normal or direct aspect of general public administration;
- (11) For private operators of public transportation, provision for federal, state, or local income taxes;
- (12) Depreciation accrued by public operators, depreciation on facilities or equipment purchased with public (federal, state, or local) capital assistance, depreciation of an intangible asset, depreciation in excess of the rate otherwise used for income tax purposes, or both;
- (13) Interest expense on long-term borrowing and debt retirement;

- (14) Lobbying expenses;
 - (15) Revenue items that directly offset public transportation expenses (referred to as contra-items), such as the following:
 - (16) Interest income earned on working capital;
 - (17) Proceeds from the sale of equipment in excess of the depreciated value (private operators only);
 - (18) Cash discounts and refunds that directly offset accrued expenses;
 - (19) Insurance claims and reimbursements that directly offset accrued liabilities; and
 - (20) State fuel tax rebates to public operators.
5. JOB ACCESS AND REVERSE COMMUTE PROJECTS. MAP-21 created a new eligible project category for “job access and reverse commute projects” under Section 5307. This category includes all types of projects that were formerly eligible under the Section 5316 Job Access and Reverse Commute Program. Examples of eligible projects are listed in paragraph (e) below. There is no requirement or limit to the amount of Section 5307 funds that can be used for these projects.

Although private nonprofit organizations are not eligible sub-recipients for other Section 5307 funds, private nonprofit organizations may receive funding for job access and reverse commute projects as a sub-recipient of an FTA designated recipient or direct recipient.

A job access and reverse commute project is defined in 49 U.S.C. 5302(9) as:

“a transportation project to finance the planning, capital and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.”

Consistent with this definition, job access and reverse commute projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible job access and reverse commute projects is not limited by the “100 bus” special rule for operating assistance established by MAP-21 under 5307(a)(2).

In order for a job access and reverse commute project to receive funding under Section 5307, it must meet the following requirements:

- a. New and Existing Services. Eligible job access and reverse commute projects must provide for the development or maintenance of eligible job access and reverse commute services. Recipients may not reclassify existing public transportation services that have

not received funding under the former Section 5316 program as job access and reverse commute services in order to qualify for operating assistance. In order to be eligible as a job access and reverse commute project, a proposed project must qualify as either a “development project” or “maintenance project” as follows:

- (1) Development Projects. “Development of transportation services” means new projects that meet the statutory definition and were not in service as of the date MAP-21 became effective October 1, 2012. This includes projects that expand the service area or hours of operation for an existing service. Projects for the development of new qualifying job access and reverse commute projects must be identified as such in the recipient’s program of projects (POP).
 - (2) Maintenance Projects. “Maintenance of transportation services” means projects that continue and maintain job access and reverse commute projects and services that received funding under the former Section 5316 program.
- b. Reverse Commute Projects. Reverse commute projects are a category of job access and reverse commute projects that provide transportation services from urbanized and rural areas to suburban employment locations. Generally, these services increase the capacity of public transportation services operating in the reverse direction of existing peak services. Reverse commute projects may only qualify as job access and reverse commute projects under Section 5307 if they meet all other requirements, including having been designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment related activities.
 - c. Welfare Recipients and Eligible Low-Income Individuals. Projects funded as “job access and reverse commute projects” must be designed to provide transportation for welfare recipients and eligible low-income individuals. The term “low-income individual” is defined as an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved. Projects that serve the general public without specific route or design characteristics intended to respond to the needs of these populations may not be eligible as job access and reverse commute project. However, job access and reverse commute projects do not need to be designed exclusively for these populations.
 - d. Planning and Program Development. In order for an entity to receive Section 5307 funding for a job access and reverse commute project, the project must be identified by the recipient as a job access and reverse commute project in the recipient’s POP, which must be made available for public review and comment.

In addition, FTA encourages recipients to ensure that projects meet the employment-related transportation needs of welfare recipients and low income individuals, either by deriving such projects from a locally coordinated public transportation/human services planning process that involves low-income communities and their stakeholders, or by an alternative process that engages low income community stakeholders in the identification and development of the project.

- e. Eligible Projects. Projects that comply with the requirements above may include, but are not limited to:
- (1) Late-night and weekend service;
 - (2) Guaranteed ride home service;
 - (3) Shuttle service;
 - (4) Expanding fixed route public transit routes, including hours of service or coverage;
 - (5) Demand-responsive van service;
 - (6) Ridesharing and carpooling activities;
 - (7) Transit-related aspects of bicycling (e.g., adding bicycle racks to vehicles to support individuals that bicycle a portion of their commute, providing secure bicycle parking at transit stations, or infrastructure and operating expenses for bicycle sharing programs in the vicinity of transit stations, not including the acquisition of bicycles);
 - (8) Promotion, through marketing efforts, of the: (i) use of transit by low-income individuals and welfare recipients with nontraditional work schedules; (ii) use of transit voucher program by appropriate agencies for welfare recipients and other low-income individuals; (iii) development of employer-provided transportation such as shuttles, ridesharing, carpooling; or (iv) use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986;
 - (9) Supporting the administration and expenses related to voucher programs. This activity is intended to supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment to providers of alternative transportation services. Job access and reverse commute projects can provide vouchers to low-income individuals to purchase rides, including (i) mileage reimbursement as part of a volunteer driver program, (ii) a taxi trip, or (iii) trips provided by a human service agency. Providers of transportation can then submit the voucher to the FTA recipient or sub-recipient administering the project for payment based on predetermined rates or contractual arrangements. Transit passes for use on fixed route or Americans with Disabilities Act of 1990 (ADA) complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50 percent local match;
 - (10) Supporting local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides, including the provision of capital loan guarantees for such car loan programs, provided the Federal interest in the loan guarantee fund is maintained and the funds continue to be used for subsequent loan guarantees or are returned to the government upon the release of funds from each guarantee;

- (11) Implementing intelligent transportation systems (ITS), including customer trip information technology, vehicle position monitoring systems, or geographic information systems (GIS) software;
 - (12) Integrating automated regional public transit and human service transportation information, scheduling, and dispatch functions;
 - (13) Subsidizing the costs associated with adding reverse commute bus, train, carpool van routes or service from urbanized and nonurbanized areas to suburban workplaces;
 - (14) Subsidizing the purchase or lease by a private nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;
 - (15) Otherwise facilitating the provision of public transportation service to suburban employment opportunities; and
 - (16) Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management techniques may enhance transportation access for populations beyond those serviced by one agency or organization within a community. For example, under mobility management, a private nonprofit agency could receive job access and reverse commute funding to support the administrative costs of sharing services it provides to its own clientele with other low-income individuals and coordinate usage of vehicles with other private nonprofits, but not the operating costs of the service. As described under “Capital Projects,” mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service.
6. INTEREST AND DEBT FINANCING AS AN ELIGIBLE COST. There are several areas in which interest is an eligible project cost for FTA’s Section 5307 program assistance, with certain limitations.
- a. Bond Interest in Advance Project Authority. This applies to a situation in which a recipient has obligated all of its Urbanized Area Formula Program funds for capital or planning projects and would like to carry out any part of a project with local funds which FTA may later reimburse under advance project authority. This authority, which is set forth in 5307(e), permits FTA to participate in the project costs, including any interest payable by the recipient and earned by the bondholder on bonds issued by the recipient to the extent the recipient has actually expended the proceeds of the bonds in carrying out the portion of the project. The recipient must certify that it has shown reasonable diligence in seeking the most favorable financing terms available in order for interest to be an eligible reimbursable cost.
 - b. Buildings and Equipment. Office of Management and Budget (OMB) regulations at 2 CFR part 225, formerly OMB Circular A-87, “Cost Principles for State, Local, and

Indian Tribal Governments,” allow financing costs (including interest) associated with otherwise allowable costs of building acquisition, construction, or fabrication; reconstruction; or remodeling finished after October 1, 1980, subject to conditions identified below. The term “building” includes the associated real property (land) and fixtures.

Title 2 CFR part 225 allows financing costs (including interest) paid or incurred on or after September 1, 1995, associated with otherwise allowable costs of equipment subject to the conditions cited below. The regulation defines equipment as, “an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5,000.”

Conditions associated with the allowable financial costs for buildings and equipment are as follows:

- (1) A bona fide third party external to the governmental unit provides the financing (from other than tax or user fee sources).
 - (2) The assets are used in support of federal awards.
 - (3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period’s cost or the capitalized interest, as appropriate. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.
 - (4) For debt arrangements over \$1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit must reduce claims for interest cost by an amount equal to interest earnings on excess cash flow.
 - (5) Interest attributable to fully depreciated assets is unallowable.
- c. Working Capital. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs.
 - d. Leasing. Leasing costs eligible for capital assistance include finance charges, including interest. **Note:** Leasing arrangements include certificates of participation (COPs) and cross-border leasing as well as traditional leasing of capital assets.
 - e. Capital Cost of Contracting. Interest on facilities and equipment is eligible for reimbursement by FTA when a recipient enters into a contract with a third party for service or maintenance.

- f. Other Interest Costs. FTA will consider other proposals concerning the eligibility of interest case-by-case. FTA will use the guidelines provided in 2 CFR part 225, formerly, OMB Circular A-87, Attachment B, "Selected Items of Cost," in such considerations.

V. PLANNING & PROJECT DEVELOPMENT

1. **METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING REQUIREMENTS.** A grant applicant requesting Section 5307 assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304, and 5306. Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide and nonmetropolitan transportation planning process specified in 49 CFR part 613 and 23 CFR part 450.

MAP-21 contains new language regarding the structure of metropolitan planning organizations (MPOs) that requires MPOs that serve areas designated as a transportation management area (TMA) include representation by providers of public transportation. Composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation in the region (including representation by providers of public transportation), the MPO is responsible for the development and adoption of the metropolitan transportation plan (twenty-year horizon) and the shorter term (four years) transportation improvement program (TIP).

All transit projects for which federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan transportation plan and TIP developed and approved by the MPO and the governor of a state, and must be included in a statewide transportation improvement plan (STIP) that has been approved by FTA and FHWA. Projects listed in the TIP must be consistent with the MPO metropolitan transportation plan and projects listed in the STIP must be consistent with the long-range statewide transportation plan.

Projects funded under other FTA programs outside of the metropolitan planning boundaries, such as under the Formula Grants for Rural Areas Program (49 U.S.C. 5311), are only required to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers or other identifying numbers and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s) within the appropriate Section of the FTA electronic award management system.

Planning projects must be included in the unified planning work program (UPWP). In addition, MPOs may include planning projects in the TIP for informational purposes.

Each project in the STIP/TIP must include sufficient descriptive material to identify the project or phase of the project. In addition, each project in the STIP/TIP must indicate reasonably expected resources to carry out the project.

FTA and FHWA will issue revised joint planning regulations implementing Sections 5303, 5304, and 5306 as amended by MAP-21. More information on the planning process can be found in the following regulations and guidance documents:

- a. “Statewide Transportation Planning” and “Metropolitan Transportation Planning,” 23 CFR parts 450 and 500 and 49 CFR part 613. The regulations outline the requirements for state departments of transportation (state DOTs), MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states; and
 - b. FTA Circular 8100.1, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.
2. TRANSPORTATION MANAGEMENT AREAS. Title 49 U.S.C. 5303(k) defines all UZAs with a population of more than 200,000 individuals as transportation management areas (TMA). The secretary of Transportation shall designate any additional area as a TMA on the request of the governor and the MPO designated for the area.

Joint FTA/Federal Highway Administration (FHWA) transportation planning regulations contained in 23 CFR part 450.312 include guidelines on determining the boundaries of a metropolitan planning area (MPA), which is determined by agreement between the MPO and the governor. The MPA boundaries at a minimum should include the entire existing UZA (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a twenty-year forecast period for the metropolitan transportation plan. An MPA boundary may encompass more than one UZA. The apportionment of funding under Section 5307 is based entirely on census-defined UZAs and is not affected by the designation or boundaries of MPAs or TMAs.

3. PERFORMANCE-BASED PLANNING. MAP-21 establishes a broad performance management program that brings significant changes to both the metropolitan transportation planning and statewide and nonmetropolitan transportation planning processes. The performance management framework attempts to improve project decision making through performance-based planning and programming and to foster a transparent and accountable decision-making process for MPOs, states, and providers of public transportation.

MAP-21 requires MPO and states to develop their long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for the metropolitan and nonmetropolitan areas of the state.

- a. The metropolitan and statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. In the development of the metropolitan transportation plan and long-range statewide transportation plan, MPOs and states must include performance targets that address the transit safety and transit state of good repair performance measures established by the USDOT under 23 U.S.C. 150(c) and 49 U.S.C. 5329.
- b. The MPO’s and state DOT’s long-range transportation plans should also include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.

- c. The MPO's TIP and state's STIP must demonstrate the linkage between investment priorities and the performance targets by including a discussion of the anticipated effect of the STIP/TIP toward achieving the performance targets established in the transportation plan.

FTA and FHWA will issue revised joint planning regulations implementing Sections 5303 and 5304 that address performance-based planning. More information on the planning process can be found in "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500 and 49 CFR part 613. The regulations outline the requirements for state DOTs, MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states.

4. ROLE OF THE DESIGNATED RECIPIENT AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING PROGRAM FUNDS. Under the Section 5307 Program, the state or designated recipient is responsible for "receiving and apportioning" the amounts made available by Congress and apportioned by the FTA to an urbanized area. The state or designated recipient receives and apportions the amounts within the UZA to the state, regional authorities, or to other public agencies.

Pursuant to 49 U.S.C. 5303(d), a metropolitan planning organization (MPO), which in some cases may also serve as the designated recipient, is the forum for cooperative decision making to carry out the transportation planning process.

Both the planning requirements and the statutory provisions of 49 U.S.C. Chapter 53 specify the roles of the MPO and of the designated recipient. Although the MPO develops and adopts the TIP, the designated recipient, which may in some cases also be the MPO, is responsible for developing the program of projects (POP) for the Section 5307 funds apportioned to a UZA for inclusion in the TIP.

In a small UZA (population less than 200,000), the TIP may take the place of the POP once it is adopted by the state into the STIP. If the TIP does not contain sufficient detail about the projects, the operators and MPO may develop the POP and present it to the state.

In the case of multiple designated recipients or multiple MPOs, the designated recipient or designated recipients must work with the MPO to ensure that the POP requirements are met by inclusion of all projects in the TIP or TIPs. The MPO and the designated recipient must work cooperatively to develop the TIP and agree on how to spend Section 5307 funds.

5. SUB-AREA ALLOCATION. In UZAs with more than one designated recipient or other recipients, FTA expects local officials, operating through the MPO, and designated recipients to determine the allocation of Section 5307 funds together. The designated recipient(s) and the MPO(s) should determine the sub-area allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A sub-allocation that is based on predetermined fixed percentages, for example, may not adequately represent the needs of transit systems in the UZA.

Designated recipients must provide documentation to FTA showing how the 5307 allocation will be split among the recipients. FTA may request a written agreement signed by a representative of each designated recipient or entity involved.

To assist in making such subarea allocations, any UZA may request the appropriate FTA regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Urbanized Area Formula Program resource.

6. PROGRAM OF PROJECTS AND PUBLIC PARTICIPATION REQUIREMENTS. A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5307 apportionment. If more than one recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP that identifies the projects to be funded in the grant. The POP must include a description of each project to be funded from the UZA's apportionment, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. Where there are multiple designated recipients or MPOs for a UZA, the POP may be presented in several separate parts for the purpose of programming and public participation. As stated above, eligibility for funding under most FTA and FHWA programs also requires the MPO to list projects in the approved TIP and STIP for metropolitan areas or the approved STIP for nonmetropolitan areas.
 - a. Sub-recipients. FTA and their grantees must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109-282, enacted September 26, 2006, as amended by Section 6202 of Public Law 110-252, and implemented by 2 CFR part 170. In order to do so, grant recipients must provide FTA with the following information for any sub-recipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award and the primary location of performance under the award, including the city, state, and congressional district. The grant recipient is required to submit this information and may choose to submit this information as a separate attachment in the FTA electronic award management system or include the information in the POP.
 - b. Programming in TIP or UPWP. Eligibility for most FTA and FHWA programs, including Section 5307, requires the MPO to list capital and operating assistance projects in the approved TIP or STIP, or both. The MPO must include planning projects in a UPWP. However, the MPO may include planning projects in the TIP and STIP for information purposes. The designated recipient is responsible for developing the POP whereas the MPO is responsible for placing the projects in the TIP or UPWP.

