

# STATE MANAGEMENT PLAN

## SECTION 5311 PROGRAM NONURBANIZED AREA FORMULA PROGRAM INCLUDING RTAP

### STATE OF NEW JERSEY



Revised December 2017

## TABLE OF CONTENTS

### GENERAL OVERVIEW

Introduction and Overview .....	7
Definitions.....	8
Programs Goals and Objectives.....	9
State Role in Program Administration .....	10
Local Public Involvement .....	11

### LOCAL COORDINATION

Overview .....	11
United We Ride .....	11
Required Elements of a Plan .....	12
History of Coordination – Early Years 1980 through 1997.....	13
Interagency Coordination – 1997 through 2007.....	14

### ELIGIBILITY AND ELIGIBLE ASSISTANCE CATEGORIES

Eligible Subrecipients.....	15
Eligible Services and Service Areas .....	15
Capital Expenses .....	16
Operating Expenses.....	16
Project Administration .....	17
Local Match Requirement and Eligibility .....	17
State Contribution.....	18

### PROJECT SELECTION CRITERIA AND METHOD OF DISTRIBUTING FUNDS

Program Notification.....	18
Application Review .....	18
Technical Capacity .....	19
Funding Distribution .....	19
Application Instructions and Approval Process.....	20
Section 5311 Timeline Chart.....	21
Transfer of Funds .....	22

### INTERCITY BUS

Intercity bus .....	23
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### STATE ADMINISTRATION AND TECHNICAL ASSISTANCE

General.....	24
Administrative Expenses .....	24

### RURAL TRANSIT ASSISTANCE PROGRAM

Program Objectives.....	25
Program Delivery .....	25
Technical Training and Scholarship Programs .....	26

### CIVIL RIGHTS

Non-Discrimination.....	27
Title VI Program Requirements.....	27
Equal Employment Opportunity Requirements.....	28
Disadvantaged Business Enterprise Program Requirements.....	29
Section 504 and ADA Reporting .....	29

### STATE PROGRAM MANAGEMENT

Equipment Management .....	29
Title to Vehicles .....	30
Transfer of Property .....	30

Vehicle Useful Life and Replacement Standards.....	31
Disposition.....	31
Vehicle Insurance.....	32
Vehicle Destroyed or Damaged .....	32
Maintenance.....	32
Transit Asset Management .....	32
Procurement and Third Party Contracting.....	32
Satisfactory Continuing Control.....	33

**FINANCIAL MANAGEMENT**

Financial Records.....	34
Financial Guidance.....	34
Budget Revisions .....	35
Audits .....	35
Closeout .....	36

**REPORTING REQUIREMENTS**

Annual Program of Projects Status Reports .....	36
Financial Status Reports .....	37
Federal Funding Accountability and Transparency Act (FFATA).....	37
Quarterly Ridership and Maintenance Reports.....	37
NTD Reports .....	37
DBE Reports .....	38
Transit Asset Management (TAM) Reporting.....	38

**OTHER PROVISIONS**

Charter Service .....	39
Private Sector Participation.....	39
Labor .....	40
School Transportation .....	40
Safety .....	40
Drug-Free Workplace.....	41
Drug and Alcohol Abuse .....	41
Commercial Driver's License .....	41
Restriction on Lobbying.....	41
Protection of the Environment.....	41
Clean Air Act .....	41

**EXHIBIT A - Federal Requirements/Clauses**

**EXHIBIT B - Vehicle Inspection Form**

**EXHIBIT C - Vehicle Quarterly Reports**

**EXHIBIT D – Subrecipient Non Vehicle Asset Management**

**EXHIBIT E - Monthly Summary Report (MSR) (S-Rides)**

**EXHIBIT F - Equivalent Service Certification**

**EXHIBIT G - 5333(b) Certification**

**EXHIBIT H - Monthly Invoice (Expenditure Report and Reimbursement Request)**

**EXHIBIT I - DBE Reporting Requirements**

**EXHIBIT J - Lobbying Certification**

**EXHIBIT K - Disclosure of Lobbying Activities (LLL Form)**

**EXHIBIT L - Ethics Certification**

**EXHIBIT M - ADA Certification**

**EXHIBIT N - Title VI Certification**

This State Management Plan (SMP) describes the State of New Jersey's policies and procedures in administering the Federal Transit Administration's (FTA) Section 5311 program. In New Jersey, NJ TRANSIT administers the FTA's Section 5311 Program. The SMP has been filed with the FTA Regional Office. Updates to the SMP shall be incorporated and submitted to FTA whenever NJ TRANSIT significantly changes its management of the program, applies for a new grant, or when the FTA requires new program requirements.

**Recent revisions made to this document since the last Federal Transit Administration State Management Review in 2015 included the following:**

**December 2017**

- Revised FLEX Section to include FAST Act language – page 21.
- Updated General section under Administrative Requirements to reflect 2 CFR Parts 200 and 1201 (Supercircular)- page 24

**July 2017**

- Updated Eligibility and Eligible Assistance to reflect actual practice
- Revised timeline to reflect actual practice to calendar year
- Revised Rural Transit Assistance Program
- Updated Vehicle Useful life and Vehicle categories including new Transit Asset Management (TAM) requirements
- Updates as per FAST Act
  - In determining the amount of the unsubsidized portion of privately provided intercity bus service that connects feeder service that is eligible as in-kind local match, all operating and capital costs can now be included without revenue offset.
  - Revenue from the sale of advertising and concessions “may be” used as local match.
  - Updated small purchase requirement from \$100,000 to \$150,000.

**July 2015**

- Under Eligible Services and Service Area new eligible service added for funding projects feeding NJ Transit Bus and Rail. The innovation grant will fund new or expanding Route deviation or Shared Ride Services.

**March 2015**

- Under Civil Rights
  - Updated the titles and departments responsible for oversight.
  - Revised the language of the Title VI Program Requirements as per FTA Circular 4702.1B, including but not limited to the submission of subrecipient Title VI Programs to NJ TRANSIT every three (3) years.

**January 2014**

- Under Disadvantaged Business Enterprise Program Requirements
  - Included the DBE language that “...all FTA subrecipients receiving operating and capital funding are required to complete and submit the Subrecipient DBE Reporting Form on a bi-annual basis to NJ TRANSIT if any of the funds are used for contracting opportunities.”
- Under Procurement and Third Party Contracting
  - Updated the language to include:
    - “Subrecipients must comply with the Third Party Contracting Requirements of FTA Circular 4220.1F in the solicitation, award and administration of its third party contracts.”
    - “Subrecipients must also ensure that they complete all required certifications, reports, forms and other required items. Procurements must comply with DBE program requirements.”

**December 2013**

- Changes included in New Authorization under MAP-21

## May 2013

- Under Reporting Requirements
  - Added Federal Funding Accountability and Transparency Act (FFATA) requirement. The FFATA requires that as federal grants are awarded certain details of sub-awards greater than \$25,000 be reported on [www.rsrs.gov](http://www.rsrs.gov).

## June 2012

- Under Maintenance
  - Removed the reference to “old EXHIBIT A” - this EXHIBIT has been removed from document. EXHIBIT A was NJ TRANSIT’s preventive maintenance guidelines. NJ TRANSIT’s current preventative maintenance guidance located at <http://www.njcttp.org/resources>
- Under Equipment Management
  - Added new requirement “...subrecipients with active non-vehicle equipment must sign yearly certification of use.”

## February 2012

- Under Local Match Requirement and Eligibility
  - Added – “...in-kind match must be noted in governing board or Freeholder resolution.”
- Under Funding Distribution
  - Changed annual amount available **from** “two year” to “the year of apportionment.”
- On the Timeline Chart updated to reflect application mailings to Jan-April and DBE reports due semiannual reports not quarterly.
- Under Transfer of Funds (Flex Funds)
  - Added all funding sources that can be flexed into Section 5311 program.
- Under Technical Training and Scholarship Programs
  - Clarified that scholarship reimbursement must be made in accordance to Rutgers/NTI policy.
- Under DBE program requirements
  - Clarified for operating and capital contracting opportunities.
- Under Equipment Management
  - Added language that subrecipients must have a written maintenance plan for every capital item with a cost of \$5,000 per unit.
- Under Title to Vehicles
  - Revised language to make it clearer.
- Vehicle useful life and Replacement Standards - updated vehicle descriptions.
- Under Audits
  - Corrected days audit required form 120 to 180 days and added language that audit can be submitted to NJT in electronic format.
- Added Quarterly Vehicle Reports and EXHIBIT C Sample reporting forms and instructions
- Under NTD reports
  - Added RU-23 requirement for urban subrecipients.

## **STATE MANAGEMENT PLAN**

This State Management Plan (SMP) describes the State of New Jersey's policies and procedures in administering the Federal Transit Administration's (FTA) Section 5311 Program. In New Jersey NJ TRANSIT administers the FTA's Section 5311 Program. This SMP has been filed with the FTA Regional Office. Updates to the SMP shall be incorporated and submitted to FTA whenever NJ TRANSIT significantly changes its management of the Program, or when the FTA requires new Program requirements.

The primary purpose of this State Management Plan is to provide information to the public regarding the administration of New Jersey's Section 5311 Program and to serve as the basic document that FTA can reference to review NJ TRANSIT's administration of the Section 5311 Program. Applicants can contact NJ TRANSIT's Local Programs and Minibus Support Unit, in writing for technical information or general assistance in completing an application for FTA Section 5311 funds.

Comments regarding any revisions or any suggestions or inquiries regarding this SMP should be forwarded to:

**NJ TRANSIT  
Local Programs and Minibus Support Unit  
One Penn Plaza East, 4<sup>th</sup> Floor  
Newark, New Jersey 07105  
ATTN: Director  
(973) 491-7372  
GRANT5311@NJTRANSIT.COM**

## GENERAL OVERVIEW

### **INTRODUCTION AND OVERVIEW**

In a society which places great value on the ability to have access and mobility, rural residents often find themselves at a disadvantage when it comes to the availability of public transportation. Rural residents, especially seniors, people with disabilities and individuals with low incomes, want to retain opportunities to actively participate in all of life's pursuits including but not limited to education, employment, entertainment, medical treatment, nutrition, shopping, therapy and volunteer work. The lack of availability and expense of travel often fosters social and economic isolation.

The Section 5311 Program was established in 1978 and provided public transportation funds for services in areas with populations of less than 50,000. Federal funding for rural transportation remained fairly constant through 1991. Funding for the program increased when reauthorized under the Intermodal Surface Transportation Efficiency Act (ISTEA). ISTEA also introduced support for intercity bus service as a requirement under the rural program and formally authorized the Rural Transportation Assistance Program (RTAP), which had initially been enacted through appropriations acts back in 1987. In 2005, Congress enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Although funding for this Program nationally was again increased, the 2000 census reduced the eligible rural area in New Jersey and the allocation to the State was reduced significantly. SAFETEA-LU introduced the requirement that projects funded with Section 5310, Section 5316 and Section 5317 funds be derived from a locally developed, coordinated public transit-human services transportation plan ("coordinated plan"). Although that requirement is not officially part of Section 5311, the FTA and the State of New Jersey strongly encourage all Section 5311 subrecipients be a part of the "coordinated plan" process.

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 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.

Fixing America's Surface Transportation (FAST) Act, signed into law on December 4, 2015 establishes the funding for FTA programs through authorizing legislation that amends Chapter 53 of Title 49 of the U.S. Code. On December 4, 2015, President Obama signed the [FAST Act](#), reauthorizing surface transportation programs from FY 2016 through FY 2020.

In New Jersey, NJ TRANSIT administers the Section 5311 Program. New Jersey's Section 5311 Program makes available project administration, operating and capital assistance including short-range planning mobility management activities. From the start, the State of New Jersey has stressed the need for the coordination of funding sources and/or services in order to maximize the effects of this grant program. That remains especially true with continued requirements under SAFETEA-LU, MAP-21 and FAST Act, signed into law on December 4, 2015.

More information on the Section 5311 Program and the requirements that the State of New Jersey must follow can be found in the FTA circular 9040.1G and can be reviewed [HERE](#).

## DEFINITIONS

- a. **Application** is the annual application submitted by a qualified public agency or non-profit organization to NJ TRANSIT, the administrator of the statewide program, requesting specific for funding for a specific activity to meet their particular service need. The information contained in the application is the basis for which a review is conducted to determine eligibility and inclusion in the final grant to the federal government.
- b. **Capital 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.
- c. **Consultation** means one party confers with another identified party in accordance with an established process and, before taking action, considers that party's views and periodically informs that party about action(s) taken.
- d. **Coordinated Human Service Transportation Plan** means a plan that identifies the transportation needs of people with disabilities, elderly individuals and people with low incomes, provides strategies for meeting those local needs and prioritizes transportation services for funding and implementation. In New Jersey, each county is required to develop a plan and each county has named a designated lead to facilitate and oversee the planning process.
- e. **Elderly Individual/Senior Citizens** is defined, for the purposes of the program, any person 60 years of age or older. At a minimum, the federal circular requires all persons 65 years or older. In New Jersey, in order to standardize the age requirement with other state-funded programs New Jersey defines elderly individual as anyone 60 years of age or older.
- f. **Human Service Transportation** means 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, elderly individuals and people with low incomes.
- g. **Intercity Bus Service** means 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.
- h. **Local Government** includes a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.
- i. **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. Mobility management **does not include** operating public transportation services.
- j. **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.
- k. **Non-profit Organization** means 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 non-profit and for which the designated State agency has received documentation certifying the status of the non-profit organization.
- l. **Other Than Urbanized (Nonurbanized) Area** means any area outside of an urbanized area. The term "nonurbanized area" includes rural areas and urban areas under fifty thousand (50,000) in population not included in an urbanized area.



- m. **People with Disabilities** is defined as any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability is unable or has great difficulty in utilizing regular fixed route mass transit facilities or services.
- n. **Public Transportation** means surface transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK.
- o. **Recipient** means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.
- p. **Rural Area** is an area encompassing a population of less than fifty thousand (50,000) people that has not been designated in the most recent decennial census as an "urbanized area" by the secretary of Commerce.
- q. **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 (50,000) but less than two hundred thousand (200,000).
- r. **Subrecipient** is a State or local governmental authority, a non-profit organization, or operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.
- s. **Urbanized Area (UZA)** is an area encompassing a population of not less than fifty thousand (50,000) people that has been defined and designated in the most recent decennial census as an "urbanized area" by the secretary of Commerce.

## **PROGRAM GOALS AND OBJECTIVES**

### **General goals for New Jersey's Section 5311 Program are to:**

- Increase mobility of New Jersey residents living in areas of less than fifty thousand (50,000) population by enhancing the access to health care, shopping, education, employment, public services, and recreation in nonurbanized areas
- Encourage development, maintenance, improvement and use of public transportation systems in non-urbanized areas to meet the specific needs of each locale;
- Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in nonurbanized areas through the coordination of programs and services;
- Administer the program consistent with the Section 5311 Program requirements.

### **The following objectives have been established to meet these goals:**

- Meet, at a minimum, the needs of the transportation disadvantaged in identified nonurbanized areas.
- Increase the number of coordinated transportation services in non-urbanized areas.

## **ROLES AND RESPONSIBILITIES**

### **STATE ROLE IN PROGRAM ADMINISTRATION**

The Governor of New Jersey has designated NJ TRANSIT as having the requisite legal, financial and staffing capabilities to receive and administer Federal funds under the Section 5311 program. NJ TRANSIT is the grantee for all Section 5311 funds within the State of New Jersey and applies on behalf of subrecipients. NJ TRANSIT is the nation's largest statewide public transportation system providing more than 944,000 weekday trips on 255 bus routes, three light rail lines, 12 commuter rail lines and through Access Link paratransit service. It is the third largest transit system in the country with 166 rail stations, 62 light rail stations and more than 18,000 bus stops linking major points in New Jersey, New York and Philadelphia. The Commissioner of the New Jersey Department of Transportation is Chairperson of NJ TRANSIT's Board of Directors ensuring coordination between the two agencies.

Administration of the Section 5311 Program is placed in the Local Programs and Minibus Support Unit which the Community Mobility Unit brings a variety of community transit based programs all under the Capital Planning and Programs Department. The Local Programs and Minibus Support Unit also administers the Section 5310 (Enhanced Mobility of Seniors & Individuals with Disabilities) grant program, the state casino revenue tax funded Senior Citizens and Disabled Resident Transportation Program (SCDRTAP) and a variety of other grants that impact local transit services. Various other departments within NJ TRANSIT support the administration of the program.

The Local Programs & Minibus Support Unit will administer the Section 5311 program in conformance with the provision of FTA C 9040.1G and with the broad direction defined by the statewide goals and objectives. Other units within NJ TRANSIT which will support the Local Programs & Minibus Support Unit in the administration of the Section 5311 grant are Bus Operations Fleet and Support Equipment which assists in reviewing vehicle specifications; as well as the Capital Programs and Administration which assists in the preparation of grant applications to FTA, initiation of grant closeouts and submittal of quarterly progress reports to FTA.

NJ TRANSIT monitors local projects; ensures that all program activities are included in a statewide transportation improvement program (STIP); and oversees project audit and closeouts. NJ TRANSIT certifies to the FTA annually that the state and subrecipients have met or will meet all Federal requirements.

Under the authority of the U.S. Department of Transportation regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, "49 C.F.R. Part 18 (sometimes referred to as the common rule), NJ TRANSIT relies on its own laws and procedures in the areas of financial management systems, equipment, and procurement for itself and its public body subrecipients.

As the grant recipient, NJ TRANSIT'S major responsibilities as the administrator of the project and manager of federal funds are as follows:

- Document the State's procedures in a State Management Plan (SMP)
- Notify eligible local entities of the availability of the program
- Ensure integration and coordination among diverse transportation modes and providers
- Solicit applications
- Review applications and approve for inclusion into a Program of Projects
- Forward the annual Program of Projects and grant application to the FTA
- Establish and maintain a record keeping system for overall program accountability
- Certify eligibility of applicants and project activities
- Monitor local project activities
- Oversee project audit and closeout
- File a National Transit Database (NTD) report each year for each subrecipient

## **LOCAL PUBLIC INVOLVEMENT**

NJ TRANSIT has a long established group known as the Special Services Citizens Advisory Committee, formed primarily to provide input on public transit accessibility issues and the state casino revenue tax funded transportation program Senior Citizens and Disabled Resident Transportation Assistance Program (SCDRTAP). This committee is made up of elderly individuals and people with disabilities as well as coordinated human services transportation providers making it an ideal vehicle to review Section 5311 issues.

In addition, throughout the year reports and presentations are made at regular meetings of the Council on Special Transportation (C.O.S.T. – <http://www.njcost.com>), local County Transportation Citizens Advisory Committees, and various organizations either providing or provided human services transportation. Presentations are made as needed at Metropolitan Planning Organizations and relevant subcommittees.

The yearly state transportation conference held every April in Atlantic City, TransAction Conference, jointly sponsored by NJ TRANSIT, NJDOT, C.O.S.T. and the County Transportation Association (CTA) is also used as a forum to disseminate information about the Section 5311 Program. This conference brings together transit operators, planners, consumers, social service agency and State agency representatives.

All twenty-one counties in New Jersey belong to one of three Metropolitan Planning Organizations (MPOs). The Transportation Improvement Program (TIP) is a planning document that describes how federal transportation funds will be used in MPO areas. The state's transportation capital improvement program (STIP) identifies multi-modal transportation projects that use federal, state and local government funds from all MPO areas in the State. The STIP is the product of a collaborative transportation planning process. The final product becomes a project scheduling and funding document.

## **LOCAL COORDINATION**

### **OVERVIEW**

Federal transit law, as amended by MAP-21 reauthorization, requires that projects selected for funding under the Section 5310 program be derived from a locally developed, coordinated public transit-human services transportation plan and that the plan be developed through a process that includes representatives of public, private and non-profit transportation, human services providers and participation by members of the public. Since the reauthorization under MAP-21, the funding formerly provided under the FTA Section 5316 Job Access and Reverse Commute (JARC) program is now part of the FTA 5307 and FTA 5311 programs. In the state of New Jersey, this program is now administered under a state operated program known as NJ-JARC. Similarly, the funding formerly provided under the FTA Section 5317 New Freedom program is now provided as part of an expanded FTA Section 5310 program that now includes operating funds to enhance services to older persons and persons with disabilities.

