



Issue Date: January 23, 2012

REQUEST FOR PROPOSALS TO PROVIDE FINANCIAL AUDIT SERVICES

Notice is hereby given that proposals will be received at the Merced County Association of Governments (MCAG) for performing all work necessary in accordance with the requirements specified herein. Please carefully read and follow the instructions provided. Responders are responsible for making certain that their proposal is complete and is received by MCAG on or before the closing deadline.

Proposals shall be mailed or delivered to:

*Merced County Association of Governments
Attn: Christina Smith, Administrative Services Manager
369 West 18th Street
Merced, CA 95340*

Proposals shall be clearly marked as follows:

Proposal to Provide Financial Audit Services – Submission Deadline February 21, 2012

THE MCAG PROCURMENT MANUAL AND ALL OF ITS PROVISIONS ARE INCORPORATED BY THIS REFERENCE.

PROPOSALS THAT ARE INCOMPLETE OR ARE RECEIVED AFTER THE DEADLINE WILL BE REJECTED AND RETURNED TO THE RESPONDER UNOPENED.

CLOSING DEADLINE DATE: 4:00 P.M., Tuesday, February 21, 2012

PROPOSALS WILL BE LATE WHEN MCAG'S CLOCK READS 4:01 P.M.

MCAG is not liable for any costs incurred by responders in replying to this Request for Proposals.

Inquiries may be directed to Jeanette Garcia, Grant Analyst II, MCAG at (209) 723-3153 x324 or via email at jeanette.garcia@mcagov.org.

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RESPONDER'S SUBMITTAL CHECKLIST

All items are required. This checklist is provided to assist Responders with submitting a complete proposal.

1. _____ Certification (Attachment A)
2. _____ Cover Letter
3. _____ Table of Contents
4. _____ Firm Experience and Qualifications
5. _____ Understanding of Project
6. _____ Management and Personnel
7. _____ Methodology
8. _____ Proposed Project Costs
9. _____ Proposed Project Schedule
10. _____ Subcontracting
11. _____ Conflict of Interest
12. _____ Reference List (Attachment B)
13. _____ Nondebarment Certification (Attachment C)

Non-submittal is considered non-responsive and cause for rejection of proposal.

REQUEST FOR PROPOSALS (RFP)
TO PROVIDE FINANCIAL AUDIT SERVICES

I. INTENT OF THE REQUEST FOR PROPOSALS

A. Introduction

The Merced County Association of Governments (MCAG) invites the submission of proposals from qualified firms of certified public accountants to provide independent financial audit services to MCAG and its affiliated agencies for Fiscal Year (FY) 2011-12, with an option to extend services for two additional fiscal years.

The audits are to be conducted in accordance with Generally Accepted Auditing Standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States and in accordance with U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*

B. Description of Entities

MCAG was formed through a Joint Powers Agreement (JPA) signed by member jurisdictions on November 28, 1967. MCAG is comprised of seven member agencies: City of Atwater, City of Dos Palos, City of Gustine, City of Livingston, City of Los Banos, City of Merced, and the County of Merced. The MCAG Governing Board includes a supervisor from each of the five county districts and an elected official from each of the six incorporated cities located within Merced County.

MCAG's primary activity is government planning with an emphasis on coordinating transportation services for its member agencies. MCAG has been designated as the Merced County Metropolitan Planning Organization (MPO) by the U. S. Department of Transportation and the Regional Transportation Planning Agency (RTPA) by the State of California. In addition, MCAG is the administrator of Transportation Development Act Trust funding. Funding sources include Federal Transit Administration (FTA), Federal Highway Administration (FHWA), Transportation Development Act (TDA) and other local, state and federal funding sources. MCAG is required to comply with all federal and state requirements.

The Transit Joint Powers Authority for Merced County (TJPA) is a California Joint Powers Authority formed in 1996 from the consolidation of four former local public transit service providers. Today, TJPA, also known as "The Bus", is the single public transportation provider for Merced County. TJPA is comprised of seven member agencies: City of Atwater, City of Dos Palos, City of Gustine, City of Livingston, City of Los Banos, City of Merced, and the County of Merced and governed by the Transit Joint Powers Authority for Merced County Governing Board. Services are provided throughout Merced County, including the six incorporated cities and 13 unincorporated communities. Regularly scheduled fixed routes and demand response (Dial-A-Ride) services are provided. Funding sources include TDA and FTA. The audit must satisfy federal and state compliance requirements.