Projects included in an FTA grant application must be derived from that part of a metropolitan area's TIP (approved by the MPO, found to be consistent with the metropolitan area's long-range plan by FTA, and approved by the governor) that is within an approved STIP. The first-year program of the approved TIP constitutes a list of "agreed to" projects for FTA grant application purposes. The TIP/STIP public participation and approval processes carried out by the MPO can serve to satisfy the requirements for public participation under Section 5307. The list of projects the

designated recipient proposes for funding from the UZA's Section 5307 apportionment constitutes the POP.

Although operating assistance that does not involve funding from FTA or FHWA does not need to be listed in the TIP, demonstration of the reasonable availability of funding to adequately operate and maintain the system must be documented in the financial plan that accompanies the TIP. Capital projects may be selected from years one, two, three, or four of the TIP in accordance with the TIP project selection process described in 23 CFR 450.324.

- c. Public Participation Requirements. To receive a grant under Section 5307, a recipient must meet certain requirements concerning public participation in development of a POP and must certify to compliance with these requirements. The requirements are listed in 49 U.S.C. 5307(b)(1) through (7) and are discussed in the paragraphs below. The recipient may satisfy these requirements in whole or in part through the development of the metropolitan TIP and the local coordinated public transit-human service transportation plan.

Either the designated recipient for a UZA or each individual direct recipient must:

- (1) Make available to the public information concerning the amount of funds available under the Section 5307 Program and the POP that the recipient proposes to undertake with such funds;
- (2) Develop a proposed POP for activities the designated recipient will finance, in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals;
- (3) Publish the proposed POP in sufficient detail and in such a manner as to afford affected members of the public, private transportation providers, representatives of welfare recipients and low-income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient;
- (4) Provide an opportunity for a public hearing to obtain the views of the public on the proposed POP;
- (5) Ensure that the proposed POP provides for the coordination of Section 5307 public transportation services with transportation services assisted with other federal sources;
- (6) Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP; and

(7) Make the final POP available to the public. **Note:** Where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate process for the different areas involved.

- d. Satisfying the Requirement for Public Participation in Development of the POP using the Transportation Improvement Program Process. Federal transit law and joint FHWA/FTA planning regulations governing the metropolitan planning process require a locality to include the public and solicit comment when the locality develops its metropolitan long-range (twenty-year) transportation plan and its (four-year) metropolitan TIP. Accordingly, FTA has determined that when a recipient follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations, the recipient satisfies the public participation requirements associated with development of the POP that recipients of Section 5307 funds must meet. See 23 CFR part 450 and 49 CFR part 613 (specifically Subpart B, “Statewide Transportation Planning,” and Subpart C, “Metropolitan Transportation Planning and Programming”).

A recipient that chooses to integrate the two should coordinate with the MPO and make sure the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b). The recipient must ensure the TIP document explicitly states that public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP requirements of the Section 5307 Program. Furthermore, if recipients intend to follow such an ongoing practice, FTA encourages them to include such a reference in the metropolitan planning agreement required between public transportation operators, MPOs, and states, as called for in 23 CFR 450.314. Regulations at 23 CFR 450.316 provide a detailed description of the public participation plan.

- e. Substitute (Contingency) Projects. A grant application for Section 5307 funds may include substitute projects; see Appendix B of this circular for further information. Substitute projects may be drawn from years one, two, three, or four of the approved TIP. Applicants must include any substitute projects in the grant application (not the grant budget) and the project must meet the same requirements as other projects in the grant application (e.g., environmental, clean air, civil rights, labor protection requirements, etc.). Although the grant applicant must provide budget information about a substitute project in the grant application, it must not include these figures in the total project cost. If the state postpones or drops a project within the grant application, the recipient may move the substitute project from “below the line” into the grant budget, with written notification and explanation to FTA. If the applicant draws the project from years two, three, or four of the TIP, the applicant must advance it to year one through the local project selection process before FTA may approve the budget revision. The grant applicant must provide FTA with the project selection documentation.
- f. Budget Constraints, Additional Information. The total federal share for the final POP may not exceed the amount apportioned to the UZA or the amount allocated to the grant applicant by the designated recipient from these amounts, plus any Section 5307 carryover funds for previous years, funds transferred from other UZAs from the Section

5311 program, or for flexible funding from FHWA. Apportioned funds transferred to another UZA or to the Section 5311 program should be deducted from those available to the donating area.

7. COORDINATED PLANNING. Three former FTA formula programs, the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom (Section 5317) programs, previously required that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan.

This coordinated planning process was intended to create an inventory of area transportation services, identify gaps in transportation service for the affected transportation-disadvantaged populations, ascertain opportunities for human services program coordination, and establish funding priorities for those projects. This process was designed to be highly participatory by involving affected low income, persons with disabilities, and older adult populations in the development and approval of this plan.

Under MAP-21, the Section 5316 JARC program was repealed and a new eligibility was created for job access and reverse commute projects under Sections 5307 and 5311. In addition, the Section 5317 program was repealed and a new eligibility was created for these project types under Section 5310. Beginning with funding apportioned for fiscal year 2013, the requirement that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan only applies to the Section 5310 program.

Although the coordinated planning process is no longer required for job access and reverse commute projects, FTA encourages public transit systems in all areas to continue to participate in the coordinated public transit-human service transportation planning process in order to identify and develop job access and reverse commute projects for funding under Section 5307. This process gives affected populations direct participation in the formulation and approval of projects that are intended to serve them, and provides an opportunity for a variety of public, private and private nonprofit transportation providers, non-DOT transportation programs, and other community interests to likewise share their knowledge and participate in formulating projects and identify opportunities for coordination.

In addition, recipients should be aware that several other FTA requirements can be met through the use of the coordinated planning process. For example, Section 5307(b)(5) requires that recipients ensure that the proposed program of projects assisted under Section 5307 provides for the coordination of public transportation with transportation services assisted from other U.S. government sources. Additionally, the metropolitan planning requirements under Section 5303(g)(3)(B)(ii) require that recipients conduct planning in coordination with non-DOT funded nonemergency transportation services.

Public transit systems in UZAs in which a recipient is applying for funds under Section 5310 are required to continue to participate in the coordinated public transit-human service transportation planning process.

MPOs and recipients may choose to address this requirement through this existing coordinated planning process. Alternatively, MPOs and recipients may develop a process that meets this coordination requirement, and which includes a process for analyzing and documenting efforts to achieve efficiencies and service effectiveness through transportation coordination efforts.

The local coordinated planning process may also include consideration of the intercity bus transportation needs of the targeted population of seniors, individuals with disabilities, and low income individuals. Identification of unmet intercity mobility needs of human service agency clients during the local coordinated planning process may help the state with its intercity bus needs assessment as described in Chapter VIII of FTA Circular 9040.1, "Nonurbanized Area Formula Program Guidance and Application Instructions." FTA encourages states to include intercity bus mobility needs in the coordinated planning process for Section 5310, and for any unobligated funds under Sections 5316 and 5317. Although intercity bus service other than commuter service is not eligible under Section 5307, the needs for intermodal connectivity and urban/rural connections for the targeted populations may be a relevant factor in the coordinated planning process for urbanized areas.

Although the coordination of service takes place at the local level, the state may facilitate coordination through participation in statewide interagency coordinating councils and statewide coordinated planning activities.

FTA Circular 9070.1 provides more detailed guidance on the requirements for locally developed, coordinated public-transit human services transportation plans.

8. AVAILABILITY OF FHWA "FLEXIBLE FUNDS" FOR TRANSIT PROJECTS

- a. Authority. "Flexible" or "flex" funds are amounts authorized by Section 104(f) of title 23, United States Code, and 49 U.S.C. 5334(i), to be transferred between FHWA and FTA for eligible highway or transit projects, respectively. Flexible funding authority facilitates a multimodal approach to meeting transportation needs at both the statewide and local levels by giving the local area the option of choosing which federal surface transportation funds should be used for a particular project or activity based on local planning priorities. Funding transfers are permitted only for projects contained in an approved metropolitan TIP and/or STIP. In addition, like all other funds available under FTA's urbanized area formula program, flex funds should only be used toward projects and activities identified in the final program of projects.
- b. Share Requirements. Pursuant to Section 104(f)(1)(B) of title 23, United States Code, and 49 U.S.C. 5334(i)(2), flexible funds transferred to FTA require the same nonfederal matching share that such funds would require if used for the original FHWA program from which the funds were derived. For example, Surface Transportation Program (STP) funds (23 U.S.C. 133) are not covered by Section 5323(i)(1)(A), which allows for an 85 percent federal share of the net project cost of vehicle acquisitions for purposes of complying with the ADA or Clean Air Act. Regardless, the law requires that the FHWA share apply. In some cases, the federal share of FHWA funds flexed to FTA may be subject to the upward sliding scale adjustment for states containing public lands.

- c. Use. FHWA funds that are authorized for transit projects may be transferred to FTA and used for eligible public transportation purposes, which may include planning activities, capital projects and activities, and operating expenses. FHWA flexible funds that are transferred to FTA should be administered and managed under the applicable FTA program requirements and must be obligated in a separate grant. However, to facilitate project delivery, flexible funds for eligible public transportation and public transportation-related projects may be administered by FHWA, rather than transferring the funds to FTA. When a project is eligible for flexible funding, the recipient should base its decision to have funds administered by FHWA or FTA on the nature of the project, the agencies involved in implementation, and the recipient's preference to follow either FHWA or FTA administrative procedures and requirements. Regardless of which agency administers the funding, all transit projects are subject to the transit employee protection requirements at 49 U.S.C. 5333.

Although flexible funds transferred to FTA should be administered under the applicable FTA program requirements, flex funds may only be used for the purposes for which they were originally authorized. For example, Surface Transportation Program (STP) funds are not authorized to be used for transit operating expenses and, therefore, may not be used for operating assistance on public transportation projects once transferred to a Section 5307 recipient, even though, in some instances, operating assistance is an eligible use of funds under Section 5307. However, certain public information and promotion expenses for vanpool programs, which are normally considered operating expenses by FTA, are permitted under STP and may be undertaken using flex funds. In addition, CMAQ funds may be used for operating assistance under certain circumstances as indicated under Section (g)(3) below.

Flex funds transferred for capital purposes in the Formula Grants programs that are lapsing or that have lapsed will be credited to the state governor's apportionment balance to benefit the entire state for later approved transit projects, and not necessarily for the sole use of the original recipient UZA. The governor will have the authority to decide transit projects for which the lapsed funds will be used. The FTA regional office will notify the appropriate state DOT by letter that lapsed funds have been credited. The governor or the governor's designee must inform the regional office in writing of his/her decision on the use of the funds. The governor may elect to direct that the funds be used for the original project or for another eligible project in the UZA for which they were originally transferred, or he/she may direct that the funds be made available for a different eligible project somewhere else in the state.

- d. Transfer to FHWA. FTA Section 5307 funds apportioned for fiscal year 2013 and subsequent fiscal years may not be transferred to FHWA.
- e. Planning. FHWA funds authorized for the following programs may be transferred to FTA and used for authorized planning purposes:
- (1) Metropolitan Transportation Planning, 23 U.S.C. 134; and
 - (2) Statewide and Nonmetropolitan Transportation Planning, 23 U.S.C. 135.

In 1997, FHWA and FTA instituted a transportation planning fund process called the Consolidated Planning Grant (CPG). The purpose of the CPG is to combine FHWA and FTA metropolitan and state planning funds into a single grant for ease of grantee administration. Under this process, FHWA, at the request of a state DOT transfers to FTA the metropolitan and state planning funds it has made available to the state. FTA then consolidates these funds with its metropolitan and state planning funds available to the same state and awards all the funds under a single grant. CPGs can include FTA funds being transferred to FHWA as well.

- f. Planning Projects, Capital Projects, and Operating Expenses. FHWA funds authorized for the following programs may be transferred to a recipient of 5307 funds and used for planning, capital projects and activities, and operating expenses, if originally eligible for those purposes:
- (1) Surface Transportation Program (STP), 23 U.S.C. 133;
 - (2) National Highway Performance Program (NHPP), 23 U.S.C. 119;
 - (3) Congestion Mitigation and Air Quality Improvement Program (CMAQ), 23 U.S.C. 149; and
 - (4) Transportation Alternatives (TAP), 23 U.S.C. 213.
- g. Congestion Mitigation and Air Quality (CMAQ) Improvement Program, 23 U.S.C. 149. States can use CMAQ funds apportioned under 23 U.S.C. 104(b)(2) for public transportation or highway projects that are likely to result in emissions reductions.
- (1) Eligible projects. Eligible CMAQ activities may include: public transportation vehicle acquisitions; construction of new facilities or improvements to facilities that increase transit capacity; and mobility improvements resulting from the provision of transit traveler information.
 - (2) Federal share. The federal share for CMAQ funds is governed by 23 U.S.C. 120. It is generally 80 percent, subject to the upward sliding scale adjustment for states containing public lands. Certain safety projects that include an air quality or congestion relief component (e.g., carpool/vanpool projects), as provided in 23 U.S.C. 120(c), may have a federal share of 100 percent, but this provision is limited to 10 percent of the total funds apportioned to a state under 23 U.S.C. 104.
 - (3) Operating Assistance. Section 120(m) of title 49, United States Code, authorizes states to obligate funds apportioned under 23 U.S.C. 104(b)(4) for operating costs. In June, 2013, FHWA published interim guidance on CMAQ operating assistance under MAP-21 and is available at: http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/cmaq13ig.cfm. This guidance is controlling until such time as FHWA issues its final guidance.

9. ASSOCIATED TRANSIT IMPROVEMENTS. In UZAs with populations of at least 200,000, the designated recipient or designated recipients are responsible for certifying that no less than 1 percent of a fiscal year's apportionment is expended for projects that qualify as associated transit improvements. Where there are multiple designated recipients, the designated recipients must jointly coordinate the use of the 1 percent requirement for associated transit improvement projects and must include a list of the qualifying projects in the letter to FTA's regional office identifying the split of the UZA apportionment. If a list of qualifying projects is not available at this time, the letter should at a minimum indicate how this requirement will be met by indicating the amount each recipient will expend for qualifying projects.

A UZA may choose to spend more than 1 percent on associated transit improvement projects; however, expenditures for items that are not otherwise eligible projects—in particular, operating costs for historic public transportation facilities—may not exceed 1 percent of the UZA's fiscal year apportionment. In addition, projects that are eligible for an increased federal share, such as bicycle projects included as associated transit improvements, may only receive the increased local share for expenses necessary to meet the one percent minimum.

a. Associated Transit Improvement Report

Recipients must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement (ATI) funds during the previous fiscal year and the amount spent. The recipient must attach the report in TEAM in the federal fiscal year's final quarterly report.

b. The report should include:

- (1) grantee name;
- (2) UZA name and number;
- (3) FTA project number;
- (4) project category;
- (5) brief description of improvement and progress towards project implementation;
- (6) activity line code from approved budget; and
- (7) amount awarded by FTA for the project.

c. Alternatively, the designated recipient or MPO may submit this report on behalf of all recipients in a UZA; however, the report must include all of the information listed in the paragraph above.

10. PUBLIC TRANSPORTATION SECURITY PROJECTS. In each UZA to which funds are apportioned under Section 5307, designated recipients and recipients must certify that either: (1) recipients in the urbanized area will collectively expend at least 1 percent of the amount apportioned to the UZA for a fiscal year on “public transportation security projects,” or (2) that such expenditures for security projects are unnecessary. If a recipient certifies that such expenditures are unnecessary, the recipient should include a brief explanation of how this was determined in their grant application.

11. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT.

- a. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office, must “make the case” by identifying a useful life period for all equipment, rolling stock, and facilities with an acquisition value greater than \$5,000 to be procured with federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the federal interest for the disposition of the project property in later years. For additional information on useful life policy for a bus, van, trolley, rail rolling stock, and ferries, and to determine the useful life of such project property, please refer to FTA’s Grant Management Requirements Circular 5010.1.
- b. Early Disposition. FTA calculates the value of vehicles before the end of their minimum useful life on the basis of a formula using straight-line depreciation. Straight-line depreciation is a term most often used to indicate that personal property has declined in service potential. Removal of an FTA-funded vehicle from revenue service before the end of its minimum useful life, except for reasons of fire, collision, or natural disaster, leaves the recipient liable to FTA for the federal share of the vehicle’s remaining value. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value must be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Consistent with this policy, the suggested vehicle useful life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty. Please see FTA’s Grant Management Requirements Circular 5010.1 for more information on disposition.
- c. Rolling Stock Spare Ratio Policies. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage (one hundred vehicles required for full service and twenty spare vehicles results in a 20 percent spare ratio). Spare ratios will be taken into account during the review of grant applications proposing to replace, rebuild, or add vehicles to the applicant’s fleet. The number of spare buses in the active fleet for grantees operating fifty or more fixed route revenue vehicles should not exceed 20 percent of the number of

vehicles operated in maximum fixed route service. Please see FTA's Grant Management Requirements Circular 5010.1 for more information on rolling stock spare ratio policies.