The locally developed coordinated public transit-human services transportation plan ("coordinated plan") identifies the transportation needs of people with disabilities, elderly individuals and people with low incomes. It provides strategies for meeting those local needs and prioritizes transportation services for funding and implementation. In New Jersey, the locally "coordinated plans" are developed by the twenty-one (21) counties in the State. In addition, each Metropolitan Planning Organization (MPO) either has or is in the process of developing a regional coordinated public transit-human services transportation plan based upon the county plans as well as additional information and public input. This process commenced in 2004 under the State's United We Ride (UWR) effort. 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. NJ TRANSIT also expects all Section 5311 subrecipient to participate in their local planning process.

### **UNITED WE RIDE**

In February of 2004, the Governor of the State of New Jersey approved representatives from a state interagency committee consisting of the NJ Department of Human Services, NJ TRANSIT and the NJ Department of Labor to attend the United We Ride (UWR) Leadership Forum in Washington DC. In the spirit of the UWR federal Initiative, New Jersey's interagency committee reconstituted itself and became recognized as the New Jersey Council on Access and Mobility (NJCAM) mirroring that of their federal counterparts. The Council expanded its membership to include representatives from the following:

- Department of Health and Senior Services
- Department of Corrections
- Department of Education

- Department of Labor’s Division of Vocational Rehabilitation (DVR)
- Department of Human Service’s Division of Disability Services (DDS)
- Division of Developmental Disabilities (DDD)
- Division of Mental Health Services (DMHS)
- Division of Youth and Family Services (DYFS)
- Division Family Development (DFD)
- Division of Medical Assistance & Health Services (DMAHS)
- NJ TRANSIT’s Access Link
- Rutgers Voorhees Transportation Center

As the year 2005 came to an end, NJCAM sponsored two one-day workshops. These workshops were held to introduce to local stakeholders the Framework for Action Community Self-Assessment and to kick-off the county based “coordination plan” process needed to secure Section 5310, the former FTA Section 5316 (JARC) and FTA Section 5317 (New Freedom) formula grant dollars as outlined in the federal transportation legislation, SAFETEA-LU.

In April 2006, the Commissioner of NJ Department of Transportation and the Executive Director of NJ TRANSIT sent a letter to each of the 21 counties in New Jersey asking that they designate a lead person who would serve as the point of contact for the “coordination plan” process. The role of the designated lead was to be the facilitator at the county level that would bring together the relevant stakeholders and oversee the development of the “coordinated plan”.

In November 2006, a second annual UWR work session was held. During the meeting, the designated leads and stakeholder teams from each county attended and the elements of the “coordinated plan” were presented and discussed by representatives of the FTA, NJ TRANSIT and the NJ Department of Human Services.

On October 26, 2007 Governor Corzine signed Executive Order No. 87 creating officially a New Jersey Council on Access and Mobility. This Executive Order has since expired.

### **REQUIRED ELEMENTS OF A PLAN**

In New Jersey, all grant projects shall be derived from a county developed coordinated plan that, at minimum, includes the following elements at a level consistent with available resources and the complexity of the local institutional environment:

- An assessment of available services that identifies current transportation providers (public, private and non-profit).
  - In New Jersey, the Coordinating Council on Access and Mobility (CCAM) has developed a survey tool which the counties are strongly encouraged to use. The advantage of using the same survey across the State is to encourage uniformity in developing a Statewide inventory of services.
- An assessment of transportation needs for people with disabilities, elderly individuals and people with low incomes.
  - 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.
- 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.
- Priorities for implementation based on resources from multiple program sources, time and feasibility for implementing specific strategies and/or activities identified.

In New Jersey, each county can approach the development of a “coordinated plan” with some degree of flexibility depending upon available staff, time, funding and other resources. Some of the strategies to be considered in the development of the plan include:

- Community planning session**
  - A county or its designee may choose to conduct a local planning session with a diverse group of stakeholders in the community. Such a session is intended to identify needs based on personal and professional experiences, identify strategies to address the needs and set priorities. This process can be completed in one meeting or over several sessions with the same group.

- **Self-assessment tool**
  - The Framework for Action: Building the Fully Coordinated Transportation System as developed by the FTA helps stakeholders realize a shared perspective and build a roadmap for moving forward together. In New Jersey, the State encourages counties to utilize the Framework for Action at an initial stakeholder meeting before developing a “coordinated plan”.
- **Focus Groups**
  - A county or its designee 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.
- **Survey**
  - The county or its designee may choose to conduct a survey to evaluate the unmet transportation needs with a community and/or available resources. NJCAM has developed a survey tool, which focuses primarily on inventorying existing resources and encourages counties or their designee to expand upon that survey to better access unmet needs as needed. The State of New Jersey also encourages the county or its designee to work closely with Transportation Management Associations (TMAs) and/or other organizations with survey experience.
- **Detailed study and analysis**
  - A county or its designee may decide to conduct a complex analysis using inventories, interviews, IS mapping and other types of research strategies. Usually, such detailed studies will be considered after an initial “coordination plan” has been developed and a strategy has been identified that needs more in depth planning before funding and implementation can take place.

The projects selected for funding under the Section 5310 and the NJ-JARC program according to FTA circular (and NJ Transit policies for the NJ-JARC program) must be derived from a locally developed, coordinated public transit-human services transportation plan that was developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public. The requirement for developing the local “coordination plan” is intended to improve services for people with disabilities, elderly individuals and people with low incomes. The stakeholder group for the local planning process should invite members from each of the targeted populations. In the State of New Jersey it is expected that Section 5311 projects will also be developed through this same planning process.

In New Jersey, NJ TRANSIT, as the designated recipient, will consider a plan official when the governing body of the county has adopted it. The planning process should be considered an ongoing process and it should be understood that the stakeholders should be consulted periodically to review the status of the plan. Plans will need to be updated periodically and in conjunction with a schedule mutually agreed upon by NJ TRANSIT, the three MPOs in the State and the Counties.

## **HISTORY OF COORDINATION – EARLY YEARS 1980 THROUGH 1997**

The requirement for coordination and the development of a “coordination plan” for human services transportation is not a new concept in New Jersey. The current requirement under SAFETEA-LU is built upon and reinforces previous efforts in New Jersey.

In January of 1980, a Governor's Task Force on Transportation Services for Senior Citizens and Persons with Disabilities issued a report entitled "Coordinating Specialized Transportation Services in New Jersey." The Task Force identified eighteen major sources of social service transportation funds administered by four different state agencies and twelve of their sub-divisions. The need for a transportation component in order to fulfill a specific social program goal and objective had created many small transportation units which addressed the needs of individual programs oriented towards not only senior citizens and persons with disabilities but the very young, the unemployed, low-income individuals and others who lacked mobility.

It was these costly fragmented transportation services at the local level that lead the Governor's Task Force to endorse the concept of coordination as a means of improving or expanding non-traditional transportation services to the transportation disadvantaged. At the time, the concept of coordination was impossible to achieve because of both real and perceived barriers, such as a funding source losing accountability, client mixing, and/or regulation restrictions.

The Task Force recommended the establishment of an interdepartmental advisory group, which would continue to examine ways to coordinate programs and funding. Other major recommendations were:

- 1) The Department of Transportation should establish an Office for Coordinated Transportation and assume a lead role in coordinating social service and paratransit operations in the State.
- 2) A Transportation Coordination Office should be established in each of the twenty-one counties.
- 3) Coordination efforts of specialized transportation at the state and local level must include mass transportation services.

There were sixteen other recommendations, which focused on the concepts of cooperation, coordination and consolidation.

As this report was completed there were two other events unfolding, which ultimately lead to the implementation of many of the Task Force's recommendations. The first event was the creation of NJ TRANSIT, which had been occurring simultaneously during the life of the Governor' Task Force. The second was the potential for state funding which could serve as the glue for the various programs and funding sources with the broadening of the allowable uses of a casino revenue tax fund.

In May of 1981 the responsibility for administering several specialized transportation grants originally housed at NJDOT were transferred to NJ TRANSIT and a newly created Office of Special Services. At the time three FTA (formerly UMTA) administered grant programs; Section 5310, Section 5311 and FAUS Transfer (discontinued program) as well as the state administered Reduced Fare Program were transferred to NJ TRANSIT. Of those four programs, the three FTA grants were to be administered by the newly created NJ TRANSIT Office of Special Services. The Reduced Fare Program was relocated to NJ TRANSIT bus operations.

A few months after the creation of this Office, in November of 1981, voters approved a constitutional amendment to permit casino tax revenues to be used for transportation services for senior citizens and disabled residents. It then took two additional years for the Senior Citizen and Disabled Resident Transportation Assistance Act to be signed into law in January 1984. This legislation created a special transportation assistance program and designated NJ TRANSIT'S Office of Special Services as administrator.

Today, NJ TRANSIT provides technical assistance and program oversight to twenty-one (21) county coordinated paratransit systems, fourteen Section 5311 rural transit systems and over one hundred (100) agencies under the Section 5310 program.

### **INTERAGENCY COORDINATION – 1997 THROUGH 2007**

In 1997, the Work First New Jersey (WFNJ) welfare reform program served as the catalyst for a statewide inter-agency effort to improve access and mobility for low-income and other transit dependent populations. A partnership emerged between the New Jersey Departments of Human Services (DHS), Transportation (DOT), Labor (DOL), NJ TRANSIT and the NJ State Employment and Training Council (SETC), which initiated a coordinated community transportation planning process. That process was instrumental in the development of Community Transportation Plans and securing needed funds by blending program monies to support new or expanded programs that previously limited access to employment in each of the 21 counties. New Jersey began addressing access and mobility limitations by implementing 5 collaborative transportation programs. Free monthly bus/rail passes became available through the WorkPass Program and alternatives to public transit were implemented through the Transportation Block Grant Program to active Temporary Assistance for Needy Families (TANF) recipients participating in work related activities. Post-TANF recipients were eligible to receive seven free months of bus/rail passes under the Get A Job: Get A Ride and the Extended WorkPass Programs. If public transportation was inaccessible, beneficiaries were offered the opportunity to participate in the Transportation Plus Grant alternative program. Additionally, local inter-agency transportation steering committees were established to continue discussing ways to enhance transportation services.

In 1999, New Jersey utilized their established local collaborative effort to solicit project proposals when the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) was enacted, creating the Job Access and Reverse Commute (JARC) Federal Transportation Grant. JARC regulations permitted the use of federal funds {such as Medicaid and Temporary Assistance to Needy Families (TANF)} to be used as local match for FTA programs.

In 2007 and 2008, each of the 21 counties submitted a Coordinated Human Service Transportation Plan (CHSTP) which each of the counties had updated by December 31, 2013.

## **ELIGIBILITY and ELIGIBLE ASSISTANCE CATEGORIES**

### **ELIGIBLE SUBRECIPIENTS**

Eligible recipients for Section 5311 funding may be:

- State agencies
- Local public bodies and agencies thereof
- Private non-profit organizations
- Operators of public transit systems
- Indian Tribes and groups

In New Jersey there are seventeen designated rural areas based upon county boundaries. There are no funds made available under this program for projects in Bergen, Essex, Hudson or Union County which have no nonurbanized areas identified within their boundaries. The remaining 17 counties are eligible areas. Private for-profit operators of transit or paratransit services may participate in the program through contracts with eligible subrecipients.

Subrecipients are responsible for reading, understanding, and complying with all the federal and state regulations related to the Section 5311 program. **A subrecipient's major responsibilities as the administrator of the project and manager of federal funds are as follows:**

- Provide continuous managerial direction to the project; services must meet the intent of these funds in servicing the general public in rural municipalities in the county.
- Provide, either directly or by contract, adequate inspection and supervision by qualified professionals of all work in process
- Assure that the project conforms to grant agreements, applicable statutes, codes ordinances and safety standards
- Monitor the project work plan so that schedules are being met
- Keep expenditures within the latest approved project budget
- Ensure compliance with all federal, state and program requirements by consultants, contractors and subcontractors working under approved third party contacts or interagency agreements, including procurement standards and labor regulations
- Request reimbursement to NJ TRANSIT for project expenses
- Prepare all pertinent financial as well as performance reports on the project
- Establish and maintain a record keeping system for use in site visits, audits, reporting and overall program accountability

### **ELIGIBLE SERVICES AND SERVICE AREAS**

The purpose of Section 5311 assistance is the provision of public transportation services and maximum feasible coordination with other rural transportation services. Public transportation is defined to mean "mass transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides service to the general (not including charter or sightseeing or exclusive school bus service) or special transportation to the public on a regular and continuing basis." Public transportation services funded by Section 5311 may be designed to maximize usage by transportation disadvantaged persons, providing that the general public is afforded an equal opportunity to utilize the transportation services established. Coordinated human service transportation that primarily serves elderly individuals and people with disabilities, but that is not restricted from carrying other members of the public; is open to the general public if it is advertised as public transportation services.

A rural transit provider may use a Section 5311 vehicle for non-passenger 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 purpose of the Section 5311 Program is to support public transportation for people living in any area outside of an urbanized area designated by the Bureau of the Census. Areas not currently within the urbanized area are eligible for Section 5311 funding. Since the goal of Section 5311 is to enhance the overall mobility of people living in nonurbanized areas, Section 5311 projects may include transportation to and from urbanized areas.

In New Jersey there are eligible service areas in fifteen of the twenty-one counties in the State. New Jersey has placed a strong emphasis on the county as the lead coordinating body for transportation planning. As a result, NJ TRANSIT encourages the coordination of service with other transit operations, especially if it is part of a locally developed "coordinated plan". However, in some counties the small urban and rural area is limited, and in such cases when no interest is shown by the county, a municipality and/or social service agency may apply directly for funding. In such cases the subrecipient must request a one-time resolution from the county government endorsing the service proposal and become a participating stakeholder in the local "coordinated plan" process.

NJ TRANSIT encourages subrecipients providing services under Section 5311 to feed existing NJ TRANSIT bus and/or rail services that serve other non-urban, urban or interstate locations. Such services open up many additional opportunities and dramatically increase the mobility of the non-urban/rural resident.

In 2016, to encourage Feeder service utilizing 5311 funding, we initiated the Innovation Competitive grant. This allows for eligible 5311 sub-recipients to apply for up to \$100,000 of federal funding for development or expansion of route deviation or shared ride services that are designed to provide direct connections to NJ TRANSIT bus, rail and private bus carrier services. Funding will be limited to operating cost line items and continued funding will be subject to an annual application. This program will be subject to the availability of unallocated funds from the previous years.

Eligible 5311 subrecipients will be required to complete an annual application of the proposed or route deviation or shared ride service.

Applications for the Innovation grant section of the 5311 application will be reviewed and ranked by NJ TRANSIT staff in accordance with criteria established to ensure proposed routes provide scheduled connections with the traditional bus and rail network.

This service must meet a minimum threshold of three (3) passenger trips per revenue hour at the end of the initial service period (first year) and four (4.0) passenger trips per revenue hour for years thereafter. Services not meeting the minimum operating standard will not be eligible for continued funding in the next year. If funding is available, subrecipients may continue to apply for the same project for up to five (5) years from the service start date. By year five, innovative projects should be self-sustaining or moved to traditional 5311 program funding.

## **CAPITAL EXPENSES**

Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for an efficient and coordinated public transportation system. Where FTA allows certain cost to be capitalized or treated as operating expenses, the state may determine which of those costs it will allow subrecipients to capitalize.

### **Capital expenses include, but are not limited to:**

- Buses, minibuses, vans or other paratransit vehicles; (All vehicles procurements through NJT)
- Radios and communications equipment
- Wheelchair lifts and securements
- Vehicle rehabilitation
- Extended warranties which do not exceed industry standards
- Operational support such as computer hardware and software
- Installation costs, vehicle procurement, testing, inspection and acceptance costs
- The introduction of new technology, through innovative and improved products, into public transportation including ITS
- Mobility management consisting of short-range planning, management activities and projects for improving coordination among public transportation and other transportation service providers.

## **OPERATING EXPENSES**

Operating expenses are those costs directly related to systems operations in the rural and small urban areas.



**Operating expenses include, but are not limited to:**

- Salaries and Fringe Benefits (drivers, mechanics, and dispatchers, etc.)
- Licenses
- Contract Services (work and labor provided by outside organizations)
- Maintenance and repairs
- Replacement parts which do not meet the criteria for capital items
- Materials consumed (fuel, oil, etc.)
- Miscellaneous Expenses (uniforms, etc.)

**NET OPERATING EXPENSES**

Expenses that remain after operation revenues are subtracted from eligible operation expenses. At minimum operating revenue **must** include farebox revenues. Farebox revenues include fares paid by riders who are later reimbursed by a human service agency or other user-side subsidy arrangements, but do not include payments made directly to the transit provider by human service agencies. However, purchase of transit passes or other fare media for clients would be considered farebox revenue.

**PROJECT ADMINISTRATION**

In New Jersey, subrecipient administration expenses are considered non-operating expenses. Administration expenses are those associated with administering the transportation service provided.

**Administration expenses include, but are not limited to:**

- Salaries and Fringe Benefits (director, secretary, bookkeeper)
- Standard Overhead (indirect)
- Office supplies
- Training and Travel
- Marketing Expenses
- Drug and Alcohol Testing
- Audit and Legal Expenses
- Insurance premiums or payments to a self-insurance reserve

***Administration budget should not exceed 10% of the total yearly S5311 allocation***

**LOCAL MATCH REQUIREMENT AND ELIGIBILITY**

Project applicants are responsible for identifying their source of local match in their annual application. Agencies may use non-DOT federal funds as a local match. The eligible local share for a Section 5311 project must be from non-FTA sources of funding and can include any local or state funds. In addition, subrecipients may use revenue generating contracts including advertisement & concessions revenue to be used as a local match.

Income from contracts to provide human service transportation may be used to offset the cost of providing the service or as local match for Section 5311 operating assistance. The manner in which a local subrecipient applies income from human services agencies to a local project, that is, whether it is treated as local match, or is used to offset operating expenses will affect 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 sub-allocating its apportionment among its local subrecipients is a discretionary action. A state may not prohibit a local recipient from using income from Human Service agency contracts as local match for Section 5311 funds as a matter of law. However, New Jersey allocates funds based upon census population so if a subrecipient uses Human Service agency contracts as match it will reduce the local funds needed as match but will not necessarily increase the federal Section 5311 funds available. New Jersey will consider the degree to which a local subrecipient demonstrates local financial commitment to a project from resources other than local funds as a rating factor in its discretionary allocation decisions.

In-kind contributions, volunteer services and donations are eligible as part of the local match. Such non-cash sources of local match are eligible only if the value of each is formally documented and included as part of a formal resolution from the governing body submitting the application.

The actual amount that any applicant may receive is limited by the maximum participation rates established for federal and state assistance. **The maximum federal and state funding ratio is as follows:**

<b>Operating Expenses:</b>	Federal 50%	Local 50%
<b>Administration Expenses:</b>	Federal 80%	Local 20%
<b>Capital Expenses:</b>	Federal 80%	Local 20%
<b>Mobility Management:</b>	Federal 80%	Local 20%

### **STATE CONTRIBUTION**

In New Jersey, in order to encourage local transit, NJ TRANSIT has historically provided one-half of the local match since the program began in 1979. **As a result, in New Jersey, the funding ratio in practice has been as follows:**

<b>Operating Expenses:</b>	Federal 50%	State 25%	Local 25%
<b>Administration Expenses:</b>	Federal 80%	State 10%	Local 10%
<b>Capital Expenses:</b>	Federal 80%	State 10%	Local 10%
<b>Mobility Management:</b>	Federal 80%	State 10%	Local 10%

Although NJ TRANSIT as matter of policy is committed to the provision of one-half the local match, the provision of that match is contingent upon the NJ TRANSIT Board of Directors approving funds annually.