The Merced County Regional Waste Management Authority (RWMA), created in 1972, is a California Joint Powers Authority comprised of seven member agencies: City of Atwater, City of

Dos Palos, City of Gustine, City of Livingston, City of Los Banos, City of Merced, and the County of Merced and governed by the Merced County Regional Waste Management Authority Governing Board. Established for the purpose of coordinating and managing two regional landfills in Merced County, the role of the RWMA was expanded in the 1990's to include activities mandated by the California Integrated Waste Management Act. Merced County Regional Waste Management Authority Governing Board, which also serves as the Solid Waste Policy Board, has been designated as the governing body for RWMA operations. Funding is generated through tipping fees paid by landfill consumers. The audit must satisfy all requirements of the bond issue.

The Yosemite Area Regional Transportation System (YARTS), a Joint Powers Authority of Mariposa County, Merced County and Mono County began operating in 2000. MCAG administers the YARTS program for the JPA. The audit must satisfy federal and state compliance requirements.

Audits for MCAG, TJPA, RWMA and YARTS can be viewed at <http://www.mcagov.org/rfp.html>.

C. Audit Engagement and Selection Schedule

MCAG is seeking the services of a qualified Certified Public Accounting Firm to perform a normal annual audit and render an opinion on its financial statements and condition. The term of the engagement shall be for FY 2011-12, with the option to renew the agreement for two additional years at the discretion of MCAG.

To the extent achievable, the following schedule shall be used for the review and selection process. MCAG reserves the right to modify the dates below as necessary.

- | | |
|----------------------|---|
| 1. January 23, 2012 | Distribution of RFP |
| 2. February 21, 2012 | Proposals Due to MCAG by 4:00 p.m. |
| 3. February 28, 2012 | Tentative interviews – MCAG staff option |
| 4. March 5, 2012 | MCAG staff prepares recommendation for MCAG Board |
| 5. March 15, 2012 | MCAG Board considers staff recommendation |
| 6. April 2, 2012 | Execute Contract |

D. Questions

Questions concerning this RFP may be submitted in writing via email or letter, no later than 5:00 p.m. on Friday, February 10, 2012, to:

Jeanette Garcia, Grant Analyst II
Merced County Association of Governments
369 West 18th Street
Merced, CA 95340
jeanette.garcia@mcagov.org

Responses will be issued for all questions received by Wednesday, February 15, 2012. All questions and responses will be posted to the MCAG website. Responder's who wish to receive

responses directly shall send an email request to Jeanette Garcia and shall provide an email address where the information may be sent.

II. REQUIREMENTS

A. Scope of Work and Timeline

The information shown below details the funds and agencies to be audited.

1. Merced County Association of Governments (MCAG)
 - a. Preparation of State Controller's Annual Report for Transportation Planning Agencies Financial Transactions
 - b. Fiscal Audit of Merced County Association of Governments
 - c. Fiscal Audit of Regional Transportation Impact Fee (RTIF)
 - d. Merced Data Special Services
 - e. Yosemite Area Regional Transportation System (YARTS)
 - f. Fiscal and Compliance Audit of Merced County Association of Governments pursuant to the Transportation Development Act (TDA) and according to the federal guidelines (OMB Circular A-128)
 - g. Fiscal and Compliance Audit of Local Transportation Funds (LTF) and State Transit Assistance Funds (STAF)
 - h. Triennial Performance Audit of Merced County Association of Governments
 - i. Other related funds
2. Transit Joint Powers Authority for Merced County (TJPA)
 - a. Fiscal audit of TJPA
 - b. Triennial Performance Audit of Merced County – The Bus
 - c. Fiscal and Compliance Audit of Merced County Association of Governments pursuant to the Transportation Development Act (TDA) and according to the federal guidelines (OMB Circular A-128).
 - d. Preparation of State Controller's Annual Report for Transit Operator Financial Transactions and Compensation Report
 - e. Other related funds
3. Merced County Regional Waste Management Authority (RWMA)
 - a. Fiscal Audit of RWMA
 - b. Fiscal Audit of Regional Solid Waste Management Bond Program
 - c. Preparation of related State Controller's Annual Report for Financial Transactions
 - d. Other related funds
4. Yosemite Area Regional Transportation System (YARTS)
 - a. Fiscal Audit of YARTS