- d. Fleet Expansion. Recipients seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve, or whether the expansion is necessary to meet demands for service in existing markets. The application should address vehicle needs, fleet size, and spare ratio. FTA may request official property records (or a rolling stock status report), in which future needs (expansion and replacement) are discussed. Information may include documentation developed during the metropolitan and statewide transportation planning processes in which case summary information and precise reference to the earlier material will be acceptable. The recipient may also include a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used to identify feasible opportunities for new or expanded routes. These criteria are often based on demographic measures and are used to identify geographic locations that are good candidates for new transit service. The recipient should explore all areas within the region, including areas that are currently served by transit, since they may have potential for different types of service.

In order to comply with FTA C 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," recipients that operate fifty or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population must conduct, prior to implementation, service equity analyses for all major service changes in order to determine whether those changes have a discriminatory impact.

In addition, all providers of fixed route public transportation are required to adopt systemwide service policies to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. One such policy is related to vehicle assignment. Vehicle assignment refers to the process by which transit vehicles are placed into service in depots and on routes throughout the transit provider's system. Please see FTA Circular 4702.1, Chapter IV, Section 4 for additional information.

- e. Pre-Award and Post-Delivery Review of Buses. Procurements for revenue service vehicles to transport passengers, other than sedans or unmodified vans, must be reviewed in accordance with 49 CFR part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the FTA Grant Management Requirements Circular 5010.1 and in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement" on FTA's website: http://www.fta.dot.gov/legislation_law/12921_5424.html.
- f. Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with 49 CFR part 665 and must obtain a copy of the resulting test report before FTA funds can be released. FTA provides a "Bus Testing" section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

MAP-21 amended the bus testing provisions under 49 U.S.C. 5318 to require that FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if it has received a passing score. This requirement will take affect after FTA has issued regulations establishing the standard.

- g. Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR part 661). FTA's Buy America requirements at 49 CFR part 661 differ from federal Buy American regulations at 48 CFR part 25. The former applies to third party contracts funded by FTA whereas the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.
- h. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26.
- TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.
- i. Americans with Disabilities Act of 1990 (ADA). Recipients must ensure that each transit vehicle meets the accessibility requirements and standards for the vehicle type specified in 49 CFR parts 37 and 38, as applicable. Where a vehicle or component departs from the particular technical and scoping requirements, the recipient must obtain a determination of equivalent facilitation, as described in Section 38.2, from the FTA administrator under procedures set forth in Section 37.7(b). Where a specific vehicle type is not addressed by part 38, accessibility requirements must be determined by the U.S. Department of Transportation in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) as specified in Section 38.171(c).
- j. Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. Please see FTA's Grant Management Requirements Circular 5010.1 for additional information on rebuilding and overhaul policies.

- k. Requirements Related to Accessories and Miscellaneous Equipment. A grant application may include certain miscellaneous items separate from the costs of a bus procurement or facilities project. For example, a recipient may apply for mobile radios, bus stop signs or shelters, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The application must explain the rationale or need for each request. FTA does not require a separate justification if, for example, a farebox or radio is included in the cost of a new bus, or shop equipment is included in the cost of a new maintenance facility.

12. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded by Section 5307.

- a. General Philosophy. FTA generally assists in building two kinds of facilities:
 - (1) facilities that support transit operations, such as maintenance garages and administrative buildings; and
 - (2) facilities that provide passenger amenities and extend into the built environment, such as bus or rail terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus or rail services.
- b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of forty to fifty years for the minimum useful life of a facility. A railroad or highway structure has a minimum useful life of fifty years, and most other buildings and facilities (concrete, steel, and frame construction) have forty years. For further information, see FTA Circular 5010.1.
- c. American with Disabilities Act of 1990 (ADA). Recipients must ensure that transit facilities meet the accessibility standards and requirements specified in 49 CFR parts 37, 38, and 39, as applicable. Where any departure from the specific requirements is contemplated, as permitted under 36 CFR part 1191, the recipient must obtain a determination of equivalent facilitation from the FTA administrator under procedures set forth in Section 37.9(d).
- d. Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to nontransit use for construction, maintenance, and operation costs.
- e. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a recipient currently operating twenty vehicles, a request for a bus maintenance garage that will accommodate twenty vehicles and have space for a 10 to 25 percent vehicle increase would be considered an acceptable grant request. For the same

transit agency, a grant request for a garage accommodating forty vehicles would not be acceptable, unless the recipient could demonstrate its need, willingness, and ability to expand its fleet to forty vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and supporting facilities may be justifiable.

- f. Project Staging. When applying for a grant to build a facility, a recipient must be able to fully describe the project and estimate the cost of the facility. Planning for the project may include a feasibility study/needs assessment for the project that provides preliminary cost estimates, funding sources, and possible site locations and related environmental work. The next phase is engineering and design, which could include costs for development of an environmental document specific to the project, and real estate appraisals. Once FTA has reviewed and approved the environmental documentation, funds may be requested for land acquisition and construction.
- g. Planning Justifications. There must be a planning basis for every project or group of projects. Accordingly, FTA requires recipients to include the planning justification in the grant application submitted in FTA's electronic management system. Planning activities are eligible under the Section 5307 Urbanized Area Formula Program. Feasibility studies at varying levels of detail as appropriate and proportionate should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a recipient may choose to reference and summarize pertinent parts of documents in which results of project studies were reported (e.g., transportation plans, unified planning work programs [UPWPs], and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide additional guidance for various kinds of facilities projects.
- h. Passenger Shelters and Bus Boarding and Alighting Areas. A program for bus shelters and bus boarding and alighting areas should be developed for the existing and proposed network based on the operator's shelter criteria and to the extent the construction specifications are within its control, and, in the case of significant increases, should be described in the grant application. Bus shelters and bus boarding and alighting areas must comply with standards for accessibility established by U.S. DOT regulations implementing the transportation provisions of the ADA (49 CFR parts 27, 37, and 38, as amended). A map indicating the transit network and shelter and bus boarding and alighting area location should be developed and available upon request.
- i. Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning/feasibility study. Elements would include a determination of transit demand and other uses, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, an evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
- j. Park-and-Ride Facilities. The basis for a new park-and-ride lot should be documented in a feasibility study. Generally, activities would include an evaluation of demand and

service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.

- k. Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a feasibility study. Activities would include an evaluation of the condition and adequacy of the existing facility, if any, development of site evaluation criteria, identification and evaluation of alternative sites based on site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.

13. TRANSIT ASSET MANAGEMENT REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit asset management practices and procedures. The intent of the statute is to promote coordinated capital investments aimed at bringing transit systems into and maintaining a state of good repair. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on transit asset management.

14. PUBLIC TRANSPORTATION SAFETY REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit agency safety plans and system requirements. The intent of the statute is to increase the safety of public transportation systems for employees, customers and the general public. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on public transportation safety requirements.

15. ENVIRONMENTAL CONSIDERATIONS. Prior to projects receiving FTA funding, FTA is required to consider every project's potential impacts on the environment. These environmental reviews are conducted under the National Environmental Policy Act (NEPA) and related federal environmental laws, such as the National Historic Preservation Act, regulations, and executive orders. The amount of resources required to complete this process (time, documentation, consultant services, etc.) will vary depending on the type of project and its potential to impact the human and natural environment. The following list identifies and briefly describes each level of environmental review that may apply to a project:

- a. Categorical Exclusion (CE). Projects that historically do not result in significant environmental impacts may qualify as a CE and would require little to no documentation as described further in 23 CFR 771.118. Examples of this type of project are buying a bus or construction of transit facilities primarily within the transportation right-of-way.

- b. Documented Categorical Exclusion (DCE). Projects that historically do not result in significant environmental impacts but are slightly greater in scope than those qualifying as a CE may qualify as a DCE. Examples of this type of project may include real property acquisition or construction of transit facilities with features located outside of the transportation right-of-way.
- c. Environmental Assessment (EA) and Environmental Impact Statement (EIS). Projects that are complex in scope and/or are viewed as controversial by the public may require the preparation of an EA. This level of environmental review provides the public an opportunity to comment and will ultimately determine whether or not the project will result in any significant impacts. If the analysis in an EA concludes that the project will result in significant impacts, or if from the early planning stages it is determined the size and scope of the project will result in significant impacts, an EIS will be required. Most grantees typically need to enlist consultant services when preparing an EA or EIS.

Grantees should consult with FTA early in the grant application process, and prior to expending funds for a planned project for which federal funds are requested, to confirm the appropriate level of environmental review.

Further detail and explanation on the different levels of environmental review can be found in 23 CFR 771, FTA's Environmental Impact and Related Procedures. Grantees must receive confirmation that their proposed FTA-funded project has complied with the policies and procedures provided in 23 CFR 771 before FTA can approve the grant application and funds can be obligated.

16. UNDERTAKING PROJECTS IN ADVANCE. There are three different authorities under the Urbanized Area Formula Program in which a recipient may incur costs on a project (e.g., award a contract or begin work) before grant approval and retain eligibility for reimbursement after grant approval. The first is automatic pre-award authority which FTA typically authorizes in each of its fiscal year apportionments notice. A letter of no prejudice (LONP) is a second authority and a third is advanced construction authority (ACA). When utilizing pre-award authority, a recipient must comply with all FTA and federal requirements prior to undertaking the project, including federal planning requirements, in order to retain eligibility for reimbursement after grant approval.
 - a. Automatic Pre-Award Authority. The authorization of Urbanized Area Formula Program grant funds triggers automatic pre-award authority for design and environmental work on the project. FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the Urbanized Area Formula grant program. FTA provides automatic pre-award authority for planning and operating assistance under the Urbanized Area Formula grant program without regard to the period of the authorization. Following authorization, automatic pre-award authority for capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental record of decision (ROD), a finding of no significant impact (FONSI), or a determination that the project qualifies as a categorical exclusion (CE). Grantees may incur costs under pre-award

authority for projects that clearly meet the criteria for a CE; however, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance. If a grant applicant is concerned that a project may not clearly qualify as a CE, they are strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary. A project must also be included in the STIP prior to incurring expenses under pre-award authority.

The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Therefore, FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements before incurring expenses under automatic pre-award authority with the hope of future reimbursement.

- b. Letter of No Prejudice. For a project not covered by the automatic pre-award authority, including projects that will require Urbanized Area Formula funds not yet authorized and for which FTA has not extended pre-award authority, a grant applicant that seeks to proceed with a transit project in advance of the availability of federal funds may request that FTA issue a Letter of No Prejudice (LONP) for that project. A LONP allows a recipient to incur costs on a project using nonfederal resources with the understanding that the costs incurred after the LONP is issued may be reimbursed for eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant at a later date. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Because project implementation activities may not be initiated prior to National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a record of decision (ROD), finding of no significant impact (FONSI), or categorical exclusion (CE) determination.

Although FTA typically grants automatic pre-award authority for Urbanized Area Formula funds as discussed in subparagraph (a) under this section, a LONP is required if a recipient wishes to continue to incur costs after the life of the program's authorization. Each LONP has an expiration date, which is the date beyond which funding cannot be requested retroactively for the project. The standard expiration date of an LONP is five years, after which time the grantee may request a new LONP. In situations such as long-term leases or long-term financing, the LONP may be for an appropriately longer time period.

To obtain an LONP, a recipient must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office. FTA approval of a LONP is made in writing and determined on a case-by-case basis.

- c. Advanced Construction Authority. The statutory authority to undertake projects in advance, also referred to as advanced construction authority (ACA), allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent

reimbursement after grant approval. ACA is slightly different than the policy-driven automatic pre-award authority and LONP, which are discussed in subparagraphs (a) and (b) under this section. Under ACA, FTA has already approved the project for funding in the event funding becomes available. Under automatic pre-award authority or a LONP, FTA has not yet approved the project for funding.

- (1) ACA permits a grant applicant to incur project and financing costs such as bond interest before FTA awards a grant for the project. FTA may issue ACA under 49 U.S.C. 5307 of the Urbanized Area Formula grant program provided—
 - (a) the recipient has completed a grant application and it is on file with FTA.
 - (b) the project has met all federal requirements, including the DOL certification under Section 5333(b).
 - (c) FTA has approved the project as eligible for Urbanized Area Formula funds, although the funding is not available.

Although an ACA reserves the recipient's right to be reimbursed after FTA has approved the project, ACA does not constitute a commitment of federal funds until the project is converted to a regularly financed project. ACA expires on or before the expiration of the current authorization.

- d. Terms and Conditions Applicable to Automatic Pre-award Authority, LONP, and ACA.
In general, the terms, conditions and procedures applicable to recipients having automatic pre-award authority, a LONP, or ACA are as follows:
 - (1) All federal grant requirements must be met at the appropriate time for a project having automatic pre-award authority, a LONP, or ACA to remain eligible for federal funding.
 - (2) These authorities are not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds.
 - (3) These authorities are not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (4) The recipient assumes all the risk.
 - (5) All FTA statutory, procedural, and contractual requirements must be met.
 - (6) All applicable DOT statutory and regulatory requirements must be met.
 - (7) The recipient must not take any action that prejudices the legal and administrative findings that the FTA administrator must make in order to approve a project.

- (8) Local funds expended by the recipient after the date of the automatic pre-award authority, a LONP, or ACA will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).
- (9) Local funds expended by the recipient before the date of the authority will not be eligible for credit toward local match or reimbursement.
- (10) Applicants may incur costs for credit or reimbursement under pre-award authority if certain conditions are met for activities such as land acquisition, demolition, or construction after the date of pre-award authority. FTA's policy for pre-award authority and list of permissible activities and conditions for grant programs are outlined annually in FTA's Annual Apportionment Notice.
- (11) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall cost scope of activities and the prevailing statutory provisions and congressional direction with respect to the federal/local match ratio at the time the funds are obligated.
- (12) When a grant for the project is subsequently awarded, the federal financial report in the FTA electronic award management system must indicate the use of the automatic pre-award authority, LONP, or ACA. More information and updates regarding automatic pre-award authority and LONPs can be found in FTA's fiscal year apportionment notice published in the *Federal Register*.

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VI. PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. CERTIFICATIONS REQUIRED BY 49 U.S.C. 5307. FTA recipients must annually certify that they are in compliance with federal transit law as well as federal cross-cutting requirements. FTA advises recipients to review the annual list of Certifications and Assurances, located on FTA's website (www.fta.dot.gov), and on the FTA electronic award management system website (<http://ftatamweb.fta.dot.gov>). Section 5307(d)(1) lists the conditions to which Section 5307 recipients must certify, as discussed below.

a. Consistent with 49 U.S.C. 5307(c)(1)(A), a recipient must certify that it has or will have the legal, financial, and technical capacity to carry out the program. New grantees must submit documentation of capacity prior to receiving a grant. Sample documents are available in Appendix D of this circular.

(1) Legal Capacity. Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding, FTA generally relies on the grant applicant's certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the applicant must have appropriate authority designated by state or local law or by the governing body of the applicant. Although FTA does not require recipients to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. (An Opinion of Counsel sample is available in Appendix D of this circular.) FTA also retains the discretion to require any recipient to submit a legal opinion and other supporting documentation.

(a) An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, state and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. Although the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the recipient will certify its authority to apply for subsequent grants in the annual certification process. That affirmation appears on FTA's website at www.fta.dot.gov, on the page that lists the current year Certifications and Assurances.

FTA expects the recipient to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the recipient's ability to carry out the project. Any significant change in status will require a new Opinion of Counsel.

(b) In general, the authority of those officials acting on behalf of a public body grant applicant must be demonstrated by a resolution from the governing body of the

grant applicant, a statute, or an ordinance showing that the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for all FTA recipients. A sample format of an authorizing resolution is provided in Appendix D of this circular. The authorizing resolution only has to be submitted prior to the grant applicant's first application. For subsequent grant applications, FTA will rely on the annual certifications and assurances. The designated signature authority submitted in the FTA electronic award management system on the first application must agree with the designated signature authority on subsequent applications.