## **PROJECT SELECTION CRITERIA and METHOD of DISTRIBUTING FUNDS**

### **PROGRAM NOTIFICATION**

NJ TRANSIT establishes the annual program level based on federal formula allocations. This information is included in FTA's annual federal register notice after the annual federal transportation appropriations bill becomes law. All rural area's subrecipients that are eligible Section 5311 are notified directly by NJ TRANSIT of the availability of funds. NJ TRANSIT will notify each MPO of its annual allocation through the TIP process.

### **APPLICATION REVIEW**

NJ TRANSIT will make available to each of the designated coordinated transportation providers, municipalities, where applicable or other interested parties an application package. The application must be completed and returned to NJ TRANSIT. Annual applications will be reviewed by NJ TRANSIT's Local Programs and Minibus Support Unit.

NJ TRANSIT will only approve **one Section 5311 application per designated nonurbanized area** before considering additional applications from a designated area. Additional applications from a designated area will also be considered if allocated funds to a particular designated area are not fully utilized by an approved applicant. All applicants approved must secure a one-time resolution from the appropriate governing body in the service area. At a minimum, the needs of the transportation disadvantaged in those areas should be met and the project should increase the adequacy, efficiency and effectiveness of transit services in those areas. Once a particular project within a designated area is approved the annual application to support that ongoing project is given a priority over new requests.

On occasion, the level of funding requested may be greater than the funds allocated and will be weighed against the level and type of service to be provided and compared to the amount of funding apportioned to the applicant county.

NJ TRANSIT staff will determine whether the project warrants use of discretionary funds, if requested. Also, applications will be compared to similar applications already approved. Past experience with an applicant will be considered. A resolution from the County Board of Chosen Freeholders Board of Directors of a Non-Profit Organization or Local Town Council authorizing the application and the commitment of local match will be required. In the application, each applicant is also required to comply with all standard FTA's Section 5311 assurances. Intention to comply with the guidelines and assurances will be of the utmost importance when reviewing and application for approval.

An approved Program of Projects will be forwarded to the FTA and each grantee will enter into a contract with NJ TRANSIT containing the terms and conditions for receiving Section 5311 funds. Because NJ TRANSIT is responsible for administration of the Section 5311 as well as Section 5310 and state casino revenue tax funding for transportation, the agency requires coordination of transit services provided through these programs. Existing coordinated transportation systems or agencies working in cooperation with other transportation providers are given preference for funds available under the Section 5311 programs.

Responsibility for evaluation and approval for each project is the responsibility of NJ TRANSIT. **All local public transportation projects submitted by Section 5311 eligible applicants are evaluated by NJ TRANSIT based upon five (5) primary criteria:**

1. Reasonableness of existing and proposed level of service to the general public.
2. The level of planning reflected and the ability of the proposed project to meet identified local rural transportation needs.
3. The level of coordination among the existing transportation providers in the area, including feeder service to NJ TRANSIT bus and rail where feasible.
4. The level of coordination between human service agencies and the public transportation applicant.
5. Adequacy of service to the transportation disadvantaged especially senior citizens and people with disabilities.

### **TECHNICAL CAPACITY**

In reviewing an application and during the life of the project, all Section 5311 applicants must demonstrate the technical capacity to carry out the services proposed.

**At a minimum the applicant must be able demonstrate the following:**

- The financial ability to perform and deliver the service applying for and awarded.
- The adequate level of staffing and grant experience and knowledge to comply with all FTA grant requirements.
- The adequate level of staffing and operational experience needed in delivering the service as per grant award.
- The adequate level of staffing and maintenance experience for performing required maintenance on vehicles used or purchased for this service.
- The adequate level of vehicles including back-up vehicles to perform the service under this program.
- A driver training program to ensure safe and reliable service to all passengers.
- That the service provided is not duplicating other services funded under FTA or other funding sources. All FTA subrecipients must be part of the local Human Service Coordination Transportation plan.
- There are written procedures and policies for operations, grant administration and FTA reporting requirements.

***For those services currently operating that do not meet the minimum technical capacity requirements outlined above, NJ TRANSIT will work with the subrecipient to establish milestones to reach adequate technical capacity.***

### **FUNDING DISTRIBUTION**

After state administrative funds are set aside, all remaining funds will be distributed to eligible applicants on a formula basis. Federal regulation stresses the need to distribute Section 5311 funds in a fair and equitable manner. NJ TRANSIT's formula to distribute funds is based on the nonurbanized population living in each county. Each county is allocated a percentage of Section 5311 funds equal to the percentage of the state's non-urbanized population living in that county.

The annual amount apportioned to an approved applicant will remain available to that applicant for the year in which it is apportioned by NJ TRANSIT. After that time, NJ TRANSIT reserves the right either to reapportion unobligated funds according to the formula described above or to distribute these funds as discretionary to other ongoing or new projects.

## **APPLICATION INSTRUCTIONS AND APPROVAL PROCESS**

Subrecipients must complete a Section 5311 application in order to apply for program funds. Applications are made available annually. Applicants can contact NJ TRANSIT' Local Programs and Minibus Support Unit by phone, email or in writing, for technical information or general assistance in completing an application for FTA Section 5311 funds. As part of the application the subrecipients must provide:

### **PROJECT DESCRIPTION**

The application should include sufficient information to evaluate the eligibility of the proposed project, and the subrecipient's legal, financial, technical, and managerial capability to implement the project, and maintain any project property.

### **COORDINATION**

The subrecipients must describe how FTA assisted services are or will be coordinated with social service agencies and private transportation providers in the service area. (See section on Coordinated Public Transit-Human Service Coordination Plan)

### **BUDGET**

Each application must contain a line item budget for Project Administration, Operating and Capital funds being requested as well as information on the source of the match dollars.

Applications will be reviewed based upon the stated goals and objectives of this program, an applicant's prior record of compliance and proof that the applicant is a participant in the "coordinated plan" process at the local level.

### **Competitive Innovation Grant Section of 5311 Application**

Beginning in State FY 2016, eligible 5311 subrecipients will be eligible to apply for up to \$100,000 of federal funding under the Section 5311 program for development of route deviation services that are designed to provide direct connections to NJ TRANSIT bus and rail and private bus carrier services. The funding under this sub-program will be awarded on a competitive basis with the same matching fund requirements as the rest of the 5311 program. Funding will be limited to operating cost line items and continued funding will be subject to an annual application.

Eligible Section 5311 subrecipients will be required to complete and submit an annual application of the proposed route deviation or shared ride taxi service.

Applications for the Innovation grant section of the 5311 application will be reviewed and ranked by NJ TRANSIT staff in accordance with criteria established to ensure proposed routes provide scheduled connections with the traditional bus and rail network.

Since NJ TRANSIT is responsible for administration of the FTA Section 5310, Section 5311 and state casino revenue funding for transportation, the agency has historically encouraged coordination of transit services provided through these programs. Existing coordinated transportation systems or agencies working in cooperation with other transportation providers are given preference for funds available under the Section 5311 program. All subrecipients must, at a minimum, participate in the locally developed "coordination plan" process and be willing to participate as a stakeholder.

## **SECTION 5311 TIMELINE CHART**

The State Management Plan establishes a general timeline, which will be used as an approximate guide to the application process. The Section 5311 grant development schedule is as follows:

### **APPLICATIONS**

- October 1 or later** .....Receive allocation figures from FTA
- June/July**.....Mail application packages and allocation to applicants.
- Sept/Oct**.....Applicants must submit completed application to NJ TRANSIT.

..... Regional Program Administrator reviews grant applications and select projects for approval.

..... NJ TRANSIT prepares state program of projects.

### **AGREEMENTS (LEASES)**

**Oct/November**.....Mail subrecipients agreements to signSubrecipients return signed agreements and sub-contracts.

**Dec/January** ..... Executed agreement and reimbursement forms mailed to subrecipients if initial application is reviewed and complete.

### **REPORTING**

**Monthly** ..... Expenditure Report, Reimbursement Request form with supporting documentation of actual expenses incurred and the corresponding Service Report form.

..... Monthly Ridership Reports via S-RIDES

**Annual** ..... Submit National Transit Database Reports

**No later than 180 days after close of the subrecipient's fiscal year.** ..... Annual Financial Audits -The subrecipient shall deliver an annual audit report to the Director of Local Programs Support Unit.

..... Local Programs and Minibus Support Unit initiates grant closeout.

## **CERTIFICATION AND ASSURANCES**

The subrecipients must sign the certifications and assurances required of each, the lobbying certification (if the application exceeds \$100,000). Since certifications and assurances are sent annually and most Section 5311 are ongoing projects, subrecipients in the Section 5311 program will usually submit their annual certifications and assurances separately from their application.

## **TRANSFER OF FUNDS**

### **Flexible Funding Programs - Transfer of Funds**

NJ TRANSIT will allow the transfer of Section 5310 funds to a local Section 5311 project as long as the transferred funds are used for eligible Section 5310 projects. However, such a transfer will only be considered in extraordinary situations. Flexible funds from the Federal Aid Highway Programs, Section 5309 and CMAQ may be transferred to the Section 5311 program for use by the State. Unlike transfers between transit programs, under which funds retain their original purposes, flexible funds transferred to the Section 5311 program will be treated as Section 5311 funds and all program requirements will be applicable. The funds are available for obligation by the State for two additional years after the year in which they are transferred.

The FTA allows funds to be transferred between small urbanized and nonurbanized areas as well as allows Section 5310, 5316 or 5317 funds to be transferred to Section 5307 and S5311 programs. NJ TRANSIT has not historically transferred funds between programs but will consider on a case-by-case basis.

Flexible funds are legislatively specified funds that may be used for either transit or highway purposes. This provision was first included in the Intermodal Surface Transportation Efficiency Act of 1999 (ISTEA), was continued through [Transportation Equity Act for the 21st Century \(TEA-21\)](#), SAFETEA-LU, MAP-21 and the FAST Act. Flexible funds allow a local area to choose to use certain federal surface transportation funds based on local planning priorities, not on a restrictive definition of program eligibility. Flexible funds include FHWA Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds and FTA Urban Formula Funds.

FHWA funds transferred to FTA have provided a substantial new source of funds for local transit projects. When FHWA funds are transferred to FTA, they are transferred to one of three programs: Urbanized Area Formula Program (5307), Nonurbanized Area Formula Program (Section 5311 program); and Elderly and Persons with Disabilities Program (Section 5310 program). Once they are transferred to FTA for a transit project, the funds are administered as FTA funds and take on all the requirements of the FTA program. Transferred funds may use the same non-federal matching share that the funds would have if they were used for highway purposes and administered by FHWA.

In New Jersey, the decision on the transfer of flexible funds is made by the MPO. The decision to transfer funds should flow from the transportation planning process and the priorities established for an area as part of the planning process.

For the FTA Section 5310, 5311 and/or local 5307 programs the funds transferred from FHWA can be drawn from the following sources:

**Surface Transportation Program (STP)** - STP is the largest source of funds from FHWA. Funding is at 80 percent Federal share and may be used for all projects eligible for funds under current FTA programs excluding operating assistance.

**Congestion Mitigation and Air Quality Improvement (CMAQ) Program** - CMAQ funds are used to support transportation projects in air quality nonattainment areas. A CMAQ project must contribute to the attainment of the national ambient air quality standards by reducing pollutant emissions from transportation sources.

**Interstate Substitute Funds** - While these Highway funds are eligible for transit use, they are limited to the construction and improvements of fixed guideways, the purchase of rolling stock (buses) and other transportation equipment, and any other project eligible under FTA's Section 5309 capital grant program.

**FHWA Earmark** - Several transit projects are earmarked under TEA-21 as high-priority projects. FHWA asked that they be administered by FTA. FHWA earmarked funds through FY 1999 were transferred into the Section 5309 program. Beginning in FY 2000, these earmarks were transferred to FTA's formula programs only.

### **FHWA Funding - CMAQ or STP**

## **Description**

The allocation of CMAQ and STP funding is determined by the regional Metropolitan Planning Organizations (MPOs) through the Transportation Improvement Program (TIP) planning process and not by NJ TRANSIT or NJDOT. Upon identification and inclusion in the TIP by the appropriate MPO, NJ TRANSIT and NJDOT will take the appropriate actions to include these funds in the State Transportation Improvement Program (STIP). Once these actions are completed NJ TRANSIT will apply for the funds directly to the FTA on behalf of the designated subrecipients and will administer the program in accordance with the rules of the program to which the funds are flexed.

## **Schedule**

On-going as projects are programmed in the STIP and approved by the FHWA and FTA.

## **Key Steps**

1. **MPO Programming:** Regional MPOs approve the allocation of STP and CMAQ funds to transit projects within the region through adoption or amendment of the region's TIP.
2. **MPO Notification to NJ TRANSIT of STP or CMAQ Funds:** MPO should ensure STP and/or CMAQ projects are included in their TIP and then MPO should send a notification to NJ TRANSIT regarding federal funding award.
3. **NJ TRANSIT Notification to NJDOT to revise the STIP:** When the grantee requests that CMAQ or STP funds be flexed, NJ TRANSIT notifies NJDOT amend the STIP to include projects.
4. **NJ TRANSIT request to FTA to flex FHWA Funds:** It is NJ TRANSIT's expectation that most projects will be flexed (transferred) by NJ TRANSIT to the FTA and drawn down by subrecipients through NJ TRANSIT as the grant administrator.

## **INTERCITY BUS**

Under Section 5311 states are required to spend a portion of their apportionment "to carry out a program for the development and support of intercity bus transportation." The percentage required by the statute was phased in from not less than 5% in fiscal year 1992 and not less than 10% in fiscal year 1993, to not less than 15% in fiscal year 1994 and thereafter. A state is not required to expend the specified percentage of its apportionment for an intercity bus program "in any fiscal year in which the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met". A new certification must be made each year that the state does not program the required percentage of funds. In many States, intercity bus service is a vital link between otherwise isolated rural communities and the rest of the nation. The federal government has stated that there are three objectives under the intercity program. They are: 1) to support the connection between nonurbanized areas and the larger regional or national system, 2) to support services to meet the intercity travel needs of residents in nonurbanized areas and 3) to support the infrastructure of the intercity bus network through planning, marketing and capital investment.

As a statewide transit agency, NJ TRANSIT reviews and considers transit needs in the state. NJ TRANSIT communicates on a continuing basis with the various Metropolitan Planning Organization (MPO's) Transportation Management Associations (TMA's), County Transportation Association (CTA) and Council on Special Transportation (C.O.S.T). NJ TRANSIT will solicit input from these organizations as needed in determining whether or not to request a certification from the Governor.

In addition, it is important to allow an opportunity for private companies to consider providing intercity service in New Jersey. There is presently only one nationwide intercity bus carrier operating within the United States: Greyhound Lines Incorporated. However, there are a number of smaller carriers that operate on a regional or local basis. NJ TRANSIT has identified over 40 members of the American Bus Association as well as over 20 current contracted providers with NJ TRANSIT. Additional companies are identified through websites of private intercity bus operators and the Russell's Official National Motor Coach Guide. NJ TRANSIT will periodically consult with the companies and organizations cited above to solicit potential intercity bus needs. However, any intercity bus needs identified must be weighed against any negative impacts the redirection of funds from previously approved ongoing projects will have. Should a proposal be submitted, a review will be conducted to determine based upon a hierarchy of needs, if the nonurbanized (5311) transit providers in the state have a greater funding need than intercity bus providers.

**At least once every three years NJ TRANSIT will:**

1. Identify intercity bus providers in the State;
2. Invite all operators to submit comments and to attend an information session to discuss the Section 5311 (f) program and advertise the process in various newspapers throughout the State;
3. Provide an period of time no less than 30 days after the meeting for operators to submit proposals;
4. Access the results of the consultation and application process and make a determination if the State's intercity service needs are adequately being met.
5. Include information on the coordinated public transit-human services transportation plans and encourage their participation at the local level;

If after consultation with the various organizations in the state no intercity bus needs can be identified, NJ TRANSIT will request the Governor to certify to the FTA that the intercity bus service needs of the state are being adequately met.

Eligible expenses under Section 5311(F) are for Operating Only (see OPERATING EXPENSES Page 17).

## **STATE ADMINISTRATION AND TECHNICAL ASSISTANCE**

### **GENERAL**

The basic grant management requirement for state and local governments are contained in the Department of Transportation (U.S. DOT) regulations, " Supercircular Uniform Administrative Requirements, Cost Principles and Audit Requirements Policy Changes," 2 C.F.R. Parts 200 and 1201. The provision of these rules applies except where inconsistent with Federal statutes or authorizing legislation.

NJ TRANSIT will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

### **ADMINISTRATIVE EXPENSES**

NJ TRANSIT will allocate up to a maximum of 15% of each year's apportionment for the administration of the program and for state and local technical assistance. When deemed necessary a small amount of discretionary funds will be set aside from each year's apportionment for special projects or to provide assistance where a marginal amount of funding will provide additional benefits to insure a project's success. **However, discretionary funds will not be set aside if the unavailability of those funds would jeopardize the continuing success of ongoing projects.**

Allowable administrative costs include salaries, overhead expenses, supplies and office equipment used to administer the program. NJ TRANSIT can make, on occasion, a portion of the state Administration funds (not to exceed 15 percent of Administrative funds) available to local projects for consulting services.



**The Local Program and Minibus Support Unit staff and/or consultants can assist subrecipients with the following:**

1. Project planning, user surveys, ridership estimates, demand estimates, routes and schedules, equipment needs, cost and revenue estimates
2. Coordinating Section 5311 public and human service transportation services
3. Grant preparation
4. Vehicle selection, procurement and maintenance
5. Training drivers and other staff
6. Developing a marketing strategy;
7. Project management assistance
8. Development of policies and procedures

Local transit and paratransit operators wishing to request funding for technical assistance from NJ TRANSIT staff or consultants should generally follow the steps described below.

1. Submit a letter of intent to apply for technical assistance; and submit a scope of services which includes:
  - a. Statement of problem(s) to be solved
  - b. listing of tasks that will be completed to alleviate problems(s)
  - c. amount of funds needed to complete.
2. NJ TRANSIT Local Programs and Minibus Support staff reviews the scope of services; and makes recommendation for approval, revision, or rejection.

## **RURAL TRANSIT ASSISTANCE PROGRAM**

### **Program Objectives**

The objectives of New Jersey's Rural Transit Assistance Program (RTAP) are to promote the safe and effective delivery of public transportation in non-urbanized areas and to make more efficient use of public and private resources; to foster the development of state and local capacity for addressing the training and technical assistance needs of the rural/small urban transportation community; and to improve the quality of rural/small urban transportation through the development of training and technical assistance resource materials.

NJ TRANSIT has expanded RTAP using state funds to include all operators receiving FTA Section 5310, NJ-JARC as well as funding from the State of New Jersey's Senior Citizen and Disabled Resident Transportation Assistance Program (SCDRTAP) and human service transportation providers. This expansion of the program is made possible through funding under the State's SCDRTAP grant.

### **Program Delivery**

The program features driver, dispatcher, mechanic, management and other support staff member training including support and sponsorship of the annual New Jersey State Paratransit Driver Rodeo. In addition, a portion of the program is dedicated to technical support for transit research, information sharing and the publication of a quarterly newsletter.

The objectives of the driver training program are to provide professional paratransit/community transit operator training and to provide advice and guidance to local trainers when providing training. The objectives of the Management and Technical Training are to enhance the knowledge and professionalism of rural and small transit providers who are subrecipients of Section 5310, Section 5311, NJ-JARC and State Casino Revenue funds.

## **Technical Training and Scholarship Programs**

NJ TRANSIT administers the day-to-day scheduling and administering of classes and workshops. In order to better disseminate information on scheduled training a website has been established, the New Jersey Community Transportation Training Program (NJCTTP) at <http://s-rides.njtransit.com/>. NJ TRANSIT administers the scholarship program to assist operators in offsetting the cost of receiving educational, professional and technical training. Scholarship eligibility is determined as follows, in order of priority; Transit organizations providing transit services in non-urbanized areas receiving Section 5311 funding; transit organizations operating vehicles purchased through the FTA Section 5310 program; other FTA funded programs and transit organizations providing transit services to senior citizens and people with disabilities with funding through the Casino Revenue Program. Finally, other human service providers not directly funded through FTA or Casino Revenue Programs but identified as providers in the “coordinated plan” can attend on a space available basis.