Each fiscal examination shall include an evaluation of the system of internal controls, a required test of the accounting records and other financial records, and a review of the accounting system. The audit of TDA funds shall satisfy the specifications stated in California Code of Regulations Sections 6661, 6662, 6664, 6665, 6666, 6667, and 6751 and shall include determinations of compliance with the TDA and its administrative rules and regulations.

The Consultant's work program shall include all necessary meetings with MCAG and affiliated agency staff. The Consultant will provide three copies of the submittal package and one (1) electronic copy via flash drive, CD or DVD in PDF format. Double sided printing is encouraged.

B. Annual Schedule

A proposed audit schedule shall be submitted as part of the submission package. The proposed audit schedule should conform to and fulfill federal and state requirements. The RWMA audit must be completed and issued no later than October 1, 2012. MCAG, TJPA and YARTS audits must be completed and issued no later than November 30, 2012.

C. Consultant's Administrative Responsibilities

1. Working meetings: Schedule and coordinate all necessary working meetings with MCAG project managers and staff.
2. Invoices and progress reports: Invoices may be submitted at the end of each month. All invoices must include a description of work completed and upcoming tasks. Consultant must display hourly rate and expenditures for each employee.

III. SUBMITTALS

A. Instructions for Preparation of Proposal

1. **Firm experience and qualifications**: This section should provide a brief description of the firm's profile, including the year founded, form of organization and types of services offered. A summary description of the consultant's overall qualifications for this project and previous experience on similar or related engagements.
2. **Understanding of the Project**: This section should include a brief narrative introducing the consultant's understanding of the project requirements. The contents of this section are to be determined by the respondent, but should demonstrate understanding of the unique characteristics of this project and the requirements contained in this RFP.
3. **Management**: Prospective consultants shall designate by name the project manager to be employed. The selected consultant shall not substitute the project manager without prior approval by the MCAG Executive Director.
4. **Project Personnel**: Prospective consultants shall describe the qualifications of all professional personnel assigned to this project, including a summary of similar work or studies each member has performed and a resume of each professional.
5. **Methodology**: Prospective consultants shall describe the overall approach to the audit work, specific techniques that will be used and personnel assignments.
6. **Proposed Project Costs**: Prospective consultants shall submit proposed costs and payment schedule for all services related to preparation, completion and delivery of

the financial audits. A personnel summary, listing the classification, number of hours assigned, and hourly rate, shall be included. In addition to first year services, proposed costs for the two additional years shall be submitted.

7. Proposed Project Schedule: The proposed audit schedule should conform to and fulfill federal and state requirements. See Section II.B, *Annual Schedule*.
8. References: Prospective consultants shall provide names, addresses and telephone numbers for at least three clients for whom the prospective consultant has performed financial audits of similar complexity to that proposed in this request.
9. Subcontracting: If subcontractors are used, prospective consultants must submit a description of each person or firm and the work to be done by each subcontractor. The MCAG Executive Director must approve all subcontractors and no work may be subcontracted without the prior approval of the MCAG Executive Director. The proposal must state the percentage of work to be completed by a certified Disadvantaged Business Enterprise (DBE) firm.
10. Conflict of Interest: Prospective consultants shall disclose any financial, business or other relationship with MCAG or any of its member jurisdictions, including officers or officials. The prospective consultant shall also list current clients who may have a financial interest in the outcome of the project.

B. Submittal Package

Proposals must be submitted with three paper copies and one electronic copy via flash drive, DVD or CD, no later than 4:00 p.m. on Tuesday, February 21, 2012, and shall be submitted to the following address:

Merced County Association of Governments
Attn.: Christina Smith, Administrative Services Manager
369 West 18th Street
Merced, CA 95340

All items listed in Section III, *Instructions for Preparation of Proposal*, are required components of the submittal. In addition, prospective consultant should review Section V, *Conditions and Contract Requirements*, and Attachment C, *Federal Contract Provisions*, to ensure compliance with provisions of this RFP and the contract to provide financial audit services.