- (2) Financial Capacity. Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the financial capacity to carry out the project. Specifically, an applicant for Section 5307 funds must be able to match and manage those funds, to cover cost overruns, to cover operating deficits through long-term stable and reliable sources of revenue, and to maintain and operate federally funded facilities and equipment. Financial capacity and proposed project financing must be made evident. The source of local share must be identified and assurances must be provided that adequate local funds will be available at the time federal funds are drawn down. Financial capacity is also reviewed by FTA's Financial Management Oversight contractors as deemed necessary.

FTA Circular 7008.1, "Financial Capacity Policy," defines the basis on which FTA will make determinations of a grant applicant's financial capacity to receive a Section 5307 grant. The circular refers to two aspects of financial capacity: general financial condition of the transit operator and financial capability. The general financial condition includes historical trends and current experience in financial factors affecting the ability of the grant applicant to operate and maintain the transit system at present levels of service. The information supporting an assessment of financial condition is usually available in audited annual financial statements and other financial reports that address working capital levels, cash balances, capital reserves, the presence and status of depreciation accounts, long-term debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

Financial capability addresses the sufficiency, stability, and reliability of the grant applicant's revenue sources to meet future operating deficits and to meet future annual capital and operating costs. Financial capability considers the nature of funds pledged to support operating deficits and capital programs, and changes in forecast in fare and nonfare revenues. Capital costs include replacement and rehabilitation of existing equipment and facilities and new investments. Operating and maintenance costs include those for the present system and any increases caused by capital investment and service expansion.

In considering financial capacity of the grant applicant, FTA takes into account the fact that a financial analysis must be undertaken and a financial plan must be

developed before programming a project into the TIP. That analysis, plan, and subsequent inclusion of the project in the TIP reflect the two aspects FTA considers in determining the grant applicant's financial capacity: the financial plan must demonstrate that TIP projects can be carried out while the existing transportation system is being adequately operated and maintained (financial condition); and only projects for which funds can reasonably be expected to be available may be included in the TIP (financial capability).

FTA assesses financial capacity of a Section 5307 grant applicant when FTA approves the STIP and again when FTA approves projects for Section 5307 funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending on the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, including: short-range transit plans, capital budgets, financial plans required for New Starts projects, and reports on financial operations such as periodic financial statements or single audit reports.

- (3) Technical Capacity. According to 49 U.S.C. 5307(c)(1)(A), before FTA may award a Section 5307 grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Section 5307 grant must demonstrate that it can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws and regulations, using sound management practices. Thus, FTA requires a certification that the recipient will comply with all requirements applicable to its grant application and to the grant agreement, when awarded. Guidelines for grant management practices can be found in FTA Circular 5010.1, "Grant Management Requirements."
- (4) Satisfactory Continuing Control. According to 49 U.S.C. 5307(c)(1)(B), a recipient must annually certify that it "has or will have satisfactory continuing control over the use of equipment and facilities" through operation, lease, or otherwise.

An FTA recipient must maintain control over federally funded property by ensuring the grantee uses it in public transportation service and disposes of it according to federal requirements. If the recipient leases federally funded property to another party, the lease must provide that the recipient maintains satisfactory continuing control over the use of that property. FTA determines control over FTA-funded facilities and equipment in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and nonrevenue). For more information regarding the disposing of property, and for safeguards against loss, theft, or damage, see FTA Circular 5010.1, "Grant Management Requirements."

- (5) Maintenance. According to 49 U.S.C. 5307(c)(1)(C), a recipient must certify that it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5307 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. Additional guidance is available on FTA's State of Good Repair and Asset Management website (<http://www.fta.dot.gov/13248.html>).

- (6) Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours. According to 49 U.S.C. 5307(c)(1)(D), a recipient must certify that the fares charged to seniors, individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours, for transportation using or involving a facility or equipment of a project financed under this section, are not more than 50 percent of the peak hour fare, regardless of whether the service is provided by the recipient or by another entity under contract, lease, or other arrangement. Because a Medicare card does not constitute proof of an individual's identity, it is reasonable for a transit agency to request confirmation of the individual's identity, either through secondary photo identification or by using a photographic identification card issued by the transit agency. It is also reasonable for a transit agency to verify the validity of the Medicare card being presented, and to facilitate the half-fare application process, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented.
- (7) Use of Competitive Procurements. According to 49 U.S.C. 5307(c)(1)(E), a recipient must follow procurement requirements specified under 49 U.S.C. 5323 and 49 U.S.C. 5325. This includes the requirements that a recipient utilize a competitive procurement process, comply with applicable Buy America laws, and not use a procurement that follows exclusionary or discriminatory specifications.

Recipients must use competitive procurement procedures as determined by FTA and will not use procurements employing exclusionary or discriminatory specifications. Any recipient failing to provide this certification or that is found by FTA to have procurement practices and procurement systems that do not comply with federal laws, regulations, and directives governing federally financed procurements may be determined ineligible for award of federal assistance.

There is a link between a recipient's certification that its procurement procedures follow federal requirements and a positive finding by FTA concerning the applicant or recipient's technical capacity to administer and manage a grant properly. FTA Circular 4220.1, "Third Party Contracting Guidance," sets forth the requirements and procedures applicable to third party contracts. A third party contract refers to any purchase order or contract awarded by a recipient to a vendor or contractor using federal financial assistance awarded by FTA. FTA Circular 4220.1 contains

guidelines for the general procurement requirements of the DOT Common Grant Rule, 49 CFR part 18, and also includes specific statutory procurement provisions required by FTA's enabling legislation and other special concerns to FTA. Note that both the Common Grant Rule and FTA Circular 4220.1 prohibit state or local preference provisions in procurements, except in certain restricted circumstances.

Section 5323(h)(2) prohibits the use of FTA grant funds to support exclusionary or discriminatory specifications, and Section 5323(m) provides specific pre-award and post-delivery provisions for procuring rolling stock.

In addition to procurement and audit provisions that apply to architectural, engineering, and related services, 49 U.S.C. 5325 includes provisions affecting third party procurements, including the general requirements for competition and prohibitions on the use of exclusionary or discriminatory specifications, requirements for award to other than low bidders, requirements for awards to responsible contractors, special rolling stock limitations, contract term limited to five years (seven years for rail rolling stock), access of federal officials and the comptroller general to project records, authority for design-build projects, and an express federal preemption of any state law requiring bus purchases from in-state dealers.

FTA's Best Practices Procurement Manual at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html provides another useful source of procurement information.

- (8) Domestic Preference for U.S. Property - Buy America. Pursuant to 49 U.S.C. 5307(d)(1)(E), grant applicants and sub-recipients must certify that they will comply with applicable Buy America laws as set forth under 49 U.S.C. 5323(j) in carrying out a procurement. FTA's Buy America requirements apply to all third party procurements funded by FTA. These requirements, published at 49 CFR part 661, are different from the federal Buy American regulations, published in the Federal Acquisition Regulation at 48 CFR 25.1 and 25.2, which apply to direct federal procurements. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any procurement to ensure compliance with the requirements applicable at the time the recipient will undertake the procurement. Additional information is available on the FTA Buy America website (<http://www.fta.dot.gov/buyamerica>).
- (a) General Requirement. In compliance with 49 U.S.C. 5323(j) and FTA's implementing regulation at 49 CFR part 661, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States. FTA may waive this requirement in certain circumstances, as discussed below.
- (b) Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and

bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

- (c) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin (49 CFR 661.5(d)).
- (d) Rolling Stock. All buses and rolling stock (including train control, communication, and traction equipment) acquired with FTA funds must consist of at least 60 percent domestic components by cost and final assembly must take place in the United States (49 CFR 661.11).
- (e) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
 - 1. if the FTA administrator determines a waiver is in the public interest;
 - 2. if no responsive or responsible bid offers a product manufactured in the United States;
 - 3. when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
 - 4. when including domestic material will increase the cost of the overall project by more than 25 percent (49 CFR 661.7).
- (f) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America requirements. Currently, DOT’s Common Grant Rule (49 CFR 18.36(d)) sets that threshold at \$100,000 or less. FTA bases the exemption on the total amount of the contract and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$15,000 each under a single purchase order, the \$150,000 contract would make the procurement subject to Buy America requirements (49 CFR 661.7).
- (g) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (h) Responsibilities. Under 49 CFR 661.13, a recipient’s responsibilities are:

1. to adhere to the Buy America clause in its grant agreement with FTA;
 2. to include in its bid specification for procurement within the scope of FTA's regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and
 3. to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- (9) Public Participation. According to 49 U.S.C. 5307(c)(1)(F), a recipient must certify that it has complied with the public participation requirements of 49 U.S.C. 5307(b). Chapter V, Section 6, "Program of Projects and Public Participation Requirements," of this circular discusses this requirement.
- (10) Availability of Local Funds. According to 49 U.S.C. 5307(c)(1)(G), a recipient must certify that the required local funds are available to carry out the project. See Chapter III of this circular for additional information on local share.
- (11) Compliance with Planning Requirements. According to 49 U.S.C. 5307(c)(1)(H), a recipient requesting Section 5307 program assistance must certify that it will comply with the planning requirements of 49 U.S.C. 5303 and 5304. Further detail on planning requirements may be found in FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."
- (12) Public Comment on Fare and Service Changes. According to 49 U.S.C. 5307(c)(1)(I), the recipient must certify that it has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation service.

The recipient is expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions. The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. During a triennial review, the recipient should be able to provide evidence that public comments were considered. Guidance on this requirement is available in FTA

Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”

- (13) Expenditure on Public Transportation Security Projects. According to 5307(c)(1)(J), each designated recipient of Section 5307 program funds must certify that of the amount apportioned to its UZA in a fiscal year, the recipients within the UZA will collectively expend at least 1 percent on “public transportation security projects,” or the designated recipient(s) must certify that such expenditures for security projects are unnecessary. This certification may also be provided by the MPO in coordination with eligible recipients in the UZA.

FTA monitors compliance with the Section 5307 1 percent security spending requirement during the grant review and approval process and through the triennial review process, when FTA reviews a table of Public Transportation Security Expenditures completed by the recipient.

- (14) Expenditure on Associated Transit Improvements. In large UZAs (with populations of 200,000 or more), 49 U.S.C. 5307(c)(1)(K) establishes a minimum annual expenditure requirement of 1 percent for public transportation projects and project elements that qualify as associated transit improvements under the Section 5307 program. The term “associated transit improvement” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. Eligible associated transit improvement projects are listed in Chapter III.

- (a) Requirements. When several recipients receive Section 5307 funding within a large UZA, the recipients together must spend not less than 1 percent of the UZA’s fiscal year apportionment on projects and project elements that qualify as associated transit improvements. Each individual recipient is not required to spend 1 percent of its Section 5307 program funds on associated transit improvements, provided that this requirement is met by the recipients as a whole.

The designated recipient or recipients have the responsibility for selecting (programming) all 49 U.S.C. 5307 projects including associated transit improvements, but the MPO has the responsibility for placing the project in the TIP. Where there are multiple designated recipients, they must coordinate the use of the 1 percent for associated transit improvements and include the transit improvements in the letter to FTA regarding the split of the UZA apportionment. A UZA may spend more than 1 percent of its apportionment for associated transit improvements, except that items that are only eligible as improvements—in particular, operating costs for historic facilities—may only be assisted with the associated transit improvement funds.

- (b) Associated Transit Improvement Report. The recipient must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement funds during the previous fiscal year and

the amount spent. The recipient must submit the report in the federal fiscal year's final quarterly report, using ALI codes from the approved project budget.

2. **CERTIFICATION PROCEDURES.** Before FTA may award federal funding, the applicant must provide to FTA all certifications and assurances required by federal laws and regulations. Near the beginning of each federal fiscal year, FTA publishes the certifications in the *Federal Register*, highlighting any changes or additions from the previous year. FTA sometimes publishes the certifications and assurances on the same date the formula apportionments are published.
 - a. **Action Required.** The authorized representative of the recipient and the recipient's attorney must make the requisite certifications in FTA's electronic award management system by:
 - (1) attesting to the certifications and assurances electronically with a personal identification number (PIN); and
 - (2) selecting electronically each assurance or certification category that will apply to the applicant's grants for the fiscal year; or
 - (3) selecting instead a "select all" field that signifies the grant applicant will comply with all categories of certifications and assurances that apply to it or its projects.

FTA requires a current attorney's affirmation of the recipient's legal authority to certify compliance with that fiscal year's FTA funding assistance. FTA will not accept the attorney's affirmation from a previous year.
 - b. **Timing.** FTA expects to receive the certifications and assurances electronically from each recipient that has an open grant:
 - (1) within 90 days from the date of publication of the certifications and assurances; or
 - (2) with the first grant application of the fiscal year, whichever comes first.

Absent information to the contrary, certifications and assurances, which remain valid for one year or until FTA publishes the next version, apply to all open grants.

FTA encourages grant applicants and recipients to contact the appropriate FTA regional office for more information about these requirements. Some requirements call for extensive planning that the applicant should address before submitting a grant application.
3. **FTA ELECTRONIC AWARD MANAGEMENT SYSTEM.** FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, grantees apply for grants, inquire about the status of grants, file the required federal financial status and milestone progress reports, and submit annual Certifications and Assurances in

this system. A user guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants."

The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects through the FTA electronic award management system. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the FTA electronic award management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO), which is described in Chapter VI of this circular. ECHO is a FTA Web-based application that processes FTA recipients' requests for payment. To access the FTA electronic award management system, a new applicant must complete the Grantee/Recipient User Access Request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is: http://www.fta.dot.gov/funding/grants_financing_36.html.

4. SYSTEM FOR AWARD MANAGEMENT REQUIREMENTS. The System for Award Management (SAM) is a free website that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance (<https://www.uscontractorregistration.com/>). On July 30, 2012, the Central Contractor Registration (CCR), FedReg, and the Excluded Parties List System (EPLS) were migrated into SAM.

Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA or receives its final payment under the project, whichever is later. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance.

5. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENT. Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.
6. SUB-RECIPIENTS DUNS REQUIREMENT. If it is authorized to make sub-awards under its agreement with FTA, the recipient must notify potential sub-recipients that no entity may receive a sub-award from the recipient unless the entity has provided its DUNS number to the recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.

7. ELECTRONIC CLEARING HOUSE OPERATION (ECHO) REQUIREMENTS. Grantees are required to establish an ECHO control number (ECN) before FTA is able to disburse funds to the grantee. Department of Treasury regulations, 31 CFR part 205, govern payment to recipients for financing operations under federal assistance and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA “ECHO-Web System User’s Manual for Recipients” at: <http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENT. FTA’s recipients must report the information about each first tier sub-award over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the direct recipient makes any sub-award or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign sub-recipient agreements until February, the FTA grantee would have until March 31 to report the sub-award into the federal sub-recipient reporting system (FSRS). Once the grantee submits an initial report, the grantee can revise it later to add additional sub-awards as they are made, or to change data previously submitted to reflect adjustments in sub-awards.
 - a. No report is required until the month after the grantee makes a sub-award. For example, if a recipient received a Section 5307 grant in November and listed three sub-recipients in the program of projects, but does not consider the sub-awards to be made until each sub-recipient signs a letter of agreement, the recipient would not have to report any sub-awards in December, but would report them by the end of the month after the sub-recipient signs the agreement. On the other hand, if the recipient has a standing agreement with sub-recipients and considers the sub-awards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the recipient. If the recipient allows sub-recipients to incur costs for projects in advance of obligation, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept sub-award reports before the federal obligation is recorded in the system.
 - b. FTA grant recipients that use funds to purchase vehicles from a statewide contract and then provide the vehicles to sub-recipients have a subaward relationship with these sub-recipients and should submit a subaward report for each sub-recipient that is receiving vehicles from the statewide purchase. Grant recipients should enter the cost of the vehicles being transferred to the sub-recipient as a proxy for the sub-award amount in their sub-award report. Recipients that are awarded grants directly from FTA and use these funds to purchase vehicles from a statewide contract for their own use do not have a sub-award relationship with another organization and do not need to submit FFATA sub-award reports.