Applications may be submitted for any training course, workshop or conference that is being held within the continental United States, but not in New Jersey, during the calendar year of application. NJ TRANSIT Local Programs and Minibus Support Unit reserves the right to approve or disapprove any or all applicants. Determination of event eligibility will be based on the program's content, and its usefulness to the applicant agency, its relationship to the goals of the RTAP program and the availability of funds.

All travel arrangements for each scholarship will be the responsibility of the subrecipient agency or individual. However, exceptions to this rule will be granted on an as needed basis if necessary.

Following attendance at/in the program, the scholarship subrecipient is required to prepare a summary report of the program attended. **The report must be submitted within 30 days of attendance to the program.** Failure to comply will result in ineligibility of the agency/individual to receive future scholarships.

**Applicants who qualify for a scholarship will fall into one of the following award categories:**

<b>Category I</b>	under \$500
<b>Category II</b>	\$500 - \$1,500
<b>Category III</b>	Above \$1,500

In order to assure an equitable distribution of the limited scholarship funds, no eligible organization or agency shall be able to receive more than two Category II scholarships or more than one Category III scholarship within a calendar year. If NJ TRANSIT RTAP determines the need is great, it has the option of awarding more than five scholarships for that particular program/event. The scholarship match shall be 20% of the total cost of Category I. The scholarship match shall be \$100 or 20% of the total cost, whichever is greater, of Categories II and III. NJ TRANSIT works closely with their NJCTTP Review Committee, which is composed of operators throughout the state and works with NJ TRANSIT to identify training needs in the state.

## **CIVIL RIGHTS**

### **NON-DISCRIMINATION**

49 U.S.C. § 5332 states that "a person [defined broadly] may not be 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, creed, national origin, sex, or age."

NJ TRANSIT and all subrecipients of FTA assistance are responsible for compliance with all civil rights requirements applicable to transit related projects including the nondiscrimination prohibitions of 49 U.S.C. § 5332, and of Title VI of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended and 49 U.S.C. 5332 and any implementing requirements FTA may issue; Nondiscrimination on the basis of sex including requirements of Title IX of the Education Amendments of 1972 and 49 CFR part 25, and with any implementing directives that DOT or FTA may promulgate,. Nondiscrimination on the basis of age including requirements of the Age Discrimination Act of 1975, as amended 42 U.S.C. 6101 et seq. and implementing regulations; Nondiscrimination on the basis of disability including requirements under Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended (ADA) and Disadvantaged Business Enterprise (DBE) to the extent required by Federal law.

### **TITLE VI PROGRAM REQUIREMENTS**

Title VI of the 1964 Civil Rights Act, Section 601 states: 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. NJ TRANSIT will require that subrecipients annually sign the nondiscrimination assurance included in FTA's notice of certifications and assurances.

NJ TRANSIT shall submit its assurance to FTA and shall retain assurances from subrecipients. Subrecipients will be required to send a nondiscrimination assurance included in their annual notice of certifications and assurances, which accompanies their application.

NJ TRANSIT shall maintain for itself and its subrecipients a description of any complaints alleging discrimination in service delivery filed within the past year together with a statement of status or outcome of each such complaint.

Each agency in their preliminary application to NJ TRANSIT must provide the estimated number of minority group persons that it will serve. This information can be obtained by any appropriate means that will ensure inclusion of the numbers as part of each individual application. This documentation will be used by NJ TRANSIT to assure equity of distribution of benefits among eligible groups within the state or urbanized areas, as required by Title VI of the Civil Rights Act.

Consistent with Title VI of the Civil Rights Act, United States Department of Transportation implementing regulations, an Executive Order 13166, recipients shall take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of their programs and activities for individuals who are limited-English proficient (LEP) and/or low-literacy. Recipients shall use information obtained in the Four Factor Analysis to determine the specific language services that are appropriate to provide.

NJ TRANSIT will prepare with its annual Section 5311 grant application a record of approved and rejected funding requests that identifies applicants that are minority organizations or that provide assistance to minority and/or limited English proficient communities. Utilizing information provided by the applicant, NJ TRANSIT would compare the estimated total number of persons to be served versus the estimated total number of minority and limited English proficient persons served. A comparison of total applicants versus approved applicants is also done. These numbers are reviewed to ensure that the approved applicants fairly represent a cross section of all applications received with regard to service offered to the minority communities of the state.

NJ TRANSIT, consistent with FTA Circular 4702.1B, requires that all subrecipients of FTA funds prepare and submit a Title VI program. A Title VI program, once submitted and accepted by NJ TRANSIT, must be resubmitted every three years.

**A subrecipient Title VI program responsibilities are:**

1. Sign a certification of compliance pertaining to Civil Rights (See [EXHIBIT N](#)).
2. Post the Title VI Notice to the Public, post to the grantee's website, and post in public areas including vehicles;
3. Post the Title VI Complaint Procedures – This includes a copy of the complaint form, the procedures for filing a complaint, and how the complaint will be handled by the agency;
4. Maintain a list of transit-related Title VI investigations, complaints, and lawsuits;
5. Contact NJ TRANSIT immediately via phone, e-mail, fax or letter if the subrecipient has received a lawsuit or civil rights complaint;
6. Report through application a concise description of active lawsuits or complaints alleging discrimination in service delivery in the past three years;
7. Provide updates on the status or outcome of active or pending lawsuits on at least quarterly basis;
8. Provide and post the Public Participation Plan, including information about outreach methods to engage minority and limited English proficient populations (LEP);
9. Develop and provide a Language Assistance Plan for providing language assistance to persons with limited English proficiency (LEP) or low-literacy, based on the U.S. DOT's LEP Guidance;
10. Establish documentation that the membership of non-elected committees and councils, selected by the transit system and/or parent organization, is representative of the diversity of the service area, as well as documentation of the process the grantee and/or parent organization uses to encourage the participation of minorities on such committees and councils; and,
11. Submit approval by your agency Board/Council, with a copy of the approval submitted to NJ TRANSIT.

First-time applicants to NJ TRANSIT for FTA funding, in addition to the Title VI program described above, must also prepare and submit, on a one-time basis, information on the organization's Title VI compliance history if they have previously received funding from another Federal funding agency. This shall include a copy of any Title VI compliance review activities conducted in the previous three years. **The one-time submission must also:**

1. Describe the purpose or reason for the review.
2. Specify the name of the agency or organization that performed the review.
3. Provide a summary of the findings and recommendations of the review.
4. Document the status and/or disposition of such findings and recommendations.

In addition, first-time applicants shall submit a brief description of any pending applications to other Federal agencies for assistance, and whether any Federal agency has found the applicant to be in noncompliance with any civil rights requirement.

This information shall be relevant to the organizational entity actually submitting the application, not necessarily the larger agency or department of which the entity is a part.

NJ TRANSIT will provide technical assistance to existing or prospective applicant for funds in compliance with Title VI requirements.

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

All SUBRECIPIENTS must be in compliance with FTA's Equal Employment Opportunity (EEO) requirements, as set forth in FTA's most recent guidance in Circular C 4704.1A and must ensure nondiscrimination in employment on the basis of race, color, religion, national origin, sex, age, genetic information, disability, veteran status and retaliation. If any SUBRECIPIENT meets the threshold requirements specified in the Circular (receives capital or operating assistance in excess of \$1M or planning assistance in excess of \$250,000 in the previous Federal fiscal year, and employs 50 or more transit-related employees), it must submit an EEO program to NJ TRANSIT for a site/desk audit or other compliance review. SUBRECIPIENTS who do not meet the EEO Program threshold are not required to submit an EEO Program but are still required to comply with all Equal Employment Opportunity statutes and regulations.

**In this area subrecipient responsibilities are:**

1. Post EEO information in a place readily accessible by employees.
2. Prepare an EEO plan if thresholds are met.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS**

The subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The subrecipient shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S.D.O.T. assisted contracts. Failure by the subrecipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as NJ TRANSIT deems appropriate. For those subrecipients utilizing federal funding for contracting opportunities (see [EXHIBIT I](#)) for DBE Programs requirements for race-Neutral federal procurement activities. NJ TRANSIT will review all subrecipient's bid specifications, including cost breakdowns/estimate to ensure compliance and establish the DBE goal for the contract.

## **SECTION 504 AND ADA REPORTING**

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, prohibits discrimination on the basis of disabilities by SUBRECIPIENTS of Federal financial assistance. In addition, the Americans with Disabilities Act of 1990, as amended (ADA), specify Federal civil rights of individuals with disabilities. SUBRECIPIENTS must comply with 49 C.F.R. Parts 27, 37, and 38, implementing ADA and amending the Section 504 rule. Among other requirements, the regulations:

- Prohibit discrimination against individuals with disabilities
- Require that vehicles acquired be accessible to and usable by individuals with disabilities, including individuals using wheelchairs (with limited exceptions for demand responsive systems providing equivalent service to individuals with disabilities or a demonstration of inability to obtain an accessible used vehicle despite good faith efforts to do so)
- Require that public entities operating fixed route transit plan for and provide complementary paratransit for individuals with disabilities who cannot use accessible fixed route transit

All services and/or vehicles acquired with project funds must be equipped, maintained, and operated in accordance with the regulations.

**SUBRECIPIENTS** must ensure that service provided does not discriminate against individuals with disabilities. In addition, subrecipient of any FTA funds should be aware that they also have responsibilities under other provisions of ADA in the areas of employment, public accommodations, and telecommunications.

In this area subrecipient responsibilities are:

1. Sign annually certifications and assurances pertaining to ADA requirements; including a separate subrecipient affidavit, pertaining to ADA requirements. (See [EXHIBIT M](#)).
2. Establish service policies and procedures in accordance with the ADA; including reasonable modification policy.
3. All information related to policies and procedures must be made readily available to the public on the agencies website and marketing materials
4. Establish a complementary paratransit program for publicly operated fixed route systems
5. Notify NJ TRANSIT of any ADA complaints related to transportation services.

## **STATE PROGRAM MANAGEMENT**

### **EQUIPMENT MANAGEMENT**

FTA defines equipment as all tangible, non-expendable personal property that has a service life of more than one year and an acquisition that exceeds \$5,000 per unit. Subrecipients must use, manage, and dispose of equipment acquired under a Section 5311 grant in accordance with state laws and procedures. Subrecipients shall have at the establishment where operations, dispatching, scheduling, administration, and project equipment is stored and/or utilized, the current contractual agreement and/or equipment lease. Additionally all vehicle maintenance, insurance and accident reports must be at the establishment. Reproductions of all materials shall constitute compliance with this requirement so long as the location of original materials is posted and attached to reproductions.

- A. A subrecipient can be involved in a variety of relationships with other parties where FTA funds or equipment are used in providing public transit. In circumstances where other entities play a role, a

subrecipient is responsible for ensuring compliance with FTA requirements. These entities can include other governmental agencies, consultants, contractors, subcontractors, and lessees working under approved third party contracts or interagency agreements. A subrecipient must fulfill oversight responsibilities. There must be staff with knowledge of FTA requirements and a mechanism in place for monitoring. The mechanisms can be as simple as a letter of agreement, contract or lease supplemented by periodic meetings, inspections, or required reports. All appropriate federal certifications and assurances need to be passed through to contractors and monitored for compliance by the subrecipient.

- B. A subrecipient must ensure that any federally funded contractor-operated equipment is controlled. The requirements for a biennial physical inventory and control measures also apply to equipment that is leased or provided to service contractor.

**Subrecipients must have equipment records that provide the following required information:**

- Description, ID number, acquisition date, cost, federal percentage, grant number, location, use and condition (disposition action), vested title.
- Subrecipients must conduct a physical inventory of equipment and reconcile results with the equipment records every two years. Subrecipients must have a control system to prevent loss, damage, or theft of property. Subrecipients must place an ID tag all FTA funded equipment with either a property control number, service number or vehicle identification number.
- Subrecipients must have a written maintenance plan for every capital item with a cost of \$5,000 or more per unit.

NJ TRANSIT is responsible to ensure that all non-vehicle equipment with federal interest continues to be in program use as approved under the FTA grant the non-vehicle equipment was initially purchased from. Each year subrecipients with active non-vehicle equipment will be required to sign a non-vehicle certification of use verifying FTA funded equipment is still in active use and meeting the intent of the grant.

**The yearly certification will include but not limited to the following:**

- A description of the asset
- The identification number or serial number ( if applicable)
- The entity or individual that holds title to the asset
- The source of funding (the FAIN number under which it was procured)
- The acquisition date
- The cost of the asset
- The percentage of federal participation in the cost
- The location
- The use and condition
- The useful life
- Maintenance Plans and Warranty (when applicable)

**TITLE TO VEHICLES**

NJ TRANSIT assigns title of the equipment to the subrecipient with NJ TRANSIT as the first lienholder. Upon completion of the project and the useful life of the vehicle being met the lien will be released, a termination of lease agreement is signed and the equipment is turned over to the subrecipient with no further obligations. NJ TRANSIT reserves the right to hold title of equipment purchased. NJ TRANSIT retains the original title at NJ TRANSIT until the useful life of the equipment has been met and the vehicle is ready to be retired from the program.

**TRANSFER OF PROPERTY**

NJ TRANSIT can transfer facilities and equipment acquired with assistance under Section 5311 to any subrecipient eligible to receive assistance under 49 U.S. C. Chapter 53, if the facility or equipment will continue to be used in accordance with the requirements of Section 5311. 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 subrecipients, including acceptance in writing of the special Section 5333(b) warranty for Section 5311. 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 would be included in a new or revised program of projects sent to the FTA Regional office.

In addition, Section 5334(g) allows facilities and equipment and other assets (including land) which are no longer needed for the purposes for which they were acquired to be transferred to any public body to be used for any public purpose with no further obligation to the Federal government, if authorized by the Secretary.

## **VEHICLE USEFUL LIFE AND REPLACEMENT STANDARDS**

NJ TRANSIT is responsible for establishing and implementing rolling stock requirements for all categories of vehicles acquired under the S5311/5310 programs. Specifically, NJ TRANSIT is responsible for establishing minimum useful life standards for vehicles; establishing procedures for determining fair market value; and developing policies and procedures for maintenance and replacement of vehicles. Maintenance requirement and insurance coverage must be adequate to protect the Federal interest in the vehicle within the useful life determined by NJ TRANSIT.

**Vehicles controlled and inventoried under this procedure are defined as:**

**Modified Minivan:** This vehicle can transport up to three (3) ambulatory passengers and one (1) mobility device. The lower floor eliminates the need for a lift but comes with an electric ramp. Useful Life is 4 years or 100,000 miles.

**Small Cutaways/ Vans “Replacement” or “Expansion”**

- **Small Cutaway Front Lift:** This vehicle can transport up to six (6) ambulatory passengers and one (1) mobility device. When space permits and if no mobility device is being transported, a flip seat will be included to increase seating capacity. Useful Life is 4 years or 100,000 miles.
- **Small Cutaway Rear Lift:** This vehicle can transport up to eight (8) ambulatory passengers and two (2) mobility devices. When space permits and if no mobility device is being transported, a flip seat will be included to increase seating capacity. Useful Life is 4 years or 100,000 miles.

**Standard Cutaway “Replacement” or “Expansion” Less than 30FT**

- **Standard Cutaway Rear or Front Lift:** This vehicle can transport up to twelve (12) ambulatory passengers and a minimum of two (2) mobility devices. When space permits and if no mobility device is being transported, a flip seat will be included to increase seating capacity. Useful Life is 5 years or 150,000 miles.
- **Extended Cutaway Rear or Front Lift:** This vehicle can transport up to sixteen (16) ambulatory passengers and a minimum of two (2) mobility devices. When space permits and if no mobility device is being transported, a flip seat will be included to increase seating capacity. Useful Life is 5 years or 150,000 miles.

*Low floor and CNG vehicles are available in this type (seating configurations may vary).*

**Medium Duty Cutaways (CDL License Required)**

- **Medium Duty Cutaways:** This vehicle is designed to transport between 22 to 26 ambulatory passengers and a minimum of two (2) mobility devices. Vehicle is equipped with air brakes and requires driver to have an air brake certification on their Commercial Driver’s License. This vehicle may require a higher insurance combined single limit coverage. Useful Life is seven (7) years or 200,000 miles.

## **DISPOSITION**

In accordance with C5010.1D Chapter IV 3 (a) NJ TRANSIT will initiate disposition if the useful life of a vehicle has been met. After a vehicle has reached its useful life NJ TRANSIT will initiate actions to release the lien on equipment not titled to or owned by NJ TRANSIT and, thereby, end the subrecipient’s contractual obligations to NJ TRANSIT under the FTA Section 5310 and 5311 programs.

If a subrecipient wants to retire a vehicle before the useful life has been met they may notify NJ TRANSIT in writing to request an inspection of the vehicle(s) or equipment they wish to dispose of. In such cases, the inspection will determine if the disposition of the vehicle(s) or equipment is warranted for reasons other than age or mileage. Depending on the situation NJ TRANSIT may require the subrecipient to reimburse the fair market value of the vehicle.

**If NJ TRANSIT determines that the vehicle is not eligible for early disposition the subrecipient may, with NJ TRANSIT's concurrence:**

- Keep the vehicle in service
- Or if no longer needed; to return to NJ TRANSIT which will transfer it to another selected recipient
- Or keep the vehicle but reimburse NJ TRANSIT the fair market value of the vehicle minus the local match share

NJ TRANSIT is not required to return the FTA proceeds from the disposition of equipment, regardless of the fair market value at the time the equipment is sold, so long as the proceeds remain in use for general public transit purposes. This applies to all equipment currently in use, which was purchased with Section 5310 and Section 5311 funds.

**VEHICLE INSURANCE**

NJ TRANSIT requires subrecipients to submit verification of insurance. Subrecipients are required to maintain insurance coverage in the amount of one million dollars per vehicle. The subrecipient must also safeguard against loss, damage or theft of equipment and list NJ TRANSIT as an additional insured. NJ TRANSIT will periodically review this requirement and adjust the amount of coverage accordingly.

**VEHICLE DESTROYED OR DAMAGED**

All vehicles purchased with Section 5311 funds must be covered by insurance. If a vehicle damaged in a fire, accident, etc. is repairable, the subrecipient should negotiate a settlement with the insurer, get the vehicle repaired and place it back in service. . If the vehicle is not repairable, it is eligible for replacement under the following circumstances: 1) If the subrecipient wishes to replace the vehicle, 100% of the insurance claims payments plus any proportionate interest earned on it must be applied to the cost of the replacement vehicle: 2) If the subrecipient doesn't wish to replace the vehicle, the insurance claims payment is considered the fair market value. The entire settlement minus the local share match will be returned to NJ TRANSIT who will put the funds back into the Section 5311 program or the subrecipient may place the insurance settlement back into the project to offset operating costs.

**MAINTENANCE**

During inspections and site visits NJ TRANSIT staff will inspect all equipment purchased with FTA funds. During these inspections NJ TRANSIT may randomly select for review maintenance records for a vehicle. Subrecipients are encouraged to have their own written preventive maintenance procedures. However, at a minimum, subrecipients are expected to follow the maintenance practices contained in the manufacturer's guide and/or NJ TRANSIT'S Vehicle Preventive Maintenance Guidelines. These will be provided at time of vehicle delivery and/or upon request. Failure to follow these practices could lead to noncompliance.

**TRANSIT ASSET MANGEMENT**

The TAM rule (49 CFR part 625) is a set of federal regulations that sets out minimum asset management practices for transit providers. The TAM rule aims to address the backlog by requiring subrecipients to create TAM plans or adopt the States Plan. This will help subrecipients systematically address their maintenance needs which will, in turn, improve service. Well-developed asset management systems have been shown to lower long-term maintenance costs. Additionally, TAM will have important non-quantifiable benefits, such as improved transparency and accountability. Implementing a TAM system will require subrecipients to collect and use asset condition data, set targets, and develop strategies to prioritize investments to meet their goals.