IV. EVALUATION CRITERIA

Selection of the successful consultant will be based on information provided in response to this RFP. Proposals submitted will be evaluated separately based on how well each proposal meets the criteria listed below.

CRITERIA	POINTS
Qualifications and Experience	30

Thoroughness of Proposal	20
References	20
Project Cost	15
Project Schedule	10
DBE Participation Level	<u>5</u>
TOTAL	100

V. CONDITIONS AND CONTRACT REQUIREMENTS

Insurance

MCAG will require the selected consultant to obtain and maintain at its sole cost and expense the following insurance coverage:

- a) Workers' compensation insurance with statutory limits and professional liability insurance with limits of not less than \$500,000 per incident.
- b) Comprehensive general liability insurance with a combined single limit of not less than \$500,000 per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage.
- c) Comprehensive automobile liability insurance with a combined single limit of not less than \$500,000 per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage.

The selected consultant shall maintain said insurance policies in effect during the term of the contract and shall cause all parties supplying services, labor, or materials to maintain insurance in amounts and coverage not less than those specified above.

The consultant shall provide proof of this insurance with the Executive Director of MCAG prior to commencement of its performance under this agreement.

Hold Harmless & Indemnity

The successful consultant will be required to hold harmless, defend and indemnify MCAG and its member agencies, their officers, employees and agents from any liability, claims, actions, costs, damages or losses, for injury, including death to any person, damage to any property, and reasonable attorney fees and costs arising out of the consultant's services.

Arbitration Clause

The parties desire to avoid the expense and delay associated with litigation and therefore agree to submit any and all disputes which cannot be resolved by a good-faith effort to meet and confer to binding arbitration pursuant to the following terms. Except as set forth in this provision, despite the fact that such binding arbitration is pursuant to contract, it shall be conducted based on California rules of judicial arbitration. There shall be one arbitrator. If the parties cannot agree on an arbitrator, he or she may be chosen from the then active list of arbitrators maintained by the Merced County Superior Court. The party seeking arbitration shall commence the case with a letter request which shall set forth, in clear and concise terms, the nature of the dispute and shall

further list three names from the above-mentioned list of arbitrators agreeable to the requesting party. The other party shall select one of the listed attorneys, or submit a list of three names to the requesting party, who may select one of the other parties' listed attorneys. If the parties cannot agree on the arbitrator, either may petition the court for appointment. The arbitrator shall set the matter for hearing within thirty (30) days of his or her appointment. Following the hearing the arbitrator shall issue a decision within ten (10) days. The decision of the arbitrator shall be final and binding, and may be enforced as a judgment in the Merced County Superior Court. If bidder brings any legal action or seeks arbitration regarding this IFB, the prevailing party in the litigation or arbitration shall be entitled to recover reasonable attorney fees and costs, including costs of arbitration, from the other party, in addition to any other relief that may be granted.

Withdrawal

Any proposal received prior to the date and time specified above may be withdrawn or modified by written request of the Consultant.

Rejection

Failure to meet the requirements of the RFP will be cause for rejection of the proposal. MCAG reserves the right to reject any and all proposals **without cause**. MCAG may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the RFP documents, or excise the prospective consultant from full compliance with the contract requirements, if the consultant is awarded the contract.

Disqualification

Each consultant must certify that it is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions. Attachment C must be properly completed and submitted with the proposal.

Civil Rights

To engage in contract services specific to this RFP, the consultant must agree to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued there under in 49 CFR Part 21.

Equal Employment Opportunity

In connection with the performance of this contract, the consultant shall not discriminate against any employee or applicant for employment because of race, color, age, creed, 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.

Disadvantaged Business Enterprise (DBE) Policy

It is the policy of the U.S. Department of Transportation that minority and women-owned business enterprises (hereby referred to as DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. If the prospective consultant is DBE certified, proof that the company has been certified shall be included in the proposal. Certification will be from an

agency authorized to make such determinations, such as the Small Business Administration, State of California, etc. Certification will be reviewed and may not be accepted in the event of irregularities. DBE certification will be favorably considered in the selection process. The proposal MUST list the percentage of work by sub-consultants (or prime) to be completed by a certified DBE company.