- c. The required data elements in FSRS for each first tier sub-award over \$25,000 :
- (1) Name of entity receiving sub-award
Doing Business As (DBA) Name
 - (2) DUNS of the entity and its parent and DUNS+4 (is used to identify specific units within a larger entity)
 - (3) Amount of Sub-Award
 - (4) Sub-award Number (Note: assigned by recipient)
 - (5) CFDA Number (Note: The same CFDA associated with the FTA award)
 - (6) Place of performance (including congressional district)
 - (7) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds)
 - (8) Award title descriptive of the purpose of the funding action
 - (9) Location of the entity (including congressional district)
- d. The amount that is to be reported for each sub-recipient is the amount of the total sub-award, not payments to date. Payment/drawdown information is not included in the data fields requested.
- e. After the recipient reports the sub-award data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.
- f. Information and training materials about FFATA sub-award reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to [USASpending.gov](http://www.USASpending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Grantees should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff are available to help with FTA grant award information and requirements.
9. NATIONAL TRANSIT DATABASE (NTD) REPORTING. The NTD was established by Congress to be the nation’s primary source for information and statistics on the transit systems of the United States. NTD data are used to support numerous DOT programs and to “help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning” (49 U.S.C. 5335). Recipients (including sub-recipients and contractors) of Section 5307 program funds are required by statute to submit data to the NTD.

FTA’s implementing regulation can be found at 49 CFR part 630. A recipient of FTA grants that is required to report to the NTD must provide a complete report to the NTD of all transit operations, regardless of whether or not those operations are funded in whole or part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with

information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD regulation, the USOA, and the most recent versions of the NTD Reporting Manuals can be found on the NTD website at <http://www.ntdprogram.gov/>.

- a. Annual Report. Recipients or beneficiaries of Section 5307 grants must annually report financial and nonfinancial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- b. Monthly Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- c. Safety and Security Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly safety and security reports. These monthly reports include information on fatalities, injuries, collisions, derailments, fires, hazardous material spills, evacuations, arrests, and significant security events. The NTD Safety & Security Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- d. Waiver. Under certain circumstances, described in NTD reporting manuals, grant recipients may apply for reduced NTD reporting requirements. Under a small systems waiver, grantees with less than thirty vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.

VII. OTHER PROVISIONS

1. **INTRODUCTION**. In addition to the program-specific requirements, FTA recipients are held to a number of FTA-specific and other federal requirements. This chapter provides a summarized, alphabetical listing of those requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. This circular should be used in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (by using the FTA electronic award management system) to establish or renew their funding relationship with FTA.

The Master Agreement and the Certifications and Assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized throughout this chapter, as a reminder to recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement, the Certifications and Assurances on the FTA public website www.fta.dot.gov, the FTA electronic award management system's website (<http://ftateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

Recipients are encouraged to contact the appropriate FTA regional office for more details about these requirements.

2. **CHARTER BUS SERVICES**. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604, Charter Service, amended effective April 30, 2008 (73 FR 2326, January 14, 2008). Each recipient must enter into an agreement with FTA stating that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter bus service website (http://www.fta.dot.gov/legislation_law/12922.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency

to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) The ADA, as amended (42 U.S.C. 12101 *et seq.*), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a sub-recipient or under a contract or other arrangement) providing fixed route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (5) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regards to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. Department of Transportation (DOT) regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005).
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This Executive Order 13166 guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Order 5610.2, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice. The DOT Order describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ (DHHS) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE) Program. To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
- (1) The recipient agrees and assures that it will comply with Section 1101(b) of MAP-21 (23 U.S.C. 101 note), which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE’s. This 10 percent national goal is aspirational and is used by DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities .
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

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

For further guidance, refer to the federal laws, regulations, and executive orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and transportation improvement programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the MPO, and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.
6. DEBARMENT AND SUSPENSION. The purpose of the DOT governmentwide debarment and suspension (nonprocurement) regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration's (GSA) system for award management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a website, <https://www.sam.gov>, which is updated in real time as changes to the data occur.
 - a. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (e.g., those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
 - c. The awarding party must verify that the person is not excluded or disqualified by:
 - (1) Checking the SAM list of excluded parties maintained by the GSA and available at <http://www.sam.gov>. **Note:** strongly recommended by FTA;
 - (2) Collecting a certification from the prospective awardee; or
 - (3) Adding a clause or condition to the third party contract or subagreement with that awardee.

In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the these regulations.

7. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Rural Area Formula Program, and other programs as determined by the secretary are required by 49 U.S.C. 5331 to establish drug and alcohol (D&A) testing programs. In the MAP-21 legislation, although the 5316 Job Access and Reverse Commute (JARC) and 5317 New Freedom Programs (NF) were consolidated into the applicable formula programs (5307 and 5311), pursuant to Section 5331(b)(1)(A), FTA intends for those recipients solely engaged in JARC and NF activities to continue to be exempt from D&A testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4. This exemption is applicable if the recipients receive JARC and NF only.

The purpose of the Drug and Alcohol testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning D&A testing (49 CFR parts 40 and 655 respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with Parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219—for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382—for contractors with mixed transit/motor carrier/school bus), and United States Coast Guard (USCG) (46 CFR parts 4 and 16—for ferryboat) regulations concerning drug and alcohol programs.

FTA's regulation (49 CFR part 655) applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides [public] transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes sub-recipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations with effective ongoing oversight. FTA's regulation does not apply to construction phases of funded projects. Contractors that supply newly manufactured equipment are excluded, as are facility construction workers. The regulation applies to the testing, startup, and actual revenue operations of FTA-funded transit systems. Van pool drivers, as volunteers and not employees of a transit system that do not receive remuneration over their actual expenses, are exempt from testing. Also exempt are taxi operations for paratransit transportation where the patron chooses the service through a user subsidy or voucher and the service is not dispatched through the FTA recipient or sub-recipient. In addition, maintenance contractors for rural 5311 providers and providers in urbanized areas with populations of less than 200,000 are exempt as well.

FTA's regulation requires testing of employees who perform one or more of five transit safety-sensitive functions, which are defined at 49 CFR 655.4. The regulation requires the following six types of testing for illegal drug use and alcohol misuse: pre-employment (including transfer from a non-safety-sensitive position to a safety-sensitive position, and removal from the random pool for ninety days or more); reasonable suspicion; random; post-

accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in twelve months after returning to duty). Since an October 2010 amendment to 49 CFR part 40, return-to-duty and follow-up tests are required to be directly observed.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Technical assistance materials and training information to help recipients implement the rules are available at FTA's website (<http://www.fta.dot.gov/safetysecurity/12533.html>) or through contacting the FTA office of transit safety and oversight, FTA headquarters.

8. **DRUG-FREE WORKPLACE.** In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. These provisions apply only to FTA's direct recipients and do not extend to sub-recipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link:

<http://www.dol.elaws/drugfree.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and D&A testing rules are available on FTA's website (<http://www.fta.dot.gov>) or by contacting FTA's office of safety and oversight, FTA headquarters, 1200 New Jersey Ave. SE, Washington, DC 20590.

9. **EMPLOYEE POLITICAL ACTIVITY.** To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. Sections 1501–1508, and Sections

7324–7326, and U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(1)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.

10. ENERGY CONSERVATION. The recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.* The recipient, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C. Only after the completion of an energy assessment will FTA approve assistance for the construction, reconstruction, or modification of buildings for which the recipient submits an application. An energy assessment consists of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The energy assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special or innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure projected over the life of the facility and including projected costs of this fuel; and the kind of energy the recipient will use.
11. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with the National Environmental Policy Act (NEPA) implementing regulations (40 C.F.R. part 1500-1508), FHWA and FTA’s Environmental Impact and Related Procedures (23 C.F.R. part 771), Efficient Environmental Reviews for Project Decisionmaking (23 U.S.C. part 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion, environmental assessment, or environmental impact statement) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., final design and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE). Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until a ROD, FONSI, or CE is issued.
12. ENVIRONMENTAL JUSTICE. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and the FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects on our programs, policies, and activities on minority populations and/or low-income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out the executive order.

13. INTERGOVERNMENTAL REVIEW. Executive Order 12372 and DOT regulations, “Intergovernmental Review of Department of Transportation Programs and Activities” (49 CFR part 17), require that a grant applicant applying for FTA funds comply with a state’s intergovernmental review process. The requirement is to ensure that the appropriate state authorities are informed about and provided an opportunity to comment on projects for which federal assistance is being provided within the state. Many states have their own review procedures, which describe the federal programs and activities that had been selected for intergovernmental review, and how applicants satisfy the state’s intergovernmental review requirements.

If there is no intergovernmental review process in the grant applicant’s state, then programming of a project in the TIP and statewide transportation improvement program (STIP), or unified planning work program (UPWP), as appropriate, will be considered by FTA as meeting the need for intergovernmental review.

If there is an adopted state process of intergovernmental review for an FTA program or activity, FTA requires that the applicant, upon the MPO’s approval of the TIP, notify the single point of contact for the state’s intergovernmental review process that the MPO has approved the TIP and that the applicant has submitted the TIP to the governor for approval and subsequent inclusion in the STIP.

The applicant must provide the single point of contact, with the name and mailing address of the office to which it is submitting the TIP. The applicant may wish to transmit to the single point of contact, or request the MPO to transmit pertinent documents on public transportation projects from the approved TIP. Timely alerting of the single point of contact will allow that entity to review and comment on the projects in the TIP during the STIP development process, if the entity so chooses. In the FTA electronic award management system, an applicant should indicate whether Executive Order 12372 applies, and the date the state reviewed the application, if applicable.

14. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the secretary of Labor and in accordance with the Davis-

Bacon Act, as amended. The secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the Master Agreement.

- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), formerly Section 13(c) of the Federal Transit Act as amended. Those arrangements must be certified by the secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-1519, 200 Constitution Avenue NW, Washington, DC 20210; telephone 202-693-1193; fax 202-693-1344.

15. PRESIDENTIAL COIN ACT. In accordance with Pub. L. 109-145, beginning January 1, 2008, all transit systems that receive operational subsidies or any disbursement of funds from the federal government shall be fully capable of accepting and dispensing \$1 coins and must display signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.
16. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.
17. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use federal financial assistance in a project that will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C. chapter 61)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-wide regulations that apply to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR part 24 is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html or on FHWA's website at: <http://www.fhwa.dot.gov/realstate/49cfr.htm>. Also, recipients should be aware of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and Circular 5010.1.

18. **RESTRICTIONS ON LOBBYING.** Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or cooperative agreement. The state, sub-recipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

19. **SAFETY.** MAP-21 amended 49 U.S.C. 5329 to provide FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that the DOT issue a National Public Transportation Safety Plan, establish safety performance criteria for all modes of public transportation, define a "state of good repair," establish minimum safety performance standards for public transportation vehicles, and a safety certification training program. States are required to strengthen their state safety oversight (SSO) programs and submit them to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will be issuing regulations and interim guidance to implement these new requirements in consultation with public transportation industry stakeholders.

Note: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have

agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers.

20. SCHOOL BUS TRANSPORTATION. Section 5323(f) of title 49 U.S.C. prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose of FTA’s school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start Program limit the types of vehicles which may be used to transport children participating in a Head Start Program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.
21. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building it designs and constructs with federal assistance is compliant with seismic safety standards. The grant applicant is responsible to know before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with DOT implementing regulations, “Seismic Safety,” at 49 CFR 41.117(d), and must assure FTA that it will obtain a certificate of compliance with the requirements. A recipient makes this assurance through the FTA annual certification process.
22. SENSITIVE SECURITY INFORMATION. To the extent applicable, the recipient agrees to comply with 49 U.S.C. 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR part 15, and with 49 U.S.C. 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR part 1520.
23. STATE SAFETY OVERSIGHT. MAP-21 did not amend 49 U.S.C. 5330, but subsection 20030(e) of MAP-21 provided that Section 5330 would be repealed three years after the effective date of FTA’s regulation implementing the new Section 5329 requirements. Until then, the current regulations at 49 CFR Part 659 will remain in effect. The existing regulations require oversight of the system safety program plan development and implementation, internal safety and security audits, accident and hazard investigations, and corrective action plan development and implementation. Until new regulations are in effect, an oversight agency must continue to annually certify to FTA that it has complied with the requirements of 49 CFR Part 659. The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

Section 5330 and Section 5329 authorize FTA to withhold up to 5 percent of an affected state or UZA’s apportionment if FTA determines the state is not in compliance or is not making adequate efforts to comply with the rule. FTA may restore withheld formula funds if the state is in compliance within two years.

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A. APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION

1. PREAPPLICATION STAGES.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the FTA electronic management system. Applicants must have access to the system in order to enter a grant. If an applicant does not have access to the FTA electronic award management system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix F of this circular.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved statewide transportation improvement program (STIP) for capital projects or a unified planning work program (UPWP) for planning projects.
- c. Environmental Determination. The impact that a proposed FTA-assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Urbanized Area Formula Program, or any other FTA grant program, must annually submit Certifications and Assurances that are applicable to the grant applicant's active and new grants during the fiscal year. The Certifications and Assurances should be examined annually for changes, deletions, and additions.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, DBE Goals, and Americans with Disabilities Act of 1990 (ADA) Paratransit Plan. FTA's regional civil rights officer must verify that all required civil rights submissions are current at the time the grant application is submitted in the FTA electronic award management system. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. ("Civil Rights" see Chapter VII of this circular.) FTA's office of civil rights may request additional information needed to affirm that the proposed project or elements thereof are in compliance with federal civil rights requirements, and/or reports on activities and progress to address findings identified in civil rights compliance reviews and assessments.
- f. Flexible Funding Documentation (if Applicable). A grant applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once this resource of funds is included in the TIP, and incorporated into the STIP,

the grant applicant informs the state transportation agency that a grant application is in development to FTA for the use of flexible funds and requests that the state inform the Federal Highway Administration (FHWA) of the need to transfer the funds to FTA for obligation (in some states, in practice, the metropolitan planning organization [MPO] or FTA notifies the state transportation agency). Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the agency will use the funds for public transportation purposes and requests that FHWA transfer funds for the project to FTA. Information showing that these processes are under way should be included in the grant application. The grant applicant should also include the type of flexible funds, the amount, the purpose for which the funds will be used, and where they appear in the STIP.

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEMS INFORMATION). Applicants should submit their grant applications electronically. The user guide, available on the home page, provides detailed information on how to access and use FTA's system. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements; grant amendments; budget revisions; and close-out procedures. Applicants should enter the following information into the system when preparing an application:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields, including recipient address, contact information, union information, urbanized area (UZA) identification number, congressional district(s), data universal numbering system (DUNS) number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.

Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

- b. Project Information. Certain basic information required on the federal Grant Application Standard Form 424 is incorporated into the project setup fields. Applicants must identify whether the application is a new grant, or a grant amendment, the project start/end date, and, per Executive Order 12372 Intergovernmental Review of Federal Programs, review date if applicable (see additional information about EO 12372 and grant project costs in Chapter VII of this circular).
- c. Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. There is a project description field as well as a specific text field for this information associated with each activity line item (ALI). Project activities must be sufficiently described to

assist the reviewer in determining eligibility under the program. Sources of funds may also be included in the description.

- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, a grant applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the grant applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the grant applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details section.
- f. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All rolling stock procurements must include vehicle description and fuel type; expansion activities must include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for the Section 5307 program. The project budget for each grant application that includes associated transit improvement funds must include a scope code for associated transit improvements and specific budget ALIs for associated transit improvements. The grant budget may also include non-add scopes. A non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Non-add scopes are used for intelligent transportation systems (ITS), security funds, funding allocated to tribal governments, and other special emphasis areas.
- g. Determination of Sufficient Funds. All sources of funds must be identified and confirmed. The grant applicant should periodically examine the status of existing grants to make sure that unused fund balances, consisting of funds with a potential to lapse, are in fact needed to complete those grants. A grantee may deobligate any excess funds

during their period of availability so that they may be reobligated into any pending or upcoming grant application. Otherwise excess funds left at the end of the project will be deobligated at closeout and, if lapsed, will be lost to the grantee.

FTA reviews the status of a UZA's apportionment, including prior year carryover balances, as well as current year allocations, to make sure that sufficient funds exist to finance the proposed program. FTA obligates Section 5307 program funds on a first-in, first-out basis to make sure that the oldest funds are obligated before more recent funds. This process prevents the potential of funds lapsing in a given UZA, which would render them no longer available to the area for obligation.