The purpose of the FTA rulemaking is to help achieve and maintain a state of good repair (SGR) for the nation's public transportation assets. The rule develops a framework for transit agencies to monitor and manage public transportation assets, improve safety, increase reliability and performance, and establish performance measures.



## **PROCUREMENT AND THIRD PARTYING CONTRACTING**

NJ TRANSIT does not usually purchase capital equipment or federally funded facilities directly under Section 5311 other than vehicles. Subrecipients are allowed to apply for funding for capital. Any capital purchase greater than one thousand dollars (\$1,000) needs the prior approval of NJ TRANSIT. Subrecipients must submit all specifications, RFP's, IFB's and any other procurement documentation to NJ TRANSIT for review and approval prior to advertising or going out to bid for service or equipment. Subrecipients must also comply with the administrative procedures and requirements.

NJ TRANSIT Local Programs and Minibus Support staff can assist the subrecipient through the review of procurement specifications.

Subrecipients must ensure that all required federal clauses are attached to all state contract procurements including purchase orders as supporting documentation. Subrecipients that are local governments must comply with the same Federal requirements governing state procurements.

Subrecipients must comply with the Third Party Contracting Requirements of FTA Circular 4220.1F in the solicitation, award and administration of its third party contracts. Subrecipients must ensure that all third party contracts contain the required contract clauses. Subrecipients must also ensure that they complete all required certifications, reports, forms and other required items. Procurements must comply with DBE program requirements. See section of agreement "Disadvantaged Business Enterprise Program Requirements".

Subrecipients who fail to comply with any of the above procedures could forfeit the right to be reimbursed using FTA Section 5311 funds.

## **SATISFACTORY CONTINUING CONTROL**

NJ TRANSIT will make periodic reviews of projects utilizing site visits and desk audits to assess the efficiency and effectiveness of each project. When capital equipment is acquired or approved for use by any entity in providing transportation services designed to meet the needs of residents of non-urban/rural areas, provisions must be made to assure satisfactory continuing control of that capital equipment.

NJ TRANSIT retains the authority to make periodic reviews of projects and conduct site visits to assess the efficiency and effectiveness of each project. NJ TRANSIT designated employees are authorized to enter without delay and at reasonable times the premises of a subrecipient without the necessity of the subrecipient's permission, to inspect project equipment and records. As a standard practice, NJ TRANSIT will contact a subrecipient ahead of time to set up a time and place for a vehicle inspection. Inspections shall not commence without first identifying to the subrecipient the purpose of the visit, which is to complete a formal inspection of project equipment and records. Representatives from NJ TRANSIT are authorized to inspect subrecipient vehicles at any location and time as deemed appropriate by inspectors.

When conducting an inspection, the NJ TRANSIT representative shall present their credentials to the subrecipient, or vehicle operator, explain the nature and purpose of the inspection; and indicate, generally, the scope of the inspection. The scope of the inspection may be broadened if circumstances warrant. NJ TRANSIT inspectors shall have authority to photocopy records, interview staff, and take photographs related to the purpose of the inspection. The conduct of inspections shall be such as to minimize disruption of the operations of the subrecipient. At the conclusion of an inspection, the NJ TRANSIT representative shall confer with a representative of the subrecipient and advise him/her of any equipment defects discovered during the inspection.

Each vehicle will be inspected, at minimum, once every two years to determine the accuracy of required reports and to evaluate the overall condition of the vehicle. In addition, randomly selected maintenance records as well as an inspection of subrecipients maintenance facilities, if applicable, will be conducted during the scheduled site visit. If a follow-up inspection discloses that a subrecipient has failed to correct a defect, the subrecipient will be considered in noncompliance and NJ TRANSIT may consider, depending upon the severity of the infraction, termination of the lease agreement with the subrecipient. (See [EXHIBIT B](#)).

In addition, at least once every three years NJ TRANSIT will conduct an on-site program management review. The purpose of the review is to insure that the subrecipient is complying with all relevant program requirements.

## **FINANCIAL MANAGEMENT**

### **Financial Records**

Financial records, supporting documentation, and all other records pertinent to a grant must be retained by NJ TRANSIT and must be made readily available to authorized representative of the U.S. Department of Transportation and the Comptroller General of the United States for a period of three years. The retention period starts on the date of forwarding the final Financial Status Report (SF-269A). 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. A subrecipient should retain all records and supporting documentation until such time that NJ TRANSIT has notified them that the retention period has been reached.

### **Financial Guidance**

2 CFR Part 200, the Uniform Guidance, became effective for new awards and additional funding to existing awards on December 26, 2014, this provides the Federal guidelines for allowable cost for subrecipients which are Expenses such as indirect cost or payments to a self-insurance fund must be documented appropriately.

If subrecipients intend to charge indirect cost to this grant we must have a required approved Indirect Cost Allocation Plan.

## **BUDGET REVISIONS**

Subrecipients will submit a program budget with their yearly application subrecipient when needed may request to revise line items within the approved project budget or extend the terms of the project within the approved project funds, NJ TRANSIT will review and act on the request. Any request to transfer funds between project categories; operating, or non-operating, will be submitted to FTA as an information item in quarterly reports or the annual update of Program of Projects.

Any request by a subrecipient to increase the amount of funds for an approved project for which there are available funds will be reviewed by NJ TRANSIT after receipt of revised project description and a justification for additional funds. If the request is justified, NJ TRANSIT will grant approval by submission of a revised budget to FTA, and an amendment to the contract between NJ TRANSIT and the subrecipient will be executed. NJ TRANSIT's Section 5311 Agreements require that grantees request NJ TRANSIT approval for all subcontracts for operations of transit service, procurement of vehicles and/or procurement of professional services

## **AUDITS**

Subrecipient will perform a yearly audit report as prescribed by OMB Circular part 200.501 and in "Financial Reporting and Auditing Guidelines" .. The grant should be identified in the Audit by the following CFDA Number and Title: U.S. Department of Transportation, Federal Transit Administration CFDA 20.509 Formula grant Formula Grant for Other than Urbanized Areas (SECTION 5311). . The audit reports should be provided within 180 days following the close of the grant recipient's fiscal year.

The SUBRECIPIENT must retain in its files all payroll records and other documentation pertaining to work under this Agreement for a period of at least three (3) years after payment of the final voucher by the Federal Government or NJ TRANSIT as provided by applicable Federal and state statutes and regulations. The SUBRECIPIENT further agrees that NJ TRANSIT, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives may have access to these records for purposes of audit during normal business hours within the three year (3) retention period.

An examination of all accounts and financial records of the grant subrecipients and/or subgrant subrecipients is to be performed for each yearly period during which grant funds were earned. The examination shall be conducted in accordance with the Standards for Audits of Governmental Organizations, Programs, Activities and Functions and the Guidelines for Financial and Compliance Audits of Federally Assisted program issued by the United States General Accounting Office and generally accepted auditing standards established by the American Institute of Certified Public Accountants. The examination shall include such tests of the accounting records and such other auditing procedures considered necessary in the circumstances. **The examination shall be for the purpose of expressing opinion on:**

- a) The subrecipients complete financial statements prepared in conformance with generally accepted accounting principles.
- b) A project statement presenting revenues and expenses attributable to the project in accordance with the grant agreement.
- c) The individual grant recipient's compliance with the applicable legal and regulatory requirements, particularly the Financial and Accounting Conditions and Criteria for the Bus Operating Assistance Program (N.J.A.C. 16:53A1.1 et. Seq.)

**Each subrecipient shall submit the following reports each year:**

- a) A report on the complete financial statements prepared in conformity with generally accepted accounting principles.
- b) A report on the subrecipient's project statement and compliance with the terms of the grant contract and applicable laws and regulations.

**The accountant's report on the financial statements shall:**

- a) Identify the statements examined and the period covered.
- b) State that the audit was performed in accordance with the Standards for Audit of Governmental Organizations, Program, Activities and Functions and the Guidelines for Financial and Compliance Audits of

Federally Assisted Programs issued by the United States' General Accounting Office and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

- c) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, the nature of the qualification should be clearly stated.

**The accountant's report on the project statement shall:**

- a) Identify the financial statements that were examined and the period covered.
- b) State that the audit was performed in accordance with the Standards for Audit of Governmental Organizations, Program, Activities, and Functions and the Guidelines for Financial and Compliance Audits of Federally assisted Programs issued by the United States General Accounting Office and generally accepted auditing standards established by the American Institute of Certified Public Accountants.
- c) Identify the grant agreement under which the subrecipient received funds from NJ TRANSIT.
- d) Express an opinion as to whether the project statement is fairly presented in accordance with the terms of the grant agreement with NJ TRANSIT. If an unqualified opinion cannot be expressed, the nature of the qualification should be clearly stated.
- e) Contain an expression of negative assurance with respect to the subrecipient's compliance with the accounting, administrative and operational procedures of the grant agreement and applicable laws and regulations, particularly, the Financial and Accounting Conditions and Criteria for the Bus Operating Assistance Program (N.J.A.C. 16:53A-1.1 et seq.)
- f) Identify the nature and impact of any noted instances of noncompliance with the terms of the grant agreement and those provisions of law or regulations that could have a material effect on the project statement.

Subrecipients of funds under NJ TRANSIT'S NON-URBANIZED AREA FORMULA PROGRAM (§5311) will provide NJ TRANSIT with one audit report (hard copy or electronic formats via email) on a annual basis.

**CLOSE-OUT**

NJ TRANSIT shall initiate project closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed.

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame and no longer than two additional years after the original appropriation. If small amounts of funds remain in an inactive grant, the state will 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 to the state and are reapportioned by FTA among all the states in a subsequent year.

**REPORTING REQUIREMENTS**

**NJ TRANSIT is responsible for:**

**ANNUAL PROGRAM OF PROJECTS STATUS REPORTS**

NJ TRANSIT is required to submit to FTA an annual program status report for every active grant, covering the 12-month period ending September 30. The reports are due at the Regional Office within 30 days after the end of the reporting period. Reports consist of an updated program of projects and revised budget for each approved program of projects which contains active projects. The updated version should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. In addition, the state must include a narrative report indicating progress against milestones for vehicle procurements and/or construction projects, and estimating the revised completions date for the grants. Significant civil rights compliance issues occurring during the year (such as Title VI, EEO, or DBE complaints against the state or subrecipients) should be addressed in the annual status report. In addition, the state may report notable accomplishment or problems involving Section 5310 subrecipients. NJ TRANSIT has worked closely with the FTA Region II office and instead of the required annual reports, NJ TRANSIT submits reports on a quarterly basis as part of the quarterly reporting process.

## **FINANCIAL STATUS REPORTS**

The state must submit a Financial Status report for each active grant annually, for the period ended September 30. For the purpose of this report, funds are considered encumbered when agreements are signed with subrecipients.

## **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)**

FFATA requires that as federal grants are awarded certain details of sub-awards greater than \$25,000 be reported on [www.rsrs.gov](http://www.rsrs.gov). Within ten (10) business days of the FTA approval of a grant awarding funds under this program in FTA's Transit Award Management System (TrAMS) Capital Programs and Administration will provide Local Programs/Community Mobility with a copy of the grant. Local Programs/Community Mobility department staff will enter the required data for any subrecipient receiving greater than \$25,000.

## **SUBRECIPIENT is responsible for:**

### **MONTHLY SERVICE REPORTS**

The SUBRECIPIENT shall submit to NJ TRANSIT a Monthly Summary Report as provided by NJ TRANSIT. These reports shall be submitted twenty (20) days after the end of every month; ridership reports are now electronically submitted to NJ TRANSIT (See [EXHIBIT H](#)).

The SUBRECIPIENT shall also provide, as NJ TRANSIT may request, additional information NJ TRANSIT deems necessary. The SUBRECIPIENT shall also prepare and file, by the prescribed date, any and all reports required to be filed with any Federal, State or other funding or regulatory authority by reason of the operation of the contract service

### **QUARTERLY RIDERSHIP AND MAINTENANCE REPORTS (for Rolling stock only)**

All subrecipients are required to submit a Quarterly Ridership and Maintenance report to NJ TRANSIT for any active Section 5311 funded vehicle. These reports shall be used for review and analysis of performance and compliance requirements. This report includes ridership, usage, mileage, repair and maintenance cost information. Subrecipients must submit quarterly reports electronically to NJ TRANSIT via the S\_RIDES system. (See [EXHIBIT C](#)).

### **NTD REPORTS**

The National Transit Database (NTD) is the system through which the Federal Transit Administration (FTA) collects uniform data needed by the Secretary of Transportation to administer department programs. The data consists of selected financial and operating data that describe mass transportation characteristics. The legislative requirement for the NTD is found in Title 49 U.S.C. 5335(a):

Section 5335(a) National Transit Database (1) To help meet the needs of individual mass transportation systems, the United States Government, state and local governments, and the public for information on which to base mass transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories, to accumulate mass transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

(a)(2) The Secretary may make a grant under Section 5307 of this title only if the applicant and any person that will receive benefits directly from the grant are subject to the reporting and uniform systems.

The NTD reporting system evolved from the transit industry initiated Project FARE (Uniform Financial Accounting and Reporting Elements). Both the private and public sectors have recognized the importance of timely and accurate data in assessing the continued progress of the nation's mass transportation systems.

FTA conducted a comprehensive evaluation of the NTD in 2000 involving extensive outreach to the transit industry, assessment of the usefulness of NTD data to various constituencies, and balancing the usefulness of the data with the

reporting burden to transit agencies. FTA redesigned the NTD for fiscal year 2002 to better meet the needs of data reporters and users.

One of the major recommendations of the evaluation was to include rural transit data within the NTD to provide a more complete picture of our nation's public transit system. FTA is implementing this recommendation through initiation of a voluntary program for states to report key financial and operating data for rural transit providers of public transportation.

Recognizing the unique characteristics of rural transit, FTA sought assistance from the states in developing a pilot NTD Rural Data Reporting System that would be beneficial and feasible. The American Association of State Highway and Transportation Officials' (AASHTO's) Standing Committee on Public Transportation (SCOPT) formed a working group to assist FTA with the development of the data items and definitions for inclusion in the NTD Rural Data Reporting System. The NTD Rural Data Reporting System was piloted in the 2002 report year. In New Jersey, Section 5311 subrecipients were first asked to submit reports in 2006. NJ TRANSIT as the administrator of the Formula Program for Non-Urbanized Areas (Section 5311) will be responsible for the data collection and compilation from each rural provider in the state serving the general public.

The NTD Rural Data Reporting Manual consists of three forms that provide state agency identification information, financial and non-financial operating statistics for individual rural general public transit providers, and a statewide summary. **The three forms include:**

1. State Agency Identification form (RU-10)
2. Rural General Public Transit Service form (RU-20)
3. Urban Recipient Form (RU-23)
4. Statewide Summary -- Rural General Public Transit Service form (RU-30)

***Please note: Some Rural reporters may be subject to additional NTD reports depending on their Service Area.***

NJ TRANSIT will complete the State Agency Identification form and complete a Rural General Public Transit Service form for each provider of general public transportation service in the non-urbanized areas of the state. The Statewide Summary data is automatically generated from the data reported for individual providers. In order for NJ TRANSIT to complete and submit information, NJ TRANSIT's Local Program and Minibus Support Unit will ask each subrecipient to complete a RU-20 as early as September of each year in order that NJ TRANSIT can submit the required report by the deadline of October 28<sup>th</sup> of each year.

**All FTA subrecipients providing charter services must report quarterly to NJ TRANSIT.**

### **DBE REPORTS**

All FTA subrecipients receiving operating funding are required to complete and submit the Subrecipient DBE Reporting Form on a bi-annual basis to NJ TRANSIT. (See [EXHIBIT I](#)).

### **Transit Asset Management (TAM) Reporting**

Transit Asset Management applies to all recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of public transportation. All subrecipients under the Section 5311 Rural Area Formula Program are considered Tier II Providers. Each tier II provider must develop its own TAM plan or participate in a group TAM plan. **A tier II provider's TAM plan and a group TAM plan only must include the following 4 elements:**

1. An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under \$50,000 that is not a service vehicle. An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. The asset inventory must be organized at a level of detail commensurate with the level of detail in the provider's program of capital projects;
2. A condition assessment of those inventoried assets for which a provider has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization;
3. A description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization; and
4. A provider's project-based prioritization of investments.

**A TAM plan must cover a horizon period of at least four (4) years.**

**YEARLY DOCUMENTATION**

NJ TRANSIT requires annual affirmations either at time of application or with annual assurances, signed by the SUBRECIPIENT's legal authority certifying compliance with the following obligations Certification Regarding Lobbying Restrictions ([EXHIBIT J](#)) and Lobbying disclosure ([EXHIBIT K](#)); NJ TRANSIT Ethics ([EXHIBIT L](#)), ADA Affidavit ([EXHIBIT M](#)), as well as FTA's Annual Certifications and Assurances as they are released each year.

**OTHER PROVISIONS**

**FTA STANDARD CONTRACT CLAUSES**

All required Federal Transit Administration (FTA) Contract clauses set forth as part of the Federal Requirements are hereby incorporated into All Subrecipient and 3<sup>rd</sup> party Agreement (See [EXHIBIT A](#)- Federal Requirements and Clauses for full version).

**CHARTER SERVICE**

As a subrecipient of Federal Transit Administration (FTA) funding (Section 5307, 5310, 5311, 5316, and/or 5317) you are required to comply with the charter service rules, 49 CFR Part 604.

**Charter service is now defined as transportation provided at the request of a third party for exclusive use of a vehicle for a negotiated price or transportation provided to the public for events or functions that occur on an irregular basis or of a limited duration and a fare is charged (above regular fare) or a third party pays for part of or the whole service.**

The general goal of these regulations is to protect the private charter provider from unfair competition from FTA subrecipients; there are exceptions where the FTA subrecipient can provide charter service. Below are some of the exceptions but not all:

- **Exception one:** FTA subrecipients are allowed to provide charter services to human services organizations that receive funding, either directly or indirectly from the list of the 64 federal programs that are listed in "Appendix A" of this rule.
- **Exception two:** FTA subrecipients are allowed to provide charter services to Qualified Human Services Organizations (QHSEO), but these QHSEO must be registered on-line with the FTA (under charter service registration). In addition the transportation is limited only to senior citizens, people with disabilities or low income individuals.
- **Exception three:** FTA subrecipients can provide charter service whenever private charter service operators (who must also register on-line with the FTA under charter service registration) decline the opportunity to respond to a request for charter service. This exception only applies if the requestor of the charter service and the FTA subrecipient follow the charter service required notifications and registration procedures.
- **Exception four:** FTA subrecipients can provide charter service if they have filed a petition with the FTA Administrator and this petition has been approved. For example there could be a petition granted for an economic hardship imposed on the charter service requestor's customers if the FTA subrecipient couldn't provide the service.

There is a FTA on-line registration requirement for both private charter operators and certain QHSEOs. Private operators must register on-line, there is a detailed list of information they must provide including their geographic service area and whether they provide reduced rates to QHSEOs. The revised charter service rules includes a Private Operator's Bill of Rights, but only for those private operators who register on-line. A QHSEO is also required to register on-line if they do not receive one of the identified federal funds listed on Appendix A of the law.

If you are receiving FTA funds from 5310, 5311, 5316 and 5317, and using these funds for program purposes you are exempt from charter service rules. That is to say, you can only provide charter service that supports "program purposes" that are funded under these programs. However, you are still required to track all charter service requests from other parties and ensure that they follow the required charter rule registration and request process. **As a FTA subrecipient of these funds you are not required to register on-line.**

As a FTA subrecipient you must maintain records of charter requests, notices and charter services operating under the various exceptions in the charter service rules. This must be submitted to NJ TRANSIT on a quarterly basis.