Contract Award

The selected consultant will execute a contract with MCAG. The official selection of the consultant and authorization to execute the contract will be made by the MCAG Governing Board at its Thursday, March 15, 2012 meeting. Unsuccessful proposals will be notified in writing on or before April 2, 2012.

Method of Payment

Payment to the selected consultant will be made upon successful completion of project tasks as invoiced by the consultant.

ATTACHMENT A

CERTIFICATION - RESPONDER TO COMPLETE AND PLACE IN FRONT OF PROPOSAL

INDIVIDUAL/COMPANY _____

ADDRESS _____
(P.O. Box/Street) (City) (State) (Zip)

CONTACT PERSON: _____

TITLE: _____

TELEPHONE NO. _____ FAX NO. _____

E-MAIL ADDRESS _____

The undersigned hereby certifies that he/she is a duly authorized official of their organization and has the authority to sign on behalf of the organization. Undersigned assures that all statements made in the proposal are true, agrees to furnish the item(s) and/or service(s) stipulated in this Request for Proposal at the price stated herein, and will comply with all terms and conditions set forth, unless otherwise stipulated.

Authorized Representative - Name Title

Signature Date

Business License No.: Merced City _____
(If Applicable)

Merced County _____

Taxpayer Identification No.: _____

ATTACHMENT B

REFERENCE LIST - BIDDER TO COMPLETE AND RETURN WITH PROPOSAL

Three government agency references preferred.

REFERENCE NO. 1 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

AMT. OF CONTRACT: _____ DATE AND TYPE OF SERVICE _____

REFERENCE NO. 2 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

AMT. OF CONTRACT: _____ DATE AND TYPE OF SERVICE _____

REFERENCE NO. 3 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

AMT. OF CONTRACT: _____ DATE AND TYPE OF SERVICE _____

ATTACHMENT C

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

NONDEBARMENT CERTIFICATION

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 – 19211).

BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION.

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization

Name & Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but it is not required to, check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transactions knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the DOL may pursue available remedies, including suspension and/or debarment.

ATTACHMENT D

FEDERAL CONTRACT PROVISIONS

The following pages contain items that may be applicable to third party contracts between the Merced County Association of Governments, or its affiliate agencies, and professional services contractors. As such, potential contractors must be willing to certify and complete necessary forms for compliance with the provisions contained herein. The complete Federal Transit Administration Master Agreement 18 can be found at: <http://www.fta.dot.gov/documents/18-Master.pdf>

I. Project Implementation (Section 2)

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

(1) Federal Laws, Regulations, and Directives. The Recipient agrees that:

(a) Federal laws and regulations are Federal requirements that control Project award and implementation. The Recipient understands and agrees it may violate Federal laws or regulations, the underlying Agreement, or this Master Agreement if it adopts an alternative procedure or course of action without first securing FTA's approval in writing.

(b) Federal directives, as defined in this Master Agreement, provide Federal guidance. FTA strongly encourages the Recipient to follow Federal directives to ensure compliance with Federal requirements.

(c) Federal laws, regulations, and directives that apply to the Project and Recipient when the FTA Authorized Official awards Federal funds for the Project may be modified from time to time.

(d) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(e) The most recent of Federal laws, regulations, and directives will apply to its Project at any specific time, except as FTA determines otherwise in writing by:

1. Special Condition within the underlying Agreement,
2. Special Requirement within the underlying Agreement,
3. Special Provision within the underlying Agreement,

4. Condition of Award within the underlying Agreement,
5. Change to an FTA directive, or
6. Letter to the Recipient signed by an authorized FTA official.

(f) All standards or limits in the underlying Agreement and the Master Agreement are minimum requirements, except as FTA determines otherwise in writing.