- h. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will automatically generate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If it does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- i. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (see 23 CFR 771). Grant applicants should refer to part 771.118 for a listing of FTA's categorical exclusions. Most projects under the Section 5307 program meet the criteria for a categorical exclusion (CE) and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- j. Fleet Status. Applications submitted in requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's entire fleet including the applicant's spare ratio. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria. A Sample Fleet Status Report can be located in Appendix D of this circular. Official property records (or a Rolling Stock Status Report) must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable. The requirements for equipment records that must be maintained by the grantee are detailed in FTA C 5010.1
- k. ADA 10%. Up to 10 percent of a recipient's section 5307 program apportionment may be used towards the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143) with a federal share of up to 80 percent. To be eligible, recipients must be in compliance with applicable requirements of that Act, for both fixed route and demand responsive service. If an application includes ADA paratransit operations as a capital expense and there is more than one grant recipient in the UZA, the application should

include documentation of the designated recipient's sub-area allocation regarding the use of the ADA paratransit provision and the project budget should also include the appropriate ALI for the capital activity. FTA will reserve funds under a financial purpose code specific to the activity that will govern drawdown requests for this purpose. ADA paratransit operations remain an eligible operating expense, at a 50 percent federal share, for grantees otherwise eligible for operating assistance (e.g. those located in small UZAs or with fewer than 100 buses in maximum fixed route service).

- l. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in by the authorized official of the applicant.
- m. Department of Labor Certification. Once the grant application has been submitted by the recipient, the application is forwarded to the Department of Labor (DOL). DOL must certify all Urbanized Area Formula grants containing capital or operating expenses before FTA will approve them. See Chapter VII , "Other Provisions" of this circular for more information on DOL certification.
- n. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements and other federal requirements have been met, FTA awards and obligates funds requested in the grant.
- o. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Grants that indicate the use of pre-award activity require the submission of a federal financial report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.

3. **APPLICATION CHECKLIST.**

Applicants should use the following checklist in preparing a complete application:

Section 5307 <u>APPLICATION CHECKLIST</u>	
Part I—Recipient Information	
	Are annual Certifications and Assurances selected and pinned/signed by the authorized official and attorney?
	Is the Recipient Contact, Designated Signatory, Opinion of Counsel, Authorizing Resolution, and other information complete?
	Is UZA/congressional district information entered and accurate?
	Is union contact information entered and accurate?
	Has civil rights program documentation been approved by FTA?
	Has the applicants DUNS number been entered in the appropriate field?
Part II—Project Information	
	Does the project description include adequate detailed information of the project(s) such as an appropriate project title?
	Is information on any sub-recipient(s) and their projects included?
	Is this a new application or grant amendment?
	Does the application include an appropriate start/end date?
	If a supplemental agreement is applicable, has “yes” been selected?
	Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included?
	Are STIP/UPWP approval dates and page numbers or location identifiers included in the application?
	If pre-award authority is applicable, has “yes” been selected?
	If federal debt delinquency is applicable, has “yes” been selected? (If yes, grant applicant must explain in details section.)
	Has the EO 12372 review been completed, if applicable?
	Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements?
	Is UZA/congressional district information entered and accurate?
Part III—Budget	
	Are ALI codes entered under the appropriate scope codes and consistent with project descriptions?
	Are funding percentages and match ratios acceptable?
	Does the funding amount entered in the budget match financial information entered in the “Project Information” field for:
	a. Federal funds
	b. Local match
	Does the rolling stock (vehicle) line item contain accurate information such as:
	a. Description
	b. Fuel type
	Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? If appropriate and necessary.
	Will the applicant expend 1 percent of the Section 5307 funds in this application for security purposes? (If yes, list security-related projects in the project budget and summarize them in the non-add scopes. If no, select the reason.)
	If applicable, has the applicant expended 1 percent of Section 5307 funds for associated transit improvements in areas over 200,000 in population?
	Where applicable, have non-add scopes been added showing the funds allocated to intelligent transportation systems, security funds, tribal governments, or other special areas of emphasis?
Part IV—Project Milestones	
	Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.)
	Have estimated completion dates been entered?
Part V—Environmental Findings (NEPA)	
	Has an environmental finding been entered for each ALI or scope?
	For Categorical Exclusion II (d), EA, and EIS, has decision documentation been referenced or attached?
Part VI—Fleet Status	
	Has information pertaining to current and future revenue vehicles been entered?

	If applicable, are vehicles entered in the table consistent with the budget?
	If applicable, is the spare ratio 20 percent or less?

B. APPENDIX B

INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

1. INTRODUCTION. This Appendix provides information about the items that appear on an approved project budget and provides instruction for preparing a project budget. A Federal Transit Administration (FTA) grant obligates a recipient to undertake and complete activities defined by the purpose or purposes of a grant and the budget incorporated into the grant agreement. A grant budget is the approved financial plan that FTA and the recipient agree the recipient will follow in carrying out the purposes of the grant.

The recipient will use the FTA electronic award management system to prepare project budgets. The user's guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose. A grant program and budget may have several scopes.

2. DEVELOPING THE BUDGET. FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the scope and activity levels of information on the approved project budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system. Examples of formats for capital and operating assistance follow.

a) Format for Capital Assistance.

(1) Capital expenditures under the Section 5307 Program include those items defined as "capital" in 49 U.S.C. 5302(a). Vehicles can be purchased either for replacement or expansion purposes. Careful attention to use of the appropriate ALI codes enables FTA to report accurately on the use of formula and discretionary funds, for example in the annual statistical summary report.

For capital projects, the recipient should first select the appropriate scope code. Then for each scope, an ALI or ALIs should be selected.

EXHIBIT B-1 Project Scope—Sample No. 1

Scope	Quantity
111-010 Bus—Rolling Stock	6

Activity	Line Items	Quantity
11.12.02	Purchase 35-foot replacement buses with lifts	4
11.13.03	Purchase 30-foot buses with lifts for service expansion	2
11.12.40	Spare Parts/Assoc Capital Maintenance Items	

In the example above, a mix of rolling stock will be purchased, and the scope includes the purchase of associated capital maintenance items (spare parts). If a grant applicant wishes to include radios and fareboxes as part of this purchase, it could also list radios and fareboxes as part of the rolling stock scope. In such a case, the grant applicant would not include the quantities for the radios and fareboxes in the rolling stock total quantity under 111-01, but would indicate it in the activity level description. If a grant applicant proposes to purchase an entirely new fare collection system or radio communications system, the more appropriate classification might appear as follows:

EXHIBIT B-2
Project Scope—Sample No. 2

Scope	Quantity
114-00 Bus—Support Equipment and Facilities	45
(Note that in this example the activity code description appropriate to this Scope Code, Bus—Stations/Stops/Terminals, has been overwritten to provide a more accurate description.)	

Activity	Line Items	Quantity
11.42.06	Shop Equipment	
11.42.10	Purchase Fare Collection (mobile)	45

Scope	Quantity
116-00 Bus Signal/Communications System	70

Activity	Line Items	Quantity
11.61.01	Design Bus Signal System	
11.62.02	Acquire Communication System	
11.62.03	Purchase Bus Radios	50

From these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear. A grant applicant that operates a fixed guideway system or engages in a new start project will use scope level numbers that correspond to the fixed guideway and new start segments of the

activity code chart; for example, scope code 121-01, 02...for Rail Rolling Stock or 141-01, 02...for New Start Rolling Stock; or 123-01, 02...for Rail Stations and 143-01, 02...for New Start Stations.

- a. Sub-recipient Information. The design of the project budget can also accommodate sub-recipient information in cases where a recipient such as the state wishes to track each sub-recipient's projects separately. In the following examples, the grant applicant is purchasing rolling stock on behalf of two small operators:

EXHIBIT B-3
Presenting Sub-recipient Information—Format Option No. 1

Scope	Quantity
111-01 Purchase Rolling Stock and Related Equipment	7

Activity	Line Items	Quantity
11.12.03	Purchase replacement buses w/lifts for Allegany County	3
11.12.15	Purchase vans w/lifts for Cumberland Transit System	4

EXHIBIT B-4
Presenting Sub-recipient Information—Format Option No. 2

Scope	Quantity
111-00 Rolling Stock for Allegany County	3
Activity Line Items	Quantity
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
Scope	Quantity
111-01 Rolling Stock for Cumberland Transit System	4
Activity Line Items	Quantity
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4

Under format option number 1, FTA would base the determinations regarding budget revisions and scope changes on the quantity total of seven vehicles found at the scope level. Under format option number 2, FTA would base those determinations on the specific scope level quantity for each of the sub-recipients—that is, quantities of three and four.

- b. Two Budget Approaches to Large Capital Projects. A grant applicant can also choose which of the two format options above best suit its internal management of projects. For example, a grant applicant developing a bus rapid transit line may wish to develop separate scope level activities for each station and include the relevant activities under each, or the same grant applicant may wish to group all activity under one scope.

In either case, the project budget can easily accommodate budget revisions, since funds can be transferred between or among various scope level projects and their associated line items.

- b) Format for Operating Assistance.

(1) Scope 300 represents operating assistance. The ALI codes for operating expenses—30.09.01 and 30.80.01—appear on page eight of the ALI chart. ALI 30.09.01 is used for the 50 percent federal share of operating assistance. The ALI 30.80.01 is used for the Congestion Mitigation and Air Quality (CMAQ) Improvement Program operating assistance for new service (three-year limit) and FTA finances it up to 80 percent federal share. The scope for operating expenses is the first two digits, 300. If funding is being

requested for more than one local fiscal year for the same grant applicant, FTA suggests that the applicant break down the funding at the activity level. For example:

Scope

300-00 Operating Assistance

Activity Line Items

30.09.01 Operating Assistance for the period 7/1/13—6/30/14

30.09.01 Operating Assistance for the period 7/1/14—6/30/15

Designated recipients requesting operating assistance on behalf of more than one operator may choose to separate operating assistance funding at either the scope level or the activity level.

3. **BUDGET MODIFICATIONS.** At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The recipient is responsible for controlling and monitoring all grant activities to ensure they are implemented according to the approved budget. The manner in which the applicant initially structures a budget during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded: through a budget revision, an administrative amendment, or a grant amendment. Whether FTA permits a budget revision (with or without prior FTA approval before incurring costs) or whether the grantee will need an amendment to the project depends on the effect of the proposed change on the scope of the project. FTA's review of grant modifications will include a determination of whether or not the proposed change is significant enough to require Department of Labor (DOL) certification of employee protective arrangements. Recipients should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of modification is appropriate for the proposed action.

Grant modifications are electronically submitted, reviewed, and approved in the FTA electronic award management system.

- a. **Budget Revision.**

- (1) **General.** Budget revisions may be made as long as there is no change in the recipient, purpose, scope codes, and federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved statewide transportation improvement program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new equipment must be addressed in the budget revision, as applicable.

- (2) Procedures. Grantees submit budget revisions in the FTA electronic award management system using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. The FTA reviewer will return incomplete budget revisions to the grantee for more information. For assistance with completing budget revisions, please contact the FTA regional or metropolitan office.

Recipients may request budget revisions either before or after incurring costs, depending on the nature of the request. If the budget revision meets the criteria outlined below, FTA concurrence is required before costs associated with the proposed change are incurred.

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the criteria below may result in a recommendation to undertake a grant amendment. The FTA regional or metropolitan office will make this determination during its review.

- (a) The federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
- (b) Federal funds are transferred between ALIs with different federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer.
- (c) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with Americans with Disabilities Act of 1990 (ADA) or Clean Air Act (CAA) requirements.
- (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units, for grants with less than ten vehicles, or more than 20 percent from the quantity identified in the original grant.

Note: If the change in the number of revenue rolling stock vehicles exceeds 20 percent, the revision must meet FTA’s spare ratio requirements, and a bus fleet status report should supported it.

- (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
- (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of federal funds awarded in the original grant or change the scope of the project contained in the grant.

- (g) The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

Note: If an ALI to an existing scope is added to move a facility project to the next phase of construction, the budget revision may be sent to DOL for informational purposes. In addition, FTA must confirm eligibility of the project to advance to the next phase of construction.

- (4) Financial Purpose Code Transfers. When a budget revision includes a transfer of funds between capital/operating/planning activities, FTA must make a financial purpose code (FPC) change before FTA permits the grantee to draw funds for this purpose. FPC transfers of any kind require prior FTA concurrence and regional office notification to FTA's office of accounting.
- (5) Examples. The following are examples of situations when a grantee might request a budget revision. **Note:** If the examples below meet one of the criteria outlined above, the grantee must request FTA concurrence prior to incurring the costs for the requested activities.
- (a) Budget revisions to existing activity line items (ALIs). Grant AB-90-234 includes a scope for vehicles (111-00) with the ALI to purchase 40-foot buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover added construction expenses. Following the process described above and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Budget revisions that require an FPC transfer. Grant AB-90-234 has an approved budget for \$250,000 in federal funds for operating assistance (30.09.01) at a 50 percent federal/50 percent local funding ratio, and \$50,000 in federal funds for the purchase of vans (11.12.15) at an 80 percent federal/20 percent local funding ratio. The grantee has \$5,000 in federal funds remaining under operating assistance and would like to use the remaining operating funds toward the purchase of vans, a capital line item. With prior concurrence from FTA, this can be accomplished through a budget revision. Because these two scopes have different funding ratios, the local share must be adjusted to ensure the correct funding ratio is maintained for each ALI.
- (c) Adding an ALI to an existing scope. The scope for stations stops/terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that it prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI 11.33.10 and shift the funds from

11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and has satisfied applicable NEPA requirements.

- (6) Operating Assistance Changes. A grantee may use a budget revision to reflect time period changes, adjustments, or extensions to the operating period provided the total amount of federal funds previously awarded under the grant remains unchanged.

b. Administrative Amendment.

- (1) General. An administrative amendment is usually initiated by FTA and may only be used when no change will result in the scope, amount, or purpose of the grant. FTA may use an administrative amendment to change or clarify the terms, conditions, or provisions of a grant agreement. FTA also uses an administrative amendment to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee or grantee's name, or to deobligate federal funds that the grantee no longer needs to complete the approved project scope or purpose.

c. Grant Amendment.

- (1) General. FTA requires a grant amendment when there is either a change in the scope or an addition of federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in the FTA electronic award management system using the "Create Amendment" screen. Grant amendments require a revised grant agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee does not need to resubmit the portions of the original grant application that the change did not affect. The grantee must submit a detailed description of the changes and a revised project budget. For example, in the FTA electronic award management system under the project details section of the grant, grantees should include a header (e.g., "Amendment #1") and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:

(a) Examples.

1. A change in the quantity of items the grantee will purchase or construct that changes the purpose or intent of the approved grant.

2. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
 3. The addition of an ALI that results from an amendment to the approved TIP/STIP.
 4. Budget revisions that result in additions or deletions of scope(s) or ALIs are sent to DOL for information. Grant amendments are sent to DOL for certification.
- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of federal funds in the grant. The one exception is if the request does not change the scope of a grant and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification.
4. REGIONAL ASSISTANCE. Grant applicants should contact the appropriate FTA regional office for assistance in preparing the project budget for a Section 5307 Program grant application.

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C. APPENDIX C

OPERATING ASSISTANCE PROJECTS

1. APPENDIX CONTENTS. For applicants eligible to receive Section 5307 operating assistance, the following paragraphs present budget information to determine which operating expenses are eligible for federal funding. The discussion provides information on certain revenue and expense items of particular relevance to operating assistance projects. For further assistance, the applicant should review the cost principles and standards discussed in Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," 2 CFR part 225.

The Federal Transit Administration (FTA) reserves the authority to request any applicant to provide documentation in support of expense and other financial information indicated in an operating assistance application on a case-by-case basis. In the event that an audit reveals an overpayment or an inappropriate payment of operating assistance funds, the recipient will be required to reimburse FTA.

2. OPERATING EXPENSE WORKSHEET. FTA provides an operating expense worksheet for applicants to determine the amounts of available Urbanized Area Formula Program funds that the applicant may actually request. The use of this worksheet ensures consistency in the manner FTA calculates operating expenses and provides an audit trail, which may have long-term benefits to the recipient. FTA does not require the applicant to submit this worksheet as part of its application; however, the applicant must maintain records to support charges to a project.

The operating expense worksheet developed in support of the funding request should contain several basic line items, as follows:

- a. Eligible Operating Expenses. Eligible operating expenses are limited to direct labor, material, and overhead expenses incurred on an accrual basis by an operator to provide public transportation service in the UZA, usually during the specified project time period. Expenses for contracted services directly incidental to the management and operation of transportation services and not otherwise reimbursed are also included. Include expenses incurred to provide human services transportation under contract.
- b. Less Eliminations. These lines represent the ineligible expenses, nonpublic transportation expenses, revenue/offset items (contra-expenses), and other exclusions. Ineligible expenses include such items as entertainment, fines and penalties, and charitable donations. Additionally nonpublic transportation expenses such as charter, school bus, sightseeing, and maintenance of nontransit vehicles are ineligible expenses. Contra-expenses are revenue items that directly offset transit expenses and are therefore eliminated from total expenses. Common types of contra-expenses are earned interest, proceeds from the sale of equipment in excess of the depreciated value, cash discounts and refunds, insurance claims, and reimbursements which directly offset accrued liabilities.