### **PRIVATE SECTOR PARTICIPATION**

Under the requirements of 49 U.S.C. 5323(a)(1) States or local governmental authorities may use FTA funds to operate public transportation service in competition with or in addition to transportation service provided by an existing public transportation company only if the grantee "to the maximum extent feasible" provides for the participation of private companies. All projects are listed in the STIP and the MPO planning process provides adequate opportunity to address private sector concerns.

NJ TRANSIT recognizes that important opportunities to provide service exist particularly in the areas of human service transportation. Human service transportation generally refers to programs designed for individuals with lower incomes, people with disabilities, elderly persons, and sometimes children and youth. Private providers may be uniquely qualified to serve these specialized travel markets.

The New Jersey Council on Access and Mobility (NJCAM) is leading an interdepartmental effort in the State known as United We Ride to promote coordinated human service transportation delivery systems and improve access to



transportation-disadvantaged populations. This initiative emphasizes the need to develop coordinated transportation plans at the State and local level. Private operators have the opportunity to be active participants in the development of these plans. .

## **LABOR**

For almost all Federal transit programs involving transit operations, including Section 5311 program, 49 U.S.C. §5333(b) requires that fair and equitable arrangements must be made to protect the interests of employees affected by such assistance (see [EXHIBIT I](#)). The Department of Labor (DOL) is responsible under Federal law for the administration of Section 5333(b). DOL and DOT agreed upon a special Section 5333(b) Warranty for Section 5311 projects (Special Warranty), which was certified by the Secretary of Labor on May 31, 1979. The Special Warranty contains standard terms and conditions. While the state must still meet certain administrative requirements, acceptance of the Special Warranty by the subrecipients substitutes for the certification by DOL of individually negotiated agreements for each project within the state's program of projects for Section 5311. If DOL has certified comparable arrangement to be substituted for certain parts of the Special Warranty for use in a particular situation, acceptance of the warranty as modified is treated the same as acceptance of the Special Warranty.

Before undertaking a project, the subrecipient of Section 5311 funding (or legally responsible entity designated by the state) must agree in writing to the Special Warranty. The state must certify to DOL that each subrecipient included in the program of projects for a particular grant has agreed in writing to the Special Warranty before permitting the subrecipient to draw down Section 5311 funds for a project. Once a subrecipient has signed the Special Warranty it is not necessary for the subrecipient to sign it again for subsequent projects, but the state is responsible for assuring that each subrecipient has a currently valid signed Special Warranty and for certifying this to DOL for each grant. The Special Warranty also includes a requirement that the state "provide to DOL and maintain at all times an accurate, up-to-date listing of all existing transportation providers which are eligible recipients of transportation assistance funded by the project, in the transportation service area of the project, and any labor organization representing the employees of such providers." The state and each subrecipient must also post the Special warranty where affected employees may see it.

Part of the Special Warranty consists of certain specified terms and conditions derived from the National (Model) Agreement for Section 5333(b) dated July 23, 1975. Alternative arrangements comparable to those National (Model) Agreement terms and conditions incorporated in the Special comparable to those National (Model) Agreement terms and conditions incorporated in the Special Warranty may be substituted if approved and certified by the Secretary of Labor. Under certain rare circumstances, when there are no existing transportation related employees in the service area, the Secretary of Labor may, upon request, grant a waiver of the required labor protections. Requests for waivers or approval of alternative arrangement should be transmitted to DOL through NJ TRANSIT.

NJ TRANSIT will not draw down funds for a project unless the subrecipient has agreed in writing to the Special Warranty, and the state has certified this agreement to DOL, and provided DOL with the required list of eligible subrecipients and labor unions in the service areas of the project. If any noncompliance problems develop, DOL will inform FTA and work with the state and subrecipients to reach a satisfactory solution to permit the release of funds for the project in question.

## **SCHOOL TRANSPORTATION**

Section 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulations (49 C.F.R. Part 605) do permit regular service to be modified to accommodate school students along with the general public. For the purpose of FTA's school bus regulation, Headstart is a social service, not a school program. FTA subrecipients may operate vehicles, which meet the safety requirement for school transportation, but may not provide exclusive school service. In the State of New Jersey, in most cases, special license plates and equipment must be on school buses. Vehicles purchased under this program do not meet state laws regarding school buses and cannot be used to transport children to and/or from school or school related activities.

## **SAFETY**

FTA'S authority in the area of transit safety is set forth in Section 5329. FTA may withhold further financial assistance from any grantee that fails to correct any condition which FTA believes "creates a serious hazard of death or injury." FTA'S authority to investigate and make findings in certain safety-related areas is permissive, not mandatory.

## **DRUG-FREE WORKPLACE**

The Drug-Free Workplace Act is part of the federal government's effort to eliminate illegal drugs from the workplace. The Drug-Free Workplace Policy is a "first-tier" requirement applying to NJ TRANSIT and does not apply to subrecipients of Section 5310, Section 5311, Section 5316 and Section 5317.

## **DRUG AND ALCOHOL ABUSE**

Section 5311 subrecipients are required to comply with regulations issued by the FTA on drug and alcohol testing, 49 C.F.R. Parts 653 and 654. Among other requirements, subrecipients must require that all safety sensitive employees be tested for drug and alcohol use pre-employment (drug only), randomly, and post-accident, that certifications be made, and reports submitted. There are limited exceptions to the testing requirements for contract maintenance workers under Section 5311 and for volunteers.

NJ TRANSIT requires subrecipients to submit all required drug and alcohol test reports to the Local Programs Support Unit, no later than February 15<sup>th</sup> of each year. Those reports are then forwarded to NJ TRANSIT's Office of Capital Funding for submission to the FTA and/or their designee. All subrecipients must prepare and submit to NJ TRANSIT a written and approved Drug and Alcohol Testing Plan.

## **COMMERCIAL DRIVERS LICENSE**

Under federal law all drivers of vehicles designed to transport more than 15 persons (including the driver) must have a commercial driver's license (CDL). Mechanics that drive the vehicles must also have a CDL. The State of New Jersey has additional CDL requirements. If a subrecipient is not clear on whether or not the vehicle they have received under this program requires a CDL they should contact the NJ TRANSIT Local Programs and Minibus Support Unit immediately.

## **RESTRICTION 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. NJ TRANSIT, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and also must disclose the expenditure of non-Federal funds for such purposes (49 C.F.R. 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 (32 U.S.C. § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

## **PROTECTION OF THE ENVIRONMENT**

FTA has categorized typical projects according to the degree of environmental impact. Class 1 projects have a significant effect on the environment and therefore, require the preparation of an Environmental Impact Statement (EIS). Class 2 contains a list of types of projects, which normally do not have significant environmental effects. For certain FTA assisted projects, the significance of impacts cannot be readily determined. These class 3 projects require the preparation of a brief Environmental Assessment to establish the need for an EIS or provide the documentation for a Finding of No Significant Impact.

Section 5311 projects are usually classified as Class 2 and are therefore "categorically excluded." Projects considered as categorical exclusions include operating assistance, purchase of transit vehicles, new construction or rehabilitation of bus storage and maintenance facilities, or purchase of office equipment. If the applicant believes their project may not be classified as an exclusion the applicant should contact NJ TRANSIT early in the application process to determine if the applicant should include detailed project information to aid the FTA Regional Office in making a determination.

## **CLEAN AIR ACT**

The Clean Air Act, as amended, establishes many substantive requirements in order to bring air quality regions, which violate the national ambient air quality standards into attainment by prescribed dates. Most "nonattainment" areas are heavily urbanized, but in the case of areas that are nonattainment for ozone or small particulate matter (PM-10), substantial rural areas may be included within the nonattainment area boundaries.

Section 5311 subrecipients must be aware of the transportation/air quality conformity review process. In general, transportation plans, programs, and projects must be found to "conform" with approved state (air quality) implementation plans before they can be funded by FTA. Most of the projects typically funded under Section 5311 have been exempted by regulation from the conformity review process, e.g., operating assistance, purchase and rehabilitation of transit vehicles, operating equipment, construction of most storage and maintenance facilities, etc.

Other types of projects may require detailed air quality analysis in order to determine whether the project would create a violation of a standard or make an existing violation worse. While this is not an issue for most Section 5311 projects, it could be for certain large facilities, e.g., transit terminals and park-and-ride facilities.

Subrecipients should consult with NJ TRANSIT as early as possible to establish which project, if any, will require further analysis to support FTA's conformity determination. Consultation with the EPA and state and local air quality agencies is also required for all projects subject to the conformity review process;

Other Clean Air Act requirement may apply to the Section 5311 subrecipient, e.g., phase-in of more stringent bus emission standards. NJ TRANSIT, when necessary, will contact the FTA Regional Office and request additional up-to-date information on various provisions of the Clean Air Act related to mobile sources.

See all FTA Requirements and Clauses in [EXHIBIT A](#).

# EXHIBIT A

## FEDERAL REQUIREMENTS AND CLAUSES

### **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

### **Charter Bus Requirements**

These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 5323(d) and (r) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23

U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

### **School Bus Requirements**

Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

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

Violations. If a Recipient or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, and 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.

### **Energy Conservation**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

### **Clean Water**

All Contracts and Subcontracts over \$100,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33

U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for

influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

### **Federal Changes**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

### **Clean Air**

All contracts over \$100,000

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Recycled Products**

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C.

6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **Contract Work Hours & Safety Standards Act**

Applicability – Contracts over \$100,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

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

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

### **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US

Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Termination**

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

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

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve

the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor.

Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

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

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

### **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient agrees to the following: (1) It will comply with the 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, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third



Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

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

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

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

### **Civil Rights Requirements**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

a. The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.

b. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that it and each Third Party Participant, will: (1) Prohibit discrimination based on the basis of race, color, religion, national origin, sex, disability, or age. (2) Prohibit the: (a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332,

(b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or (c) Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332. (3) Follow:

(a) 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, and other applicable federal guidance that may be issued, but

(b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

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: (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 of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, and (3) Follow: (a) 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, (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) 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 on the basis of race, color, religion, sex, sexual orientation, gender identity, 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) 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, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement, (d) FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and (e) Follow other federal guidance pertaining to Equal Employment Opportunity 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: (a) Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent,

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

1 Recruitment advertising, recruitment, and employment, 2 Rates of pay and other forms of compensation, 3 Selection for training, including apprenticeship, and upgrading, and 4 Transfers, demotions, layoffs, and terminations, but (c) 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: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

e. Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws and regulations, 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: (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of the FAST Act, 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, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement. (2) 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 meeting the requirements of 49 C.F.R. part 26, that is approved by FTA, and establish an annual DBE participation goal. (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that: (a) 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 (b) 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 to FTA's electronic award and management system, the Recipient must also submit subsequent notifications if options are exercised in subsequent years to ensure the TVM is still in good standing. (4) Assurance. As required by 49 C.F.R. § 26.13(a): (a) Recipient Assurance. The Recipient agrees and assures that: 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted 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. (b) 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 on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, 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 13.d(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable, and 4 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. (5) 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.

f. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of sex, including: (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.

g. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act, 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, (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, Projects, and related activities receiving federal assistance, (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, and (5) Federal transit law, specifically 49 U.S.C. § 5332.

h. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability: (1) Federal laws, including: (a) 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 assisted Programs, Projects, or activities, (b) 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: 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but 2 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,” (c) 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, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities. (2) Federal regulations, including: (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 Disability 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. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (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 Persons with Disabilities,” 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, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (k) Other applicable federal civil rights and nondiscrimination guidance.

i. 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, as amended, 42 U.S.C. §§ 290dd – 290dd-2.

j. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following: (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.

k. Other Nondiscrimination Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination. l. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws, regulations, requirements, and guidance may be enforced as provided in those federal laws, regulations, or requirements.

## **Breaches and Dispute Resolution**

All contracts over \$100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of

any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

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

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **Transit Employee Protective Provisions**

Contracts for transit operations except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by FAST Act, 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 financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c)

It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and

(e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, (2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by FAST Act, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b),

(b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as

U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and 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 Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will 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 (b) FTA reserves the right to make other exceptions as it deems appropriate.

### **Disadvantaged Business Enterprise**

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation

has been established for this procurement, it is listed elsewhere.

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

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

### **Prompt payment**

Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

### **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in current FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

### **Drug and Alcohol Abuse and Testing**

Operational service contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by FAST Act, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

### **Other Federal Requirements**

The following requirements are not federal clauses.

### **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

### **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### **Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

### **Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master

Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

### **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Restrictions**

The Recipient agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a Recipient that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December 15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA.

### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations and (2 CFR § 200.501). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

### **CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF- SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



# EXHIBIT B

## VEHICLE INSPECTION

DATE: \_\_\_\_\_ **COUNTY:** \_\_\_\_\_ # \_\_\_\_\_

**TRANSPORTATION PROVIDER NAME:** \_\_\_\_\_

Vehicle Year	Inspection Sticker	Plate Number	Vin Number		Securements	Flp
			Registration	Insurance Card	Lift w/c	amb
Make	Model	Body			Odometer	

All items must be inspected. If an item is not applicable to this vehicle, place "N/A" in the item box. If an item is defective or requires maintenance place a "✓" in the "D" box. Also, place a "✓" in the appropriate operable "O" box as needed.

Exterior	D O		Safety Equipment	D O		Interior	D O	
Owned by decal (2)		5	Triangles (3)		1	Mirrors		2
NJT colors		5	First Aid Kit		2	Lights		3
NJT #'s (2)		5	Bloodborne Pathogen Kit		3	Horn		2
Body damage		-	Seat belt cutter (suggested)		-	Seats		2
Windows		2	Extra electrical fuses		5	<b>Seat Belts</b>		<b>0</b>
<b>2 Outside Mirrors</b>		<b>0</b>	Fire Extinguisher		2	AC/Heat/Defroster		2
Reflectors		2	Rear door buzzer		3	<b>Wipers/washer</b>		<b>0</b>
<b>Turn Signals</b>		<b>0</b>	Exit windows/buzzers		3	Gauges and Indicators		2
<b>Flashers</b>		<b>0</b>	Roof Hatch		3	<b>Brakes (Foot/Parking)</b>		<b>0</b>
<b>Tires</b>		<b>0</b>				Floor		2
<b>Headlights</b>		<b>0</b>				Steps		2
<b>Parking lights</b>		<b>0</b>				Body Damage		5
<b>Brake lights</b>		<b>0</b>				Passenger Door		1
<b>Tail Lights</b>		<b>0</b>				Driver Door		1
<b>Backup lights</b>		<b>0</b>				Cleanliness		2
<b>Clearance/Marker</b>		<b>0</b>						
<b>Reverse Alarm</b>		<b>0</b>						
Destination Sign		2						
Cleanliness		2						

Signage/Decals	D O		Lift	D O		Securements	D O	
No Smoke/Eat/Drink		5	<b>Interlocks/Belt</b>		<b>0</b>	<b>Belt (4 floor)</b>		<b>0</b>
Seat Belts Required		5	<b>Level Platform</b>		1	<b>Lap Belt</b>		<b>0</b>
Emergency Exits		3	Lift Lights		3	<b>Shoulder belt</b>		<b>0</b>
Securement Instructions		5	<b>Electric Wires (cut, frayed)</b>		<b>0</b>	<b>Floor Track</b>		<b>1</b>
Lift Operating Instructions		5	<b>Hand Pump</b>		<b>0</b>			
Vehicle Height		5	Hand Rails on Lift (2)		1			

**Comments and Observations of Inspector:**

All defects must be repaired within the number of days indicated. Vehicles may be placed out-of-service for Inoperable or Defective items listed in bold and shaded print. The vehicle may not be returned to service until defect is repaired and the Manager Minibus Support in the Office of Policy Technology & Customer Service is notified of the repairs.

**General Vehicle Condition:**    **Excellent** \_\_\_ **Good** \_\_\_ **Fair** \_\_\_ **Poor** \_\_\_ **Rec. Retirement** \_\_\_

Transportation Provider: \_\_\_\_\_

NJ TRANSIT Inspector: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

# EXHIBIT C

## Vehicle Quarterly Reports

### NJ TRANSIT Community Mobility, Local Programs and Minibus Support Quarterly Vehicle Ridership Report – Definitions/Instructions

The Federal Transit Administration requires certification that funded vehicles are being used responsibly. Therefore, Quarterly Vehicle Ridership Reports (QVRR) are distributed to each grant recipient agency, for each vehicle operated, to collect operating information and to attest to appropriate vehicle use and management procedures.

NJ TRANSIT Local Programs and Minibus Support must receive a QVRR for each vehicle operated by your agency and, funded through the Federal Section ARRA, 5307, 5310, 5311, 5316 and 5317 programs every calendar quarter throughout the useful life of the vehicle.

The QVRR **submitted to NJ TRANSIT electronically via S-RIDES** onto <http://s-rides.njtransit.com/> on or before the 30th day of the month following the close of each calendar quarter. Chronic failure to complete a QVRR accurately and promptly may result in termination of a contract/lease, repossession of project equipment and/or a rating penalty assessed to subsequent grant applications.

<u>Quarter</u>	<u>Report Due No Later Than</u>
January - March 30	April 30
April - June 30	July 31
July - September 30	October 31
October - December 31	January 31

**Trip by Trip Purpose and Customer Characteristics Headings** - There are two headings Trip by Trip Purpose and Trip by Customer Characteristics. For each vehicle provide the number of one way trips in each of the columns below these headings.

**One Way Trip** - is defined as one passenger traveling in one direction from an origin to a destination; also referred to as an “unlinked passenger trip”. Two people traveling in one direction equal two one-way trips; two people making a round trip equal four one-way trips. Personal care attendants and companions of a passenger are counted; however, they should be included in the “Other” category. In addition those using ARRA, 5307, 5311, 5316 and 5317 funded vehicles in general public transportation can put ridership in the “Other” category.

**Please Note:** The "Total" of one way trips by "Trip Purpose" **must equal** the "Total" of one way trips by "Customer Characteristics". The S-RIDES system will auto-fill the totals after you enter the data and hit the save button.

**The following definitions correspond with Customer Trip Purposes Heading:**

**Days Operated** - The number of days the vehicle operated to meet the service provided for the reporting period.

**Medical** - trips taken for medical appointments such as dialysis, doctor's offices, physical therapy, chemotherapy etc.

**Non Competitive Employment** - trips to places of employment of a non-competitive nature (i.e. sheltered workshop or extended employment center).

**Competitive Employment** - trips to places of gainful employment.

**Recreation** - Number of trips to senior centers, sporting events, concerts, plays or community sponsored special events as well as planned social outings.

**Training & Education** - Number of trips to schools or vocational training centers, full-time or part-time, day or evening, credited or non-credited.

**Nutrition** - Number of trips exclusively to/from designated nutrition sites and centers with the primary purpose of obtaining a meal.

**Shopping** - Number of trips to any shopping area or store.

**Other** - Any trip that does not fit in any of the other categories including personal care attendants or for errands such as banking, hair salon or visiting friends or for a deviated route service (open door policy) where you do not collect this data.

**Total** - The total is auto-filled by the S-RIDES system upon saving your data. The system calculates Customer Trip Purpose data across the columns left to right.

**The following definitions correspond with Customer Characteristics Heading:**

**Senior Ambulatory** - A trip taken by a customer who is 60 years of age or older and who can walk with or without the use of a mobility device such as a cane or walker.

**Senior Non Ambulatory** - A trip taken by a customer who is 60 years of age or older, who cannot walk and uses a mobility device such as a wheelchair or scooter.

**Disabled Ambulatory** - A trip taken by an individual who is **less** than 60 years of age, who has a physical or mental impairment that substantially limits one or more major life activities and who can walk with or without the use of a mobility device such as a cane or walker.

**Disabled Non Ambulatory** - A trip taken by a customer who is **less** than 60 years of age, who cannot walk and uses a mobility device such as a wheelchair or scooter.


**Other** - Any customer trip that does not fit in any of the above Customer Characteristic categories such as personal care attendants, companions or for a deviated route service (open door policy) where you do not collect this data.

**Total** - The total is auto-filled by the S-RIDES system upon saving your data. The system calculates Customer Characteristics data across the columns left to right.