(g) It will include in each third party agreement notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

(a) The Project,

(b) Any third party participant at any tier, or

(c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government has no obligations or liabilities to any:

(a) Third party participant, or

(b) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

II. Ethics (Section 3).

b. Debarment and Suspension. The Recipient agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:

(a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,

(b) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note,

(2) It will review the “Excluded Parties Listing System” at <http://epls.gov/>, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:

(a) Federal debarment and suspension requirements, and

(b) Review the “Excluded Parties Listing System” at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations, 2 C.F.R. Part 1200.

d. Lobbying Restrictions. The Recipient agrees that:

(1) As provided by 31 U.S.C. § 1352(a), it will not use Federal funds to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a Member of Congress, to award or extend the underlying Agreement,

(2) It will comply with other Federal laws and regulations prohibiting the use of Federal funds for activities designed to influence Congress or a State legislature concerning legislation or appropriations, except through proper, official channels, and

(3) It will comply, and will assure the compliance of each third party participant with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

f. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Project:

1. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and

2. U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31.

(b) By executing the underlying Agreement:

1. It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to the Federal Government in connection with the Project.

2. It acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Recipient makes, presents, or submits to the Federal Government, a false, fictitious, or fraudulent:

- a. Claim,
- b. Statement,
- c. Submission,
- d. Certification,
- e. Assurance, or
- f. Representation.

(2) Criminal Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Project:

- 1. Federal transit law, specifically 49 U.S.C. § 5323(l), and
- 2. 18 U.S.C. § 1001

(c) That Federal Government may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

- 1. Claim to the Federal Government,
- 2. Statement to the Federal Government,
- 3. Submission to the Federal Government,
- 4. Certification to the Federal Government,

5. Assurance to the Federal Government, or

6. Representation to the Federal Government.

III. Right of the Federal Government to Terminate (Section 11).

a. Justification. After receiving notice, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding to be provided for the Project for the following reasons:

(1) The Recipient has violated the underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project, or

(2) Any failure to make reasonable progress on the Project, or

(3) The Federal Government determines that the continuation of Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications. The Recipient agrees that:

(1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.

(2) The Federal Government may require the Recipient to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine, if the Federal Government determines that the Recipient has willfully misused Federal funds by:

(a) Failing to make adequate progress,

(b) Failing to make appropriate use of Project property, or

(d) Failing to comply with the underlying Agreement or this Master Agreement.

c. Expiration of Project Time Period. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the underlying Agreement.

IV. Civil Rights (Section 12).

The Recipient understands and agrees that it must comply with Federal civil rights laws and regulations, and follow Federal directives, except as the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each third party participant will, comply with Federal transit law, specifically 49 U.S.C. § 5332, which prohibits the following:

(1) Types of Discrimination.

- (a) Exclusion from participation,
- (b) Denial of program benefits, or
- (c) Discrimination, including discrimination in employment or business opportunity,

(2) Basis for Discrimination:

- (a) Race,
- (b) Color,
- (c) Creed,
- (d) National origin,
- (e) Sex, or
- (f) Age.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21, and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

(a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

(b) Follow and facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

(c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

1 Race,

2 Color,

3 Creed,

4 Sex,

5 Disability,

6 Age, or

7 National origin.

(b) Take affirmative action that includes, but is not limited to:

1. Recruitment advertising,
2. Recruitment,
3. Employment,
4. Rates of pay,
5. Other forms of compensation,
6. Selection for training, including apprenticeship,
7. Upgrading,
8. Transfers,
9. Demotions,
10. Layoffs, and
11. Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each third party participant, with:

(a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*,

(b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each third party participant will facilitate, participation by Disadvantaged Business Enterprises (DBEs) in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26 [*U.S. DOT published final rule, “Disadvantaged Business Enterprise: Program Improvements,” 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)*], and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

(2) Assurance. The Recipient 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 agreement supported with Federal funds derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party agreements supported with Federal funds derived from U.S. DOT. If U.S. DOT has approved the Recipient’s DBE program, that DBE program is incorporated by reference and made part of the underlying Agreement. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the underlying Agreement and this Master Agreement. If U.S. DOT finds and notifies the Recipient that it has not implemented its approved DBE program, U.S. DOT may impose sanctions provided by the underlying Agreement, 49 C.F.R. Part 26, and, in certain cases, seek enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of sex:

(1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*,

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and

(3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of age:

- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age,
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which implements the ADEA,
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
- (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which implements the Age Discrimination Act of 1975, and
- (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a.

g. Accessibility. The Recipient agrees to comply with Federal prohibitions against discrimination against elderly individuals or individuals with disabilities of:

- (1) The following Federal laws:
 - (a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,
 - (b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
 - (c) 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,
 - (d) 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,
 - (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
- (2) The following Federal regulations:
 - (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,

(b) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27,

(c) 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,

(d) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35,

(e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36,

(f) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19,

(g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630,

(h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F,

(i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194,

(j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609, and

(3) Other applicable Federal civil rights and nondiscrimination directives.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

(1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and

(3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd – 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

(1) Facilitating compliance with and following Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

j. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 *Fed. Reg.* 18377, April 15, 1997.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with other applicable Federal nondiscrimination laws and regulations, and follow Federal directives prohibiting discrimination, except as the Federal Government determines otherwise in writing.

V. Preference for United States Products and Services (Section 14).

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with the following U.S. domestic preference requirements and follow applicable Federal directives regarding:

a. Buy America. Acquisition requirements of:

(1) 49 U.S.C. § 5323(j), and

(2) FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661.

c. Fly America. Air transportation requirements of:

(1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and

(2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

VI. Procurement (Section 15).

The Recipient agrees not to use FTA funds for third party procurements unless they comply with Federal requirements. Therefore:

a. Federal Laws, Regulations, and Guidance. The Recipient agrees:

(1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,

(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements as may be later amended,

(3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and

(4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.

k. Preference for Recycled Products. Except as the Federal Government determines otherwise in writing, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

m. National Intelligent Transportation Systems Architecture and Standards. The Recipient agrees to:

(1) Conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and

(2) Follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455, January 8, 2001, and any other applicable implementing Federal directives, except as the Federal Government determines otherwise in writing.

t. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients will require, their third party contractors and subcontractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

VII. Employee Protections (Section 24).

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing Wage and Hour protections for nonconstruction employees:

(1) 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

(2) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

VIII. Environmental Protections (Section 25).

The Recipient recognizes that many Federal, State, and local environmental and resource use laws, regulations, and directives, in effect now or in the future, may apply to the Project. This Master Agreement identifies some of the Federal laws, regulations, and directives that may apply to its Project. The Recipient understands and agrees that those Federal laws, regulations, and directives cited in this Master Agreement may be an incomplete list of environmental and resource use requirements that might apply to its Project. Nor, in some cases, may Federal requirements be sufficient to meet its State and local environmental and resource use requirements.

In addition to other environmental or resource use requirements that might apply to the Recipient or the Project, to the extent applicable, the Recipient agrees to comply, and assures that its third party participants will comply, with the following Federal laws and regulations

and follow Federal directives in effect now or that become effective in the future, except as the Federal Government determines otherwise in writing.

b. Air Quality. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Public Transportation Operators. It will comply with:

(a) U.S. EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85,

(b) U.S. EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 C.F.R. Part 86, and

(c) U.S. EPA regulations “Fuel Economy of Motor Vehicles,” 40 C.F.R. Part 600, and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans (SIP) by:

(a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,

(b) Assuring that any Project identified as a Transportation Control Measure in its State’s SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,

(c) Complying with:

1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

2. U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A, and

3. Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f – 300j-6.

(2) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

IX. Energy Conservation (Section 26).

The Recipient agrees to, and assures its subrecipients will:

a. State Energy Conservation Plans. 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.*, except as the Federal Government determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

X. Disputes, Breaches, Defaults, or Other Litigation (Section 56).

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

a. Notification to FTA. It will notify the FTA Chief Counsel or Regional Counsel immediately of any current or prospective legal matter:

(1) Such as:

- (a) A major dispute,
- (b) A breach,
- (c) A default,
- (d) Litigation, or
- (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason,

(2) That may affect the Federal Government's:

- (a) Interests in the Project, or
- (b) Administration or enforcement of Federal laws or regulations.

b. Federal Interest in Recovery.

(1) General. 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 Project.

(2) Liquidated Damages. However, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government.

c. Enforcement. It will pursue its legal rights and remedies available under any third party agreement or available under Federal, State, or local laws or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.