- c. Eligible Operating Expenses. Eligible operating expenses form the remainder when various categories of noneligible expenses are subtracted from total expenses. (Line 1 – Line 2 = Line 3)
- d. Farebox Revenues and Revenues Applied to Eligible Expenses Not Includable as Local Share. Recipients must represent all funds used to cover eligible operating expenses in the worksheet. This line represents those revenues used to cover eligible expenses that recipients cannot include in “local share”—in other words, “nonmatchable” revenue. This category includes public transportation farebox revenues. (Line 4)
- e. Net Project Cost. This line represents the difference between lines (3) and (4)—that is, the amount of eligible operating expenses to be covered by the local and FTA shares. (Line 5)
- f. Local Share. Local share (that is, the share of project costs not financed by FTA) includes all local and state funds contributed to meeting net project cost. This includes cash from nongovernment sources other than revenue from providing public transportation services; revenues from the sale of advertising and concessions; and amounts received under a service agreement with a state or local social service agency or private social service agency. Only those funds actually applied to eligible operating expenses incurred on an accrual basis in providing public transportation services during the project period may be considered local match. (Line 6)
- g. Net Expenses Before Applying FTA Funds. This amount represents the difference between “net project cost” and “local share,” and it should represent the amount of eligible operating expenses not otherwise covered by public transportation revenues or local share funds. (Line 7)
- h. Maximum FTA Share. This is the amount determined to be the maximum FTA share, based on the worksheet. FTA share can be up to 50 percent of the net project cost. If local share is less than or equal to 50 percent of net project cost, FTA can match it dollar-for-dollar with FTA operating assistance, subject to the availability of Urbanized Area Formula Program funds, the local programming of projects, and the eligibility of operating expenses. If the local share is greater than 50 percent of net project cost, FTA operating assistance will cover only the amount in line 7, “net expenses before applying FTA funds.” (Line 8)

The worksheet should describe as fully and accurately as possible the actual or projected accrual of public transportation operating expenses, the identification of expenses eligible for FTA assistance, the application of public transportation revenues to cover such expenses, the application of state and local government funds, other sources of local share, and the resulting eligibility for FTA operating assistance.

Where an applicant applies on behalf of two or more individual public transportation operators under one operating assistance project, the worksheet should represent aggregated statements of project time period revenues and expenses.

The applicant should also retain appropriate documentation in support of the worksheet to demonstrate the proper allocation of revenues to nonoperating expenses, the availability of local share funds, and such other reconciliations as may be necessary to clarify estimates or projections of financial conditions during the project time period. FTA does not require certifications of worksheets based on estimates or projections.

In preparing the worksheets, applicants should itemize entries under each revenue and expense category. Applicants may, of course, expand the number of lines provided in the attached format whenever necessary to accommodate additional entries. It is particularly important that the itemization of revenues and expenses be sufficient to permit verification of calculations of eligible operating expenses, net project cost, local share and eligible FTA assistance during any subsequent audit pursuant to 49 U.S.C. 5307 and to OMB Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations."

SAMPLE OPERATING EXPENSE WORKSHEET

For the Period: _____

Public Transportation Operator(s): _____

Applicant: _____

Designated Recipient: _____

(A) Total Operating Expenses (Itemize)

_____\$ _____
_____\$ _____
_____\$ _____
_____\$ _____

TOTAL OPERATING EXPENSES \$_(1)

(B) Less Eliminations

(1) Less Ineligible Expenses (Itemize)

_____\$ _____
_____\$ _____

(2) Less Nonpublic Transportation Expenses (Itemize)

_____\$ _____
_____\$ _____

SAMPLE OPERATING EXPENSE WORKSHEET (cont.)

(3) Less Revenue/Offset items (Contra-Expenses) (Itemize)

	\$ _____
_____	\$ _____

(4) Less Other Exclusions (Itemize)
(e.g., costs already attributed to preventive maintenance)

	\$ _____
_____	\$ _____

TOTAL ELIMINATIONS	\$ __ (2)
--------------------	-----------

(C) Eligible Operating Expenses (Line 1– Line 2)	\$ __ (3)
---	-----------

(D) Less Farebox Revenues	\$ __ (4)
---------------------------	-----------

(E) NET PROJECT COST (Line 3 – Line 4)	\$ __ (5)
--	-----------

(F) Local Share (Itemize)	
(Human Services contract revenue) _____	
(local sales tax) _____	
	\$ __ (6)

(G) Net Expenses Before Applying FTA Funds (Line 5 – Line 6)	\$ __ (7)
---	-----------

(H) Maximum FTA Share	\$ __ (8)
-----------------------	-----------

(I) FTA Funds Requested (this amount must not exceed line 6)	\$ __ (9)
---	-----------

D. APPENDIX D

FORMS AND REPRESENTATIVE DOCUMENTS

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1. SAMPLE AUTHORIZING RESOLUTION.

Resolution No. _____

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code, or other federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the applicant, and may require the applicant to provide the local share of the project cost;

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. (If the applicant is requesting Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, either alone or in addition to other federal assistance administered by the Federal Transit Administration, the resolution should state whether the applicant is the designated recipient as defined by 49 U.S.C. 5307(a)(2), or whether the applicant has received authority from the designated recipient to apply for Urbanized Area Formula Program assistance.)
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the

(Governing Body of the Applicant) held on (Month, Day, Year)

[If the Applicant has an official seal, impress here.]

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

2. SAMPLE OPINION OF COUNSEL.

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code; and other federal statutes authorizing activities administered by the Federal Transit Administration.

(If the applicant intends to use this opinion to qualify for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, the opinion must state whether the applicant is the designated recipient as defined at 49 U.S.C. 5307(a)(2) or whether the applicant has received authority from the designated recipient to apply for and receive Urbanized Area Formula Program assistance).

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation _____

2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (cite source and provide a copy of, for example, the local ordinance passed by city council or other governing body authorizing funding for the local share)

3. I have reviewed the pertinent federal, state, and local laws, and I have concluded that there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find that there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

3. FLEET STATUS REPORT. Shown here is a screen sample of a Fleet Status Report as seen in the FTA electronic award management system.

		Before	Change	After
I. Active Fleet				
A. Peak Requirement		53	0	53
B. Spares		8	0	8
C. Total (A+B)		61	0	61
D. Spare Ratio (B/A)		15.1%	0%	15.1%
II. Inactive Fleet				
A. Contingency		5	0	5
B. Pending Disposal		0	0	0
C. Total (A+B)		5	0	5
III. Total (I.C and II.C)				
		66	0	66

4. PROCEEDS FROM THE SALE OF PUBLIC TRANSPORTATION ASSETS.

Pursuant to 49 U.S.C. 5334(h), a recipient may transfer or sell capital assets that it has acquired with FTA assistance with FTA approval. In accordance with 49 U.S.C. 5334(h)(4), the recipient must apply the proceeds from the sale of a public transportation asset that is no longer needed to a subsequent public transportation capital project. If the recipient cannot use the funds towards another eligible capital project, it must return to FTA its share of the proceeds.

When the recipient/applicant next submits a grant application to FTA, it must apply the proceeds to reduce the gross capital costs of the new public transportation project. In the FTA electronic award management system, the grant applicant should indicate the amount of the proceeds in the "Adjustment Amount" field; this shows that the proceeds from the earlier disposition are being applied to the project and that those proceeds are being used to reduce the total eligible cost. If appropriate, the grant applicant may also describe this action in the project description or extended budget description text box.

EXAMPLE.

Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. The recipient no longer needs the parcel for public transportation purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000. The recipient applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, FTA expects the recipient to report the use of the proceeds from the earlier sale of the asset in the following manner:

5. LIKE-KIND EXCHANGE EXAMPLE.

A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was federal funding whereas 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 "federal interest" in the new vehicle.

Instead of keeping the bus in service for twelve years, the useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.

Because the bus had a minimum useful life of twelve years and FTA determined its depreciation on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or \$125,000. The remaining federal interest was 80 percent of that figure, \$100,000.

Assume, for example, the recipient realized \$100,000 from the sale of the six-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.

If the recipient were to purchase a new bus in 2011 for \$270,000, the transaction would look like this:

Net project cost calculation:

Gross project cost of new bus	\$270,000
Less straight-line depreciated value of replaced bus.	- 125,000
Net project cost	\$145,000
Federal share 80%	116,000
Local share 20%	29,000

Sources of funds for new bus:

Net sales proceeds from replaced bus	\$ 100,000
New local cash	
Straight-line depreciated value shortfall	25,000
Local share of net project cost	29,000
Federal share	<u>116,000</u>
TOTAL	\$270,000

The federal interest in the new bus is \$216,000 (\$100,000 transferred from the old vehicle and \$116,000 in the new).

If the recipient had received more than \$125,000 in proceeds, all the proceeds (minus reasonable sales costs) would still have been applied as the federal share to the new vehicle. FTA is entitled to have applied to the new vehicle the greater of the straight-line depreciation or the fair market value as evidenced by the sales proceeds.

6. SAMPLE SUPPLEMENTAL AGREEMENT.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
SUPPLEMENTAL AGREEMENT
(Attachment to FTA G-15, October 1, 2008)**

It is the practice of the Federal Transit Administration to enter into a formal agreement with the designated recipient for projects that the designated recipient does not carry out directly. Under this Grant Agreement, the grant recipient is not the designated recipient. Therefore, the designated recipient hereby agrees to permit the grant recipient under this Grant Agreement to receive and dispense the federal assistance funds described in this Grant Agreement. The designated recipient further agrees that the grant recipient shall assume all responsibilities set forth in this Grant Agreement.

The federal government and the grant recipient under this Grant Agreement hereby agree that the designated recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement and is a party to this Grant Agreement only to assign the right to receive and dispense federal funds to the grant recipient as described above.

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Federal Transit Administration

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Designated Recipient

Signature: _____ Date: _____
Name (Print/Type): _____
Authorized Official
Grant Recipient

E. APPENDIX E

PREVENTIVE MAINTENANCE

Preventive maintenance, according to Federal Transit Administration (FTA) policy, is currently defined as all maintenance. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such asset. If a recipient purchases service instead of providing the operating service itself and the contract includes maintenance for that purchased service, then the recipient may apply for preventive maintenance capital assistance under the capital cost of contracting policy.

Preventive maintenance is an operating expense that is eligible as a capital project at an 80/20 federal/local match; capital maintenance expenses are eligible under most FTA funding programs.

FTA cautions recipients not to confuse the fact that maintenance items often considered operating expenses may be eligible for FTA capital assistance. Generally accepted accounting principles and the recipient's accounting system determine those costs that the recipient is to account for as operating costs. The National Transit Database (NTD), <http://www.ntdprogram.gov/>, follows generally accepted accounting principles, so a recipient reporting to the NTD must report the operating costs the recipient has incurred as operating costs regardless of the costs' eligibility for FTA capital assistance. Recipients may not count the same costs twice.

The Uniform System of Accounts (USOA) is the basic reference document for the NTD. It contains the accounting structure required by FTA laws. The NTD consolidates seven detailed functions from the USOA as basic function 041—Vehicle Maintenance and consolidates thirteen detailed functions from the USOA as basic function 042—Nonvehicle Maintenance. All of the activities included in basic functions 041 and 042 are maintenance, and thus eligible capital assistance projects. Vehicle maintenance is all of the activities associated with ensuring revenue vehicles and service vehicles are operable, cleaned, fueled (not including fuel cost), inspected, and repaired.

There are seven detailed functions in the Maintenance Administration—Vehicles function (041).

1. Maintenance Administration—Vehicles (041)
 - a. Includes preparing maintenance records, analyzing data for vehicle performance and training vehicle maintenance personnel.
2. Servicing revenue vehicles (051)
 - a. Includes providing supervision and clerical support for servicing revenue vehicles, refueling, interior cleaning, and exterior washing of revenue vehicles.

3. Inspection and maintenance of revenue vehicles (061)
 - a. Includes performing scheduled preventive maintenance on vehicle components, vehicle overhaul, performing minor repairs, traveling to vehicle breakdowns to repair or tow revenue vehicles, rebuilding and overhauling repairable components, performing major repairs on revenue vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of revenue vehicles (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.
4. Accident repairs of revenue vehicles (062)
 - a. Includes repairing damage as a result of collisions, floods, and accidental fires.
5. Vandalism repairs of revenue vehicles (071)
 - a. Includes repairing all special damage as a resulting from willful or malicious destruction or defacement.
6. Servicing and fueling of service vehicles (081)
 - a. Includes fueling, interior cleaning, and exterior washing of service vehicles, refueling, and adding oil and water to service vehicles.
7. Inspection and maintenance of service vehicles (091)
 - a. Includes inspecting service vehicle components on a scheduled preventive maintenance basis, vehicle overhaul, minor repairs, going to vehicle breakdowns for tow or repair, rebuilding and overhauling repairable components, performing major repairs on service vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of service (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.

There are thirteen detailed functions in the basic Nonvehicle Maintenance function (042).

1. Maintenance administration—nonvehicles (042)
 - a. Including preparing transit way and structures maintenance records and providing supervision/clerical support for the administration of transit way and structures maintenance and other buildings, grounds, and equipment maintenance.
2. Maintenance of vehicle movement control systems (101)
 - a. Including inspecting, cleaning, repairing, and replacing all components of vehicle movement control systems.
3. Maintenance of fare collection and counting equipment (111)
 - a. Including inspecting, repairing, and replacing all components of fare collection and counting equipment, such as on vehicle fareboxes, ticket vending machines, fare gates, vaults and money counters, changers, and sorters.
4. Maintenance of roadway and track (121)

- a. Including inspecting, cleaning, repairing, clearing, and replacing all components of roadway and track.
5. Maintenance of structures, tunnels, bridges, and subways (122)
 - a. Including inspecting, cleaning, repairing, and replacing all components of structures, tunnels, bridges, and subways.
6. Maintenance of passenger stations (123)
 - a. Including inspecting, repairing, and replacing components of passenger station building and equipment providing custodial services for passenger station building and grounds.
7. Maintenance of operating station buildings, grounds, and equipment (124)
 - a. Including inspecting, repairing, and replacing components of operating station buildings and equipment providing custodial services for operating station buildings and grounds.
8. Maintenance of garage and shop buildings, grounds, and equipment (125)
 - a. Including inspecting, repairing, and replacing components of garage and shop buildings and equipment providing custodial services for garage and shop buildings and grounds.
9. Maintenance of communication systems (126)
 - a. Including inspecting, cleaning, repairing, and replacing all components of communication system other than vehicle movement control systems.
10. Maintenance of general administration, buildings, grounds, and equipment (127)
 - a. Including inspecting, repairing, and replacing components of buildings and equipment used for general administration.
11. Accident repairs of buildings, grounds, and equipment (128)
 - a. Including repairing all damage to buildings, grounds, and equipment resulting from collisions with stationary or moving objects, floods, accidentally ignited fires, etc.
12. Vandalism repairs of buildings, grounds, and equipment (131)
 - a. Includes repairing all damage as a result of willful or malicious destruction or defacement of buildings, grounds, and equipment.
13. Operation and maintenance of electric power facilities (141)
 - a. Includes supervising, monitoring, and operating electric power generation and distribution facilities for third rail, overhead lines, cable systems, etc.

For NTD reporting purposes, inspection and maintenance of revenue or service vehicles, work on repairable units such as engine rebuilds, and overhauls are an operating expense only if they meet the criteria established by FTA in determining when an item is an operating or a capital expenditure. If the total labor and materials necessary for the rebuild or overhaul are less than a unit value of \$5,000 or a lesser capitalization level used by the agency, such as \$3,000, then this is an operating expense reported on the operating expenses form of the NTD (F-30). If more than \$5,000, then the rebuild or overhaul expenses are a capital expenditure on the uses of capital form of the NTD (F-20).

According to FTA Circular 5010.1, "Grant Management Requirements," overhaul is maintenance that does not add to the useful life of the vehicle. This eligibility for capital assistance also applies to leasing and to contracted service. Rolling stock to be overhauled must have an accumulated at least 40 percent of its service life, as per FTA Circular 5010.1.