**Validation** – After hitting the “Submit” button, you must validate the data by checking the box, when prompted and by doing so you certify that:

1. The above information is true and verifiable.
2. The transportation service provided has been operated in accordance with the project application and contract.

# SAMPLE



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**OCEAN COUNTY**  
**TRANSPORTATION**

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Home
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Import
Account History

## Quarterly Vehicle Ridership

Year:  Quarter:

Status: SUBMITTED

Filter Data:

[Export Data Into Excel](#)

### ^ Trip Purpose

Vehicle	Days Operated	Medical	Non Comp. Employment	Comp. Employment	Recreation	Training & Education	Nutrition	Shopping	Other	Total Trips
16-1124	11	12	6	0	0	0	0	0	0	18
16-1125	0	0	0	0	0	0	0	0	0	0
16-1127	0	0	0	0	0	0	0	0	0	0
16-1137	0	0	0	0	0	0	0	0	0	0
16-1319	0	0	0	0	0	0	0	0	0	0
16-939	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>11</b>	<b>12</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>18</b>

### ^ Customer Characteristics

Vehicle	Senior Ambulatory	Senior Non Ambulatory	Disabled Ambulatory	Disabled Non Ambulatory	Other	Total Trips

**NJ TRANSIT Community Mobility, Local Programs and Minibus Support  
Quarterly Vehicle Maintenance Report Definitions**

**Actual Miles Driven** - Enter the actual miles a vehicle traveled in the quarter; the sum of vehicle service and non-service miles.

**Odometer Reading** - Enter the odometer reading at end of quarter.

**Days Out of Service** - Enter the number of days the vehicle was out of service during the quarter due to preventive maintenance performed and/or other mechanical failures. This would be for service days (days of normally scheduled operation) that vehicle was not available for service.

**Total Cost** - Total of all expenses for maintenance and repairs performed during this quarter. Cumulative costs for all maintenance and repairs indicate on this report.

**PM Performed - Vehicle and Engine Preventative Maintenance Performed (VEPM)** – Check appropriate boxes to indicate the type of VEPM performed during this quarter: oil, filters, tune-up, tires, brake system, cooling/heating system and/or lift.

**Other Maintenance** - Check appropriate boxes for other maintenance items noted: transmission, drive train, electrical, exhaust or other.

**Mechanical Failures (Text box)** – Note any mechanical failures that occurred during this quarter. A failure of some mechanical element of the vehicle that prevents the vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip because actual movement is limited or because of safety concerns. Examples include: breakdown, brake failure, doors, engine cooling system, steering and front, rear axle and suspension and torque converters.

**Damage/Accidents (Text box)**: Describe any vehicle damage or accident that occurred during the quarter including the date of incident. You must notify Local Programs and Minibus Support, NJ TRANSIT within 24 hours of any accident as per your lease requirements.

**Other PM (Preventative Maintenance) (Text box)** – A failure of some other mechanical element of the revenue vehicle that because of local policy prevents the vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip even though the vehicle is physically able to continue in revenue service. Examples of other bus failures include: breakdowns of fare box, wheelchair lifts, heating, ventilation and air conditioning (HVAC) and other problems not included as a mechanical failure.

# SAMPLE



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TRANSPORTATION

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[e-Forms](#)

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[Account History](#)

## Quarterly Maintenance Ridership

Year:

Quarter:

Status: Draft

Filter Data:

[Export Data Into Excel](#)

### ^ Maintenance Data

Vehicle	Actual Miles driven this quarter	Odometer	Days out of Service	Total Cost
16-1124	0	0	0	0
16-1125	0	0	0	0
16-1127	0	0	0	0
16-1137	0	0	0	0
16-1319	0	0	0	0
16-939	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### ^ PM Performed

# EXHIBIT D

## SUBRECIPIENT NON-VEHICLE ASSET MANAGEMENT

### NJ TRANSIT Policy and Subrecipient Certification of Use

#### NJ TRANSIT POLICY

It is the responsibility of Local Programs and Community Mobility to ensure that all non-vehicle equipment with a federal interest continues to be in program use as approved under the FTA grant the non- vehicle equipment was initially purchased from.

Each year subrecipients with active non-vehicle equipment are sent a list of capital equipment in their possession that retains a federal interest. Each such subrecipient must sign this annual Certificate of Use certifying that the equipment is being used in accordance with the original approved purpose of the equipment. Subrecipients must continue to submit this Certification of Use annually until there is no longer a federal interest in the capital items (s). Each year the non-vehicle inventory list will be revised by NJ TRANSIT based on the useful life criteria for non-vehicle equipment.

All non-vehicle equipment purchased with FTA funds must be labeled with grant year, funding source and date of purchase and be available for inspection by NJ TRANSIT staff when on site.

All federally-funded non-vehicle equipment must be kept in safe and clean condition and in good working order, and garaged or stored in a secure manner. The subrecipient must properly maintain the equipment according to the procedures described in the manufacturer's service manual and through generally accepted industry practices for such equipment. Besides this normal maintenance, the equipment should be regularly inspected by trained maintenance personnel and any problems uncovered through this inspection corrected in a reasonable time. Components of equipment should be tested regularly and kept in good working order.

In addition non-vehicle equipment with purchase price of \$5,000 and over must have a corresponding written maintenance plan; the plan must describe in detail the maintenance and frequency of maintenance for each item with value of \$5,000 or over. Written maintenance records of equipment must be maintained for the useful life of non-vehicle equipment.

#### CERTIFICATION OF USE

This is to certify that \_\_\_\_\_ (*Name of Agency*) continues to use the non-vehicle equipment on attached inventory. This non-vehicle equipment continues to be used for purposes they were purchased for, are maintained and are in good working order.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name of Authorized Official**

\_\_\_\_\_  
**Title**

# EXHIBIT E

## MONTHLY SUMMARY REPORT (MSR)

### **Introduction**

The Monthly Summary Report form is used by SUBRECIPIENTS to report the transportation services supplied to all funding sources during each month.

In order for NJ TRANSIT to make payment, the SUBRECIPIENT submit monthly properly executed Expenditure Report and Reimbursement Request forms accompanied by supporting documentation of actual expenses incurred. Since NJ TRANSIT is implementing the electronic submittal of Monthly Summary Reports we no longer ask that these accompany the Expenditure Report and Reimbursement Request forms.

***The Monthly Summary Report information must be compiled monthly and submitted electronically to NJ TRANSIT no later than twenty (20) days after the close of each month.***

### **General Instructions:**

The MSR provides for the reporting of non-financial data which is necessary to fulfill both State and Federal requirements to support coordinated transportation operations. The non-financial data includes the Number of Passengers, Passenger Trip Purposes, and Client/User Characteristics to measure the benefits provided to agency consumers.

The MSR maintains data on the units of service received each month through the Senior Citizen and Disabled Resident Transportation Assistance program and by other funding services, which reimburse the transportation project. The MSR is used to summarize monthly services received by each agency or program on a separate line.

The Service Report is the basic document of accountability of services provided and enables each funding agency to monitor these services on a regular basis.

### **Program:**

This column lists the various funding sources that you receive, and then following the columns to the right is where you input the data per each funding source. At a minimum you must list all the funding sources you receive that are administered by NJ TRANSIT and the County contribution. NJ TRANSIT administered funding programs include the following: Enhanced Mobility for Senior and Persons with Disabilities (S5310), SCDRTAP (on the report this appears as Casino), CMAQ, Community Shuttle, Rural Transportation (5311), NJ JARC, New Freedom (5317) and/or Urbanized Area (5307).

You may choose to list your other funding sources individually or combine them into one as an "other" category.

For Federally funded programs that require a match you are to report the data as if fully funded by the Federal program. You may however break out a county contribution if the cost of the service is above and beyond the cost of the Federal funding being provided.

### **Mode of Service Headings:**

This section is split into two areas Demand Response and Route Deviation as defined below. By funding source complete the requested data in each of the columns below these headings.

**Demand Response** - Shared ride service operating in response to calls from passengers or their agents to the transit operator who schedules a vehicle to pick up the passengers to transport them to their destinations. Demand Response mode of service consists of Regular Passenger Trips and Subscription Trips as defined below.

**Route Deviation** - Transit service that operates along a fixed alignment or path at generally fixed times, but may deviate from the route alignment to collect or drop off passengers who have requested the deviation.

**The following definitions correspond with each column's heading:**

### **Demand Response and Route Deviation**

**Demand Response Passenger Trip** - In order for a customer to take this trip, they must have requested transportation from origin to a destination on a specified date and time. A unit of service equals one passenger traveling in one direction from an origin to a destination; also referred to as a "one-way trip" or "unlinked passenger trip". For example two people are traveling in one direction equal two one-way trips; two people making a round trip equal four one-way trips. Personal care attendants and companions of a passenger are counted; however, they should be included in the "Other" category. **For the purpose of this report** you are to count your regular Passenger Trips separately from your Subscription Trips.



**Demand Response Subscription Trips** - Trips that customers take on a regular basis, usually 3-5 days a week. Unlike regular demand response trips once given a subscription trip these customers do not have to call daily to arrange their trip, instead these trips are scheduled to meet the travel needs of customers who sign up for the service in advance. For the purpose of this report you are to count your Subscription Trips separately from your regular Passenger Trips.

**Demand Response Fares** - The amount of money collected in fares from the Demand Response Services during the reporting period.

**Total Trips for Demand Response** - This number is automatically calculated by the system as a sum of your regular Passenger Trips and Subscription Trips.

**Route Deviation Passenger Trips** - In order for a customer to take this trip, they either board the vehicle as it operates along its fixed alignment or path, or they call to request a deviation of that route for their pick-up or drop-off. A unit of service equals one passenger traveling in one direction from an origin to a destination; also referred to as a "one-way trip" or "unlinked passenger trip". For example two people are traveling in one direction equal two one-way trips; two people making a round trip equal four one-way trips. Personal care attendants and companions of a passenger are counted; however, they should be included in the "Other" category.

**Number of actual deviations** - This is the actual number of times your vehicle deviate from it's original route to pick up a passenger.

**% of actual deviations** - The system will calculate this for you.

**Route Deviation Fares** - The amount of money collected in fares from the Route Deviation Services during the reporting period.

**Total Trips for Demand Response & Route Deviation** - This number is automatically calculated by the system as the sum of each mode of service's trips. Total Trips = Demand Response Passenger Trips + Demand Response Subscription Trips + Route Deviation Passenger Trips.

#### **Customer Trip Purpose:**

**Medical** - trips taken for medical appointments such as dialysis, doctor's offices, physical therapy, chemotherapy, etc.

**Non Competitive Employment** - trips to places of employment of a non-competitive nature (i.e. sheltered workshop or extended employment center).

**Competitive Employment** - trips to places of gainful employment.

**Recreation** - trips to senior centers, sporting events, concerts, plays or community sponsored special events as well as planned social outings.

**Education & Training** - trips to schools or vocational training centers, full-time or part-time, day or evening, credited or non-credited.

**Nutrition** - trips exclusively to/from designated nutrition sites and centers with the primary purpose of obtaining a meal.

**Shopping & Personal** - trips to any shopping area or store, or for individual recreation purposes.

**Other** - Any trip that does not fit in any of the above trip purpose categories, for example personal care attendants, companions or for a deviated route service (open door policy) where you do not collect this data.

**Total Trips** - This number is automatically calculated by the system as the sum of each Trip Purpose.

#### **Customer Characteristics:**

**Senior Ambulatory** - A trip taken by a customer who is 60 years of age or older, who can walk with or without a mobility device such as a cane or walker.

**Senior Non-Ambulatory** - A trip taken by a customer who is 60 years of age or older who uses a mobility device such as a wheelchair or scooter.

## EXHIBIT E– MONTHLY SUMMARY REPORT (MSR) (continued)

**Disabled Ambulatory** - A trip taken by an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment who can walk with or without a mobility device such as a cane or walker.

**Disabled Non-Ambulatory** - A trip taken by an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment who uses a mobility device such as a wheelchair or scooter.

**Other** - Any customer trip that does not fit in any of the above Customer Characteristic categories such as personal care attendants, companions or for a deviated route service (open door policy) where you do not collect this data.

**Total Trips** - This number is automatically calculated by the system as the sum of each Customer Characteristic.

### **Demand Response Only and Route Deviation Only Headings (for all programs):**

This section is also split into the two areas Demand Response Only and Route Deviation Only. This section is a total for all funding sources combined. The heading will indicate for all programs, please enter total in each of the columns below these headings.

**VOMMS (Vehicles Operated in Monthly Maximum Service)** - The number of vehicles operating to meet the maximum service requirement (exclude atypical days such as holiday celebrations or one-time special events), or how many vehicles you operate during your peak hours of service.

**Number of Days Operated** - The number of days the vehicle operated to meet the maximum service provided for the reporting month (exclude atypical days such as holidays but include weekends if you offer service during that time).

**Number of Days Not Operated** - The number of days the vehicle did not operate to meet the maximum service provided for the reporting month (exclude atypical days such as holidays but include weekends if you offer service during that time).

**Days Not Operated Due to Emergency** - The number of days that service did not operate due to emergencies, such as floods, snowstorms, or tornadoes. A person in authority (usually the mayor, county head or governor) must officially declare an emergency.

### **Monthly Ridership (for all programs):**

**Passenger Miles** - This box must be completed by everyone receiving funding from any of the following funding sources: CMAQ, 5309/Community Shuttle, 5309/ Earmarks, 5307/Urban, 5310/JARC, 5310/New Freedom. This number shall be the cumulative sum of passenger miles for all of your funding sources including those not listed above. Passenger miles are the cumulative sum of distances ridden by each customer. A unit of service equals one customer traveling in a vehicle per one mile; example: ten customers traveling one mile equals ten passenger miles. Your passenger miles shall be inclusive of all your funding sources supporting all demand response service that you operate. This definition also applies to Route Deviation Service.

**Actual Miles** - The actual miles a vehicle travels; the sum of vehicle service and non-service miles. This definition also applies to Route Deviation Service.

**Revenue Miles** - The number of miles a vehicle travels in service from the time of the first passenger pickup and the last passenger drop off. It does not include deadhead miles, those miles between the garage to the first passenger pickup and between the last passenger drop off and garage. *This definition also applies to Route Deviation Service.*

**Actual Hours** - The actual hours a vehicle is in service; the sum of vehicle service and non-service hours. This definition also applies to Route Deviation Service.

**Revenue Hours** - The total number of hours driven from the time of the first passenger pickup to the last passenger drop off. It does not include the time between the garage to the first passenger pickup and between the last passenger drop off and the garage. This definition also applies to Route Deviation Service.

## EXHIBIT E –MONTHLY SUMMARY REPORT (MSR) (continued)

### **Monthly Cancellations (for all programs):**

**Provider Cancelled Trips** - A trip that the provider/operator cannot provide as scheduled. The customer is expecting service and the transportation provider cancelled the trip.

**Customer Cancelled Trips** - A trip that the customer cancelled within the prescribed timeframe allowed for cancellations.

**Customer No Shows** - A trip in which the vehicle arrives at the pick-up point of the customer, but the customer requesting the trip is not available or present. In many cases a NO SHOW is also defined as when a passenger gives less than a prescribed notice of cancellation. (For example: less than 30 minutes before a scheduled trip).

**Denials** - A trip request, which was not accepted because the service provider, for a variety of reasons, cannot accommodate the trip for the day and/or time requested; the provider is not able to offer an alternative acceptable to the passenger.

EXHIBIT E – MONTHLY SUMMARY REPORT (MSR) (continued)

MONTHLY SUMMARY REPORT (MSR) must be submitted to NJ TRANSIT electronically via S-RIDES

SAMPLE

**Monthly Ridership**

Year: 2013    Month: January    Search

Status: DRAFT

Filter Data: All Programs    Edit    Submit

[Export Data Into Excel](#)

Program	Demand Response Passenger Trips	Demand Response Subscription Trips	Demand Response Fares	Total Trips for Demand Response	Route Deviation Passenger Trips	Number of Actual Deviations	% of Actual Deviations	Route Deviation Fares	Total Trips for Demand Response & Route Deviation
21 PLUS	0	0	0	0	0	0	0	0	0
MEDICAID (TITLE XIX)	0	0	0	0	0	0	0	0	0
NEW FREEDOM	0	0	0	0	0	0	0	0	0
OTHER	0	0	0	0	0	0	0	0	0
TITLE III (NUTRITION)	0	0	0	0	0	0	0	0	0
<b>Total</b>	0	0	0	0	0	0	0	0	0

Program	Medical	NonComp. Employment	Comp. Employment	Recreation	Education & Training	Nutrition	Shopping & Personal	Other	Total Trips
21 PLUS	0	0	0	0	0	0	0	0	0
MEDICAID (TITLE XIX)	0	0	0	0	0	0	0	0	0
NEW FREEDOM	0	0	0	0	0	0	0	0	0

**Total**    0    0    0    0    0    0    0    0    0

**Customer Characteristics**

Program	Senior Ambulatory	Senior NonAmbulatory	Disabled Ambulatory	Disabled NonAmbulatory	Other	Total Trips
21 PLUS	0	0	0	0	0	0
MEDICAID (TITLE XIX)	0	0	0	0	0	0
NEW FREEDOM	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TITLE III (NUTRITION)	0	0	0	0	0	0
<b>Total</b>	0	0	0	0	0	0

**Demand Response Only (for all programs)**

VOMMS	Days Operated	Days Not Operated Due to Strike	Days Not Operated Due to Emergency
0	0	0	0

**Route Deviation Only (for all programs)**

VOMMS	Days Operated	Days Not Operated Due to Strike	Days Not Operated Due to Emergency
0	0	0	0

**Monthly Ridership (for all programs)**

Demand Response Passenger Miles	Demand Response Actual Miles	Demand Response Revenue Miles	Demand Response Actual Hours	Demand Response Revenue Hours	Route Deviation Passenger Miles	Route Deviation Actual Miles	Route Deviation Revenue Miles	Route Deviation Actual Hours	Route Deviation Revenue Hours
0	0	0	0	0	0	0	0	0	0

**Monthly Cancellations (for all programs)**

Provider Cancelled Trips	Customer Cancelled Trips	Customer No Shows	Denials
0	0	0	0

# EXHIBIT F

## *ADA Certification of Equivalent Service*

The (name of agency) certifies that its demand responsive/ Route Deviation service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

- (1) Response time;
- (2) Fares;
- (3) Geographic service area;
- (4) Hours and days of service;
- (5) Restrictions on trip purpose;
- (6) Availability of information and reservation capability; and
- (7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.77, public entities operating demand responsive/ Route Deviation systems for the general public which receive financial assistance under 49 U.S.C. 5311 or 5307 must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving FTA funds shall also file the certification with the appropriate state program office. Such public entities receiving FTA funds under any other section of the FT Act must file the certification with the appropriate FTA regional office. This certification is valid for no longer than one year from its date of filing.

---

(Name of authorized official)

---

(Title)

---

(Signature)

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

# EXHIBIT G

## Section 5333(b)

The attached Special Warranty and the procedures incorporated therein represent the understandings of the Department of Labor and the Department of Transportation with respect to the formula Grant Program for Areas Other Than Urbanized Areas (C.F.R. U.S.C. Section 5311)

The Department of Transportation will make this Special Warranty a part of the contract of assistance between the U. S. Department of Transportation and each state agency designated to receive and administer funds under Section 5311 of the Urban Mass Transportation Act of 1964, as amended.

The Secretary of Labor has found that the terms and conditions of the Special Warranty meet the requirements of Section 5333(b) of the Urban Mass Transportation Act of 1964, as amended. Accordingly, the Secretary of Labor hereby makes the certification that inclusion of these terms and conditions in formula grant contract for small urban and rural program grants meets the requirements of Section 5311 of the Urban Mass Transportation Act of 1964, as amended.

### A. General Application

The Public Body (A) agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project (Recipient), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Body shall provide to the Department of Labor and maintain at all times during the Project an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by the Public Body to the Department of Labor that the designated Recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of Section 5311 funding in the absence of a finding of non-compliance by the Department of Labor.

### B. Standard Terms and Conditions

The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient and any other legally responsible party designated by the Public Body to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interest of affected employees. The term a Project, as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of the Model agreement or applicable provisions of substitute comparable arrangements.

(a) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under an in accordance with any collective bargaining agreement applicable to such employees which is then in effect.

- (b) The Recipient or legally responsible party shall provide to all affected employees sixty (60) days notice of intended actions which may result in displacements or dismissal or rearrangements of the working forces. In the case of employees represent by a union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Recipient=s employment available to be filled by such affected employees
- (c) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees' negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the paragraph (4) of this warranty. The foregoing procedures shall be complied with and carried out prior to the institution of the intended action.

For the purpose of providing the statutory required protections including those specifically mandated by Section 5333(b) of the Act, the Public Body will assure as a condition of the release of funds that the Recipient agrees to be bound by the terms and conditions of the National (Model) Section 5333(b) Agreement executed July 23, 1975, identified below<sup>2</sup>, provided that other comparable agreements may be substituted therefore, if approved by the Secretary of Labor and certified for inclusion in these conditions.

Any dispute or controversy arising regarding the application, interpretation, or enforcement of any of the provisions of this arrangement which cannot be settled by and between the parties at interest within thirty (3) days after the dispute or controversy first arises, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

The Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these arrangements, or the union representative of such employee, may file claim of violation of these arrangements with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (5311) months of the date his position with respect to his

employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim.

Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor shall this arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state or local law.

In the event any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient or other legally responsible party designated by the Public Body shall provide, or provide for, such training or retraining at no cost to the employee.

The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Urban Mass Transportation Act and has agreed to comply with the provisions of Section 5333(b) of the Act. This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient details as to provide the basic information necessary to the proper application, administration, and enforcement of these arrangements and to the proper determination of any claims arising thereunder.

Any labor organization which is the collective bargaining representative of employees covered by these arrangements, may become a party to these arrangements by serving written notice of its desire to do so upon the Recipient and the Department of Labor. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party to these arrangements, as applied to the Project, the dispute as to whether such organization shall participate shall be determined by the Secretary of Labor.

In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Public Body or Recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

### C. Waiver

As a part of the grant approval process, either the recipient or other legally responsible party designated by the Public Body may in writing seek from the Secretary of Labor a waiver of the statutory required protections. The Secretary will waive these protections in cases, where at the time of the requested waivers, the Secretary determines that there are no employees of the Recipient or of any other surface public transportation providers in the transportation services area who could be potentially affected by the Project. A 30-day notice of proposed waiver will be given by the Department of Labor and in the absence of timely objection; the waiver will become final at the end of the 30-day notice period. In the event of timely objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of waiver, these protections shall apply to the Project.



**EXHIBIT G (continued)**

***5333(b) Certification Letter***

[Insert Date]

NJ TRANSIT  
Local Programs and Minibus Support  
One Penn Plaza East, 4<sup>th</sup> floor  
Newark, New Jersey 07105-2246

Dear:

The Name of Applicant has made application to NJ TRANSIT and the Federal Transit Administration pursuant to Section 5311 of the Federal Transit Act, as amended for a mass transportation grant to assist in the reimbursement of operating and/or non-operating expenses for the period January 1, 2018 to December 31, 2018.

The Name of Applicant agrees that, in absence of a waiver by the Department of Labor the terms and conditions of the Special Section 5333(b) Warranty shall apply for the protection of the employees of any employer providing transportation service assisted by the Project, and the employees of any other surface public transportation providers which are eligible recipients, in the transportation service area of the Project. The Warranty arrangement shall be made part of the contract of assistance and shall be binding and enforceable by and upon the parties thereto, by any covered employee or his representative.

Additionally, pursuant to Section (A) of the Special Section 5333(b) Warranty, included with this submission is a listing of all transportation providers in the geographic area of our project and any labor organizations representing the employees of such providers.

Sincerely,

Signature of Authorized Representative  
[Name of Authorized Representative]  
[Title of Authorized Representative]

# EXHIBIT H

## NON-URBANIZED AREA FORMULA PROGRAM (§5311)

### Monthly Expenditure Report and Reimbursement Request

#### **INTRODUCTION**

The NJ TRANSIT Non-Urbanized Area Formula Program (Section 5311) Expenditure Report and Reimbursement Request forms are used by Subrecipients to request reimbursement for eligible expenses incurred under the FTA's Section 5311 Agreements with NJ TRANSIT. In order for NJ TRANSIT to make payment, the Subrecipient must submit monthly properly executed Expenditure Report and Reimbursement Request forms accompanied by supporting documentation of actual expenses incurred. The Expenditure Report and Reimbursement Request forms and the corresponding Monthly Service Report forms must be compiled monthly.

When submitted for payment monthly, the Expenditure Report and Reimbursement Request forms, along with supporting documentation of actual expenses incurred forms must be mailed to NJ TRANSIT no later than forty-five (45) days from the last day of each month. If more than forty-five (45) days is required, the Subrecipient shall notify NJ TRANSIT in writing at the start of the contract year. The Monthly Summary Reports (MSRs) are due to NJ TRANSIT via electronically twenty (20) days, to be reimbursement for expenses Subrecipients must be up to date with submittals of their Monthly Summary Reports.

#### **GENERAL INSTRUCTIONS**

Annually each SUBRECIPIENT shall receive Reimbursement Request forms from NJ TRANSIT. The forms will contain the approved Operating line item budget in the Project Budget column. The SUBRECIPIENT must complete the form by supplying the information regarding payable (ORGANIZATION NAME AND MAILING ADDRESS) and the (NAME, TITLE AND PHONE NUMBER) of the Authorized Certifying official. The project budget, address and name cannot be changed since it must match NJ TRANSIT's Financial System.

Monthly each SUBRECIPIENT must enter the **REPORT DATE, EXPENSE PERIOD, REIMBURSEMENT REQUEST, and REIMBURSEMENT TO DATE** information and have the Authorized Certifying official sign the Expenditure Report and Reimbursement Request form.

#### **PROJECT BUDGET**

The Expenditure Report and Reimbursement Request forms contain each project's Operating line item budget in the Project Budget column. The line items containing dollar amounts are the only expense categories that will be reimbursed. The SUBRECIPIENT may request line item budget revisions, the budget revision request must be submitted in writing and require NJ TRANSIT approval. If approved NJ TRANSIT send approved revised reimbursement form to the SUBRECIPIENT.

#### **REIMBURSEMENT REQUEST**

SUBRECIPIENTs must compile their expense records, subtotal expenses by category line item and record the subtotals on the appropriate reimbursement form. The line items should then be added and the total recorded on the Total Expenses line. Finally, after the required match (and fare and or donation if applicable) is deducted the reimbursable total is entered on the Total Reimbursable line. Reimbursement documentation should be attached for equaling amounts to be reimbursed.

#### **REIMBURSEMENT TO DATE**

This column accumulates prior and current period reimbursement requests by line item and will assist the local project manager in monitoring project expenditures against the project budget. Values in the "Reimbursement To Date" column are updated monthly by adding the line item values of the current month's "Reimbursement Request" column to the prior month's "Reimbursement To Date" line item values. SUBRECIPIENTs will not be reimbursed for amounts over the total Approved Budget.

#### **SUMMARY**

This instruction sheet explains the procedures for completing the NJ TRANSIT Monthly Expenditure Report and Reimbursement Request form.

**Request for reimbursement must be mailed to:**

**NJ TRANSIT  
Community Transportation  
One Penn Plaza East, 4<sup>th</sup> Floor  
Newark, New Jersey 07105-2246**

**EXHIBIT H – Monthly Invoice (Expenditure Report and Reimbursement Request)**  
**(continued)**

**OPERATING BUDGET – Line items**

**Salaries/Fringe:** *Operating* staff the expense associated with the salaries and fringe benefits of drivers, dispatchers, schedulers, operations managers, or mechanics that provide service directly relating to the operations of the organization.

**Salaries/Fringe:** *Administrative* the expense associated with the salaries and fringe benefits of administrative staff who are involved in providing service, includes time spent preparing expense and /or ridership reports.

**Licenses and Registration:** Costs involving vehicle registration and driver licenses.

**Third Party Contract Services:** Cost involving services that are contracted for, from any entity outside of organization. Would include operating contracts, service subsidy or computer support services, such as, service or maintenance contracts. SUBRECIPIENTS must comply with FTA procurement for all such expenses.

**Maintenance/Repairs:** Reflects cost associated with maintenance of vehicles such as, repairs, lubricants, oil, vehicles servicing and any small parts. SUBRECIPIENTS must comply with FTA procurement for all such expenses.

**Materials Consumed:** Cost of gasoline, diesel fuel etc. SUBRECIPIENTS must comply with FTA procurement for all such expenses.

**Miscellaneous:** Any miscellaneous item that neither fits any other category nor occurs on a regular basis (i.e. uniforms). SUBRECIPIENTS must comply with FTA procurement for all such expenses.

**Reimbursement Documentation:** We ask that you submit the Expenditure Report and Reimbursement Request forms on a monthly basis no later than forty-five (45) days from the last day of each month. All reports must include supporting documentation of actual expenses incurred. Back-up documentation must include check ledger showing expenses paid and any additional documentation of incurred expenses. All reimbursement documentation must pass an auditors review.

**Sample documentation – must be on SUBRICIPIENT’s letter head:**

**LABOR EXPENSE BY MONTH**

NAME	TITLE	HOURLY RATE	HOURS WORKED	TOTAL
------	-------	-------------	--------------	-------

**Total Labor Expense This Month**

\$ \_\_\_\_\_ Fringe Rate% \_\_\_\_\_ \$ \_\_\_\_\_

**Total Labor and Fringe**

\$ \_\_\_\_\_ Overhead Rate% \_\_\_\_\_ \$ \_\_\_\_\_

**EXHIBIT H – Monthly Invoice (Expenditure Report and Reimbursement Request)**

(Continued)

**SAMPLE FORM**

**NON-URBANIZED AREA FORMULA PROGRAM (§5311)  
Monthly Expenditure Report and Reimbursement Request  
OPERATING (CONTRACT YEAR TERM \_\_\_\_\_ - \_\_\_\_\_)**

Grantee:

Report Number: \_\_\_\_\_ Agreement: From: \_\_\_\_\_ To: \_\_\_\_\_

Report Date: \_\_\_\_\_ Expenses: From: \_\_\_\_\_ To: \_\_\_\_\_

Service Start Date: \_\_\_\_\_

**REIMBURSEMENT PAYABLE TO:**

Signature of Authorized Certifying Official: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name & Title:

Phone No

OPERATING BUDGET LINE ITEMS	PROJECT BUDGET	REIMBURSEMENT REQUEST	REIMBURSEMENT REQUESTED TO DATE
Salaries/Fringe Benefits (Operations)			
Salaries/Fringe Benefits (Administrative labor associated with providing service) 10% of budget max			
Maintenance & Repairs			
Third Party Contract Services			
Materials Consumed (oil, fuel, etc.)			
Insurance			
Other Miscellaneous Expenses			
Total Operating Expenses			
(- Fares, Donations)			
Net Operating Expenses			
(-) 50% Local Share			
Total Reimbursement Request			

**THE EXPENSE DOCUMENTATION AND SERVICE REPORT MUST BE ATTACHED.**

NJ TRANSIT USE ONLY			
REIMBURSEMENT SOURCE	AMOUNT	Project # - Line #	PO #
Total Reimbursement Approved			

Signature indicates that Reimbursement form and all procurement documents were reviewed and are in compliance with Federal Regulations.

Approved for Payment \_\_\_\_\_ Date: \_\_\_\_\_

# EXHIBIT I

[SUBRECIPIENT]

## DBE REQUIREMENTS FOR RACE NEUTRAL FEDERAL PROCUREMENT ACTIVITIES

### TABLE OF CONTENTS

TITLE OF ARTICLE	PAGE
1.1 <a href="#">POLICY</a> .....	2
1.2 <a href="#">ASSURANCE</a> .....	2
1.3 <a href="#">DBE GOAL FOR THIS PROJECT</a> .....	2
1.4 <a href="#">GUIDANCE TO BIDDER/PROPOSERS/PRIMES</a> .....	3
1.5 <a href="#">TRANSIT VEHICLE MANUFACTURERS (TVM)</a> .....	3
1.6 <a href="#">RESPONSIBLE BID/PROPOSAL CRITERIA</a> .....	3
2.0 <a href="#">GUIDANCE ON A GOOD FAITH</a> .....	4
2.2 <a href="#">A GOOD FAITH EFFORT</a> .....	4
2.3 <a href="#">REQUIRED FORMS</a> .....	5
2.4 <a href="#">SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)</a> .....	5-6
2.5 <a href="#">INSTRUCTIONS FOR COMPLETING REQUIRED FORMS</a> .....	6-8
2.6 <a href="#">INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS</a> .....	8
3.0 <a href="#">GUIDANCE ON COUNTING DBE PARTICIPATION</a> .....	8
3.2 <a href="#">COUNTING DBE PARTICIPATION</a> .....	8-9
3.3 <a href="#">DBE PRIME CONTRACTOR GUIDANCE</a> .....	9
3.4 <a href="#">DBE TRUCKING FIRM GUIDANCE</a> .....	9
3.5 <a href="#">LEASING TRUCKS</a> .....	9
3.6 <a href="#">COUNTING MATERIALS AND SUPPLIES</a> .....	9-10
4.0 <a href="#">TERMINATION OF DBE(s)</a> .....	10
4.2 <a href="#">ADDITION OF DBE(s)</a> .....	10
4.3 <a href="#">REPLACEMENT OR REMOVAL OF DBE(s)</a> .....	10-11
4.4 <a href="#">WITHDRAWN DBE(s)</a> .....	11
4.5 <a href="#">DECERTIFIED DBE(s)</a> .....	11-12
5.0 <a href="#">AWARD OBLIGATIONS</a> .....	12
5.2 <a href="#">POST AWARD DELIVERABLES</a> .....	12
5.3 <a href="#">PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS</a> .....	12-13
5.4 <a href="#">SUBCONTRACT PAYMENT DISPUTE RESOLUTION</a> .....	13
5.5 <a href="#">PROMPT PAYMENT OF SUBCONTRACTOR RETAINAGE</a> .....	13-14
5.6 <a href="#">REMEDIES AND PENALITIES</a> .....	14
5.7 <a href="#">LIQUIDATED DAMAGES</a> .....	14
<a href="#">APPENDIX 1 (GLOSSARY)</a> .....	15

[NAME OF SUB-RECIPIENT]

## DBE REQUIREMENTS FOR RACE-NEUTRAL

**FEDERAL PROCUREMENT ACTIVITIES** The following pages provide Bidders/Proposers/Primes on federal contracts with [NAME OF SUB-RECIPIENT] , information about [NAME OF SUB-RECIPIENT] Disadvantaged Business Enterprise (DBE) Program, administered by the [NAME OF SUB-RECIPIENT]. Prospective Bidders/Proposers/Primes will have an opportunity to ask questions regarding the directives contained in the DBE specifications at the pre-bid/pre-proposal conference(s). Further clarification of the DBE specifications, along with assistance in completing the forms, can be obtained by calling ( ) Sub-recipient Telephone.

A list of certified DBE firms may be found in the NJ Unified Certification Program (NJUCP) Directory at <https://njucp.dbesystem.com>.

**Note: Use of this list does not relieve the Bidder/Proposer/Prime contractor/consultant of responsibility to seek DBE participation from other sources. The list is updated daily and must be checked periodically, as firms are certified and decertified daily.**

These DBE specifications are a part of the Contract and shall be binding upon the successful Bidder/Proposer and Prime in the pre and post-award stages of [NAME OF SUB-RECIPIENT] professional services, construction, and goods and services contracts. These specifications shall be binding upon sub-recipients and imposed on their contractors.

### 1.1 POLICY

As defined in the U.S. Department of Transportation (USDOT) Regulation 49 CFR Part 26, it is the policy of [NAME OF SUB-RECIPIENT] that Disadvantaged Business Enterprises shall have the opportunity to compete for and participate in the performance of contracts financed in whole or in part with federal funds. Each subcontract a Prime signs with a subcontractor/subconsultant must include the following assurance referenced in **article 1.2**.

### 1.2 ASSURANCE

**1.2.1 The Prime contractor/consultant, or subcontractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime contractor/consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor/consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate (49 CFR 26.13). This assurance clause shall be included in every DOT-assisted contract and subcontract.**

**1.2.2 This language is included to comply with relevant Federal law and to ensure that all persons who enter into any direct or indirect form of contractual agreement with [NAME OF SUB-RECIPIENT] are aware of their responsibilities and the commitment of [NAME OF SUB-RECIPIENT] to see that [NAME OF SUB-RECIPIENT]'s DBE Policy is carried out in all instances.**

### 1.3 DBE GOAL FOR THIS PROJECT

This project is a component of our Race Neutral Goal Program; therefore, a **Race-Neutral (RN) a Disadvantaged Business Enterprise (DBE) goal** for the gross sum of the bid/proposal has been established. Race neutral measures are those efforts used to assist all small businesses, including DBE's. For the purpose of this part, race neutral includes gender-neutrality. [NAME OF SUB-RECIPIENT] will meet a portion of its overall goal by using race neutral means of facilitating DBE participation. [NAME OF SUB-RECIPIENT] encourages Contractors/Consultants to subcontract to DBE firms for this project.

To assist [NAME OF SUB-RECIPIENT] with its race neutral measures, a bidder/proposer is encouraged to document in writing, activities taken to determine whether the bidder/proposer made reasonable efforts to solicit and award contracts to eligible minority and female businesses.

[NAME OF SUB-RECIPIENT] will track and report the extent of your Race-Neutral and Race-Conscious business assistance efforts. For reporting purposes, race neutral participation includes, but is not necessarily limited to, the following:

- 1) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures,
- 2) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a

prime contract exceeding a contract goal.

#### **1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES**

- 1.4.1** Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). **Refer to articles 5.6-5.7**
- 1.4.2** All required forms, including the supplemental section (**see articles 2.3-2.4**) must be submitted in accordance with the requirements. **Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.**
- 1.4.3** Price alone is not an acceptable basis for rejecting a DBE subcontractor/subconsultant's bid.
- 1.4.4** The Bidder/Proposer/Prime shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors/subconsultants. However, the Bidder/Proposer/Prime may be required to expand its search under specific circumstances as determined by OBD. **Refer to article 2.0**
- 1.4.5** Agreements between a Bidder/Proposer/Prime and a DBE in which the DBE promises not to provide subcontracting quotations to other Bidder/Proposers are prohibited.
- 1.4.6** The desire of a Bidder/Proposer/Prime to self-perform the work of a contract with its own organization is not an acceptable basis to not meet the goal or demonstrate a good faith effort to do so.
- 1.4.7** The Bidder/Proposer/Prime is responsible for verifying that the DBE is certified under the appropriate NAICS code for the scope of work identified. DBE credit shall be given only for work performed in the NAICS code(s) under which the DBE is certified.
- 1.4.8** A DBE firm listed on the First-Tier DBE Utilization Form (Form A) shall constitute a binding representation to [NAME OF SUB-RECIPIENT], by the Bidder/Proposer/Prime, that the DBE firm is qualified, available, and certified under the appropriate and required NAICS code to perform the scope of work identified. **Refer to article 2.5a**

#### **1.5 TRANSIT VEHICLE MANUFACTURERS (TVM)**

- 1.5.1** As a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall DBE percentage goal. A TVM must certify that it submitted the annual DBE goal required by 49 CFR 26.49 and FTA has approved it or not disapproved it.
- (a) As a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, the Bidder/Proposer must complete and submit the TVM Certification form with the bid/proposal certifying that it has complied with the requirements of 49 CFR 26.49.
- 1.5.2** [NAME OF SUB-RECIPIENT] may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the procedures of this section.

#### **1.6 RESPONSIBLE BID/PROPOSAL CRITERIA**

- 1.6.1** As a matter of responsibility, the two lowest Bidders or