FTA Circular 5010.1 states that in order for a bus to be rebuilt it should be at the end of its minimum useful life and in need of major structural and/or mechanical rebuilding. Rebuilding is a recondition at the end of useful life that creates additional useful life. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. In order for a rail car to be rebuilt it must have reached the end of its minimum useful life for an end of life rebuild. The minimum extension of useful life is ten years for rail cars, as per FTA Circular 5010.1. The eligibility of this major capital rebuild work is in addition to the eligibility of vehicle overhauls.

Under 49 CFR 37.75 and 37.83, any public entity that remanufactures a bus or rail vehicle for use in fixed route service, so as to extend its useful life for five years or more, must be made readily accessible to and useable by persons with disabilities, including wheelchair users. Rebuilding a vehicle is also an eligible capital cost under the category of preventive maintenance.

A grant application for preventive maintenance must include a time period over which the recipient incurred the maintenance costs or expects to incur them. Maintenance costs can only be claimed for the current year or the immediately preceding year. FTA reserves the right to review a recipient's cost for maintenance as reported currently in the NTD when FTA receives an application for assistance with preventive maintenance.

F. APPENDIX F

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
		Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

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FY 2019 5307 Full Year Apportionment



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION 8
Colorado, Montana,
North Dakota,
South Dakota,
Utah and Wyoming

1961 Stout Street
Suite 13301
Denver, Colorado 80294
(303) 362-2400 (voice)

April 5, 2019

Ms. Shoshana M. Lew
Executive Director
Colorado Department of Transportation
2829 W. Howard Place
Denver, CO 80204

Subject: FY 2019 §5307 Full-Year Apportionment

Dear Ms. Lew:

The *Consolidated Appropriations Act, 2019* made available FTA's formula funding for FY 2019 as authorized by the *Fixing America's Surface Transportation Act of 2015*. On March 15, 2019, FTA posted the full-year apportionments for all FTA programs, including the 49 USC §5307 Urbanized Area Formula funds. FTA's FY 2019 Apportionment Tables are available online at <https://www.transit.dot.gov/funding/apportionments/fiscal-year-2019-apportionment-tables-full-year>.

As you are aware, the governor may distribute §5307 formula funds that have been apportioned for all small urbanized areas (UZAs) among the UZAs in that state. The attached table reflects the full-year funding FTA has made available to UZAs in your state for FY 2019.

Please have the appropriate state official indicate your state's §5307 funds distribution action by completing the attached table and returning it to FTA Region 8 as soon as possible or no later than **Friday May 3, 2019**.

Please contact Ms. CJ Schlis, 303-362-2402 or by email cheryl.schlis@dot.gov should you have questions.

Sincerely,

For Cindy Terwilliger
Regional Administrator

cc: David Krutsinger, Director, Division of Transit and Rail (via email)

Attachment: Colorado FY 2019 5307 Full-Year Apportionment Table

FTA Region 8
FY 2019 49 USC §5307 and §5340 Full-Year Apportionment
Distribution of Funds for Small Urbanized Areas

State of Colorado

Urbanized Area	FTA Apportionment	Governor's Apportionment (if different)
Boulder	\$3,988,240	\$ _____
Grand Junction	\$1,868,119	\$ _____
Greeley	\$2,500,774	\$ _____
Lafayette-Louisville- Erie	\$1,210,629	\$ _____
Longmont	\$2,140,277	\$ _____
Pueblo	\$2,127,429	\$ _____
Total	\$13,835,468	\$ _____

Signature: _____

Title: _____

Date: _____

You may scan and email your signed reply to cheryl.schlis@dot.gov.

Due by Friday May 3, 2019.



COLORADO
Department of Transportation

Office of the Executive Director
2829 West Howard Place, Suite 562
Denver, CO 80204

April 25, 2019

Ms. Cindy Terwilliger, Regional Administrator
Federal Transit Administration, Region VII
1961 Stout Street, Suite 13301
Denver, CO 80294

RE: FY 2019 55307 - Yearly Apportionment

Dear Ms. Terwilliger:

This letter is in response to the letter issued April 5, 2019, concerning the FY 2019 FTA 55307 Governors' apportionments, authorized by *Fixing America's Surface Transportation Act of 2015*, which were published in the Federal Register March 15, 2019. I am responding as the Governor's designee. As per the request, attached is the signed form indicating the distribution of 49 USC 55307 Urbanized Area Formula funding to Small Urbanized Areas (UZAs) in Colorado.

In making the FY 2019 distribution to the UZAs within Colorado, CDOT traditionally follows the apportionments in the Federal Register and makes adjustments if there are unspent funds for previous years. This year there are no unspent funds at this time, so the Federal Register apportionments are hereby submitted on the attached form.

If you have any questions, please call David Kruttsinger, Division of Transit and Rail Director at (303) 757-9008.

Shoshana M. Lew
Executive Director

Attachment

cc: David Kruttsinger, DTR Director, CDOT
Sophie Shulman, Director, Chief of Innovative Mobility, CDOT
Rebecca White, DTD Director, CDOT
Darren Davis, Transit Manager, City of Greeley
Kathy Young, Mesa County RTPO, Grand Valley Transit
Benjamin Valdez, Interim Transit Manager, Pueblo Department of Transportation
Andrea Farley, RTD
Bruce Abel, RTD
Matthew Buck, OFMB, CDOT
Tiffany Gallegos, Region VII, FTA
Brodie Ayers, Transit Project Coordination Unit Manager, CDOT





U.S. Department
of Transportation
**Federal Transit
Administration**

REGION 8
Colorado, Montana,
North Dakota,
South Dakota,
Utah and Wyoming

1961 Stout Street
Suite 13301
Denver, Colorado 80294
(303) 362-2400 (voice)

April 5, 2019

Ms. Shoshana M. Lew
Executive Director
Colorado Department of Transportation
2829 W. Howard Place
Denver, CO 80204

Subject: FY 2019 §5307 Full-Year Apportionment

Dear Ms. Lew:

The *Consolidated Appropriations Act, 2019* made available FTA's formula funding for FY 2019 as authorized by the *Fixing America's Surface Transportation Act of 2015*. On March 15, 2019, FTA posted the full-year apportionments for all FTA programs, including the 49 USC §5307 Urbanized Area Formula funds. FTA's FY 2019 Apportionment Tables are available online at <https://www.transit.dot.gov/funding/apportionments/fiscal-year-2019-apportionment-tables-full-year>.

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Please have the appropriate state official indicate your state's §5307 funds distribution action by completing the attached table and returning it to FTA Region 8 as soon as possible or no later than **Friday May 3, 2019**.

Please contact Ms. CJ Schlis, 303-362-2402 or by email cheryl.schlis@dot.gov should you have questions.

Sincerely,

**DAVID L
BECKHOUSE**

Digitally signed by DAVID
L BECKHOUSE
Date: 2019.04.05 10:46:57
-06'00'

For Cindy Terwilliger
Regional Administrator

cc: David Krutsinger, Director, Division of Transit and Rail (via email)

Attachment: Colorado FY 2019 5307 Full-Year Apportionment Table

FTA Region 8
FY 2019 49 USC §5307 and §5340 Full-Year Apportionment
Distribution of Funds for Small Urbanized Areas

State of Colorado

Urbanized Area	FTA Apportionment	Governor's Apportionment (if different)
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Longmont	\$2,140,277	\$ _____
Pueblo	\$2,127,429	\$ _____
Total	\$13,835,468	\$ _____

Signature: 

Title: Executive Director

Date: 5/3/2019

You may scan and email your signed reply to cheryl.schlis@dot.gov.

Due by Friday May 3, 2019.



COLORADO
Department of Transportation

DIVISION OF TRANSIT AND RAIL STATE MANAGEMENT PLAN

APPENDIX A | FTA PROGRAMS

A6. Section 5312

Draft August 2019

Outline

A6. FTA Section 5312 - Public Transportation Innovation.....	1
A6.1 Program Goals	1
A6.2 Eligible Recipients.....	1
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A6.6 Other Provisions	2

Attachments

USDOT Fact Sheet: Section 5312 Public Transportation Innovation

A6. FTA SECTION 5312 – PUBLIC TRANSPORTATION INNOVATION

The purpose of Section 5312 funding is to support research activities that improve the safety, reliability, efficiency, and sustainability of public transportation by investing in the development, testing, and deployment of innovative technologies, materials, and processes; carry out related endeavors; and to support the demonstration and deployment of low-emission and no-emission vehicles to promote clean energy and improve air quality. These opportunities are issued directly by the Federal Transit Administration (FTA).

If an agency is not a designated direct recipient and is awarded Section 5312 funds, the Colorado Department of Transportation (CDOT) serves as a pass-through entity and is responsible for providing oversight of the funds.

Documents that govern how CDOT administers Section 5312 funds include:

- FTA website Overview: <https://www.transit.dot.gov/funding/grants/public-transportation-innovation-5312>
- FTA Circular C 6100.1E: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Cir_6100.1E.docx_4.08.2015_%282%29_0.pdf
- FTA Fact Sheet: https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/5312_Public_Transportation_Innovation_%28Research%29_Fact_Sheet.pdf

A6.1 Program Goals

FTA awards Section 5312 funds to agencies to advance innovative public transportation research and development.

A6.2 Eligible Recipients

Federal government departments, agencies, and instrumentalities of the government, including federal laboratories; state and local governmental entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical and community colleges.

A6.3 Eligible Projects

Eligible activities under Section 5312 include:

- Research
- Innovation and development

- Demonstration, deployment, and evaluation
- Low or no emission vehicle component testing
- Transit cooperative research program

These are fully described in the FTA's Fact Sheet on Section 5312.

A6.4 Federal/Local Match

Federal share: The government share of the cost of a project carried out under this section shall not exceed 80%. However, for the Lo-No Testing, the government share is 50%.

Non-government share: The non-government share of the cost of a project carried out under this section may be derived from in-kind contributions. For the Lo-No Testing, the remaining 50% is to be paid from the fees established and collected.

A6.5 Reporting Requirements

The Division of Transit and Rail (DTR) reports, on behalf of its subrecipients, the following information:

- Milestone Progress Reports. Revisions and status updates on projects including revised completion dates by Monthly Progress Report line item. Reports are due by October 30 annually and may be required quarterly.
- Federal Financial Report. Accrual reports for each project within the federal program are provided by October 30 of each year and may be required quarterly.
- Disadvantaged Business Enterprise (DBE) Reports. These are the semi-annual DBE reports required of all FTA funding recipients.

A6.6 Other Provisions

To ensure compliance with other federal requirements, subrecipients are required to sign federal Certifications and Assurances for FTA assistance programs. A subrecipient applying for assistance under any FTA program must annually submit Certifications and Assurances that are applicable to the subrecipient's award during the current federal fiscal year.

All subrecipients are required complete the Subrecipient Information Request (SIR) and participate in the Site Review Process at least once as a new subrecipient, unless otherwise decided by DTR management. The SIR is adapted from the FTA's Comprehensive Review Guide that covers the range of requirements for all FTA programs in the following areas:

In addition to the annual Certifications and Assurances, DTR requires subrecipients to maintain Program Documents on file in the Colorado Transit & Rail Awards Management System (COTRAMS). These documents are specifically requested and reviewed by Project

Coordinators during the SIR and Site Review Process, but subrecipients are expected to have updated documents in COTRAMS on an ongoing basis.

Environmental protection requirements are reviewed during the pre-award phase of the application process, where DTR confirms that the required environmental clearances for the project have been obtained.

Restrictions on lobbying are included as part of the subaward agreement and are reaffirmed through annual Certifications and Assurances submittals through COTRAMS.

ATTACHMENT

USDOT Fact Sheet: Section 5312 Public Transportation Innovation



U.S. Department of Transportation
Federal Transit Administration



FACT SHEET:
PUBLIC TRANSPORTATION INNOVATION
Section 5312

	FY15/ MAP-21	FY16 (millions)	FY17 (millions)	FY18 (millions)	FY19 (millions)	FY20 (millions)	TOTAL (millions)
Research, Development, Demonstration, Deployment, & Evaluation	\$7.5	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$100.0
Low or No Emission Vehicle Component Testing	-	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0	\$15.0
Transit Cooperative Research Program	\$3.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$25.0
5312 PROGRAM TOTAL*	\$10.5	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$140.0

**Amounts above are funded from the Highway Trust Fund. Additional funds authorized from the General Fund are subject to annual appropriations and not included above.*

PROGRAM PURPOSE: To advance innovative public transportation research and development.

Statutory References: 49 U.S.C. Section 5312 / FAST Section 3008

Eligible Recipients: Federal Government departments, agencies, and instrumentalities of the Government, including Federal laboratories; State and local governmental entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical and community colleges.

Eligible Activities:

Research: Activities shall focus on (A) providing more effective and efficient public transportation service, including services to seniors; individuals with disabilities; and low-income individuals; (B) mobility management and improvements and travel management systems; (C) data and communication system advancements; (D) system capacity, including train control; capacity improvements; and performance management; (E) capital and operating efficiencies; (F) planning and forecasting modeling and simulation; (G) advanced vehicle design; (H) advancements in vehicle technology; (I) asset maintenance and repair systems advancement; (J) construction and project management; (K) alternative fuels; (L) the environment and energy efficiency; (M) safety improvements; or (N) any other area that is important to advance the interests of public transportation.

Innovation and Development: Activities shall focus on (A) the development of public transportation research projects that received assistance that were successful; (B) planning and forecasting modeling and simulation; (C) capital and operating efficiencies; (D) advanced vehicle design;

(E) advancements in vehicle technology; (F) the environment and energy efficiency; (G) system capacity, including train control and capacity improvements; or (H) any other area that is important to advance the interests of public transportation.

Demonstration, Deployment and Evaluation: A demonstration, deployment, or evaluation project that receives assistance shall seek to build on successful research, innovation, and development efforts to facilitate (A) the deployment of research and technology development resulting from private efforts or Federally funded efforts; or (B) the implementation of research and technology development to advance the interests of public transportation.; or (C) the deployment of low or no emission vehicles, zero emission vehicles, or associated advanced technology. A comprehensive evaluation must be conducted within 2 years from the date a demonstration or deployment project receives assistance; to evaluate the success or failure of the project and to describe any plans for broad-based implementation of the innovation promoted by successful projects.

Low or No Emission Vehicle Component Testing (Low-No Testing): At least one institution of higher education shall be competitively selected to operate and maintain a facility to conduct testing, evaluation, and analysis of low or no emission vehicle components intended for use in low or no emission vehicles. The institution(s) shall have: (I) the capacity to carry out transportation-related advanced component and vehicle evaluation; (II) laboratories capable of testing and evaluation; and (III) direct access to or a partnership with a testing facility capable of emulating real-world circumstances in order to test low or no emission vehicle components installed on the intended vehicle. Component testing is voluntary, however, a low or no emission bus model must still comply with Section 5318 Bus Testing.

Transit Cooperative Research Program (TCRP): Through a cooperative agreement, the National Academy of Science will administer a public transportation cooperative research program. An independent governing board will continue to recommend public transportation research, development and technology transfer activities.

What's Changed?

- The 5312 program is authorized for funding from both the Highway Trust Fund and General Fund. In addition to the amounts in the chart above which are authorized from the Highway Trust fund, FAST authorized an additional \$20 million from the General Fund, which is subject to annual appropriations.
- The creation of a voluntary Lo-No Testing Program for components, which is separate and apart of the Bus Testing Program (Section 5318). This program also requires FTA to publish a performance report on the assessments conducted.
- TCRP, formerly authorized in Section 5313, is now included in this section and is now funded by the Trust Fund as opposed to the General Fund.
- Annual Research Report on projects, evaluations, and benefits is posted to FTA's website rather than submitted to the Congress.

Funding:

Federal Share: The Government share of the cost of a project carried out under this section shall not exceed 80 percent. However, for the Lo-No Testing, the Government share is 50 percent.

Non-Government Share: The non-Government share of the cost of a project carried out under this section may be derived from in-kind contributions. For the Lo-No Testing, the remaining 50 percent is to be paid from the fees established and collected.

Additional Information:

- Departmental Coordination: FAST requires FTA to submit its comprehensive annual modal research plan to the Assistant Secretary for Research and Technology for review and approval prior to expending funds.
- Small Business Innovation Research (SBIR): Pursuant to the Small Business Innovation Development Act of 2000 (P.L. 106-554), a portion of the 5312 funds must be set aside for the Department's SBIR program to address high priority research that will demonstrate innovative, economic, accurate, and durable technologies, devices, applications, or solutions to significantly improve current transit-related service including transit vehicle operation, safety, infrastructure and environmental sustainability, mobility, rider experience, or broadband communication.

For Additional Information on FTA and the FAST Act, please visit: www.fta.dot.gov/fast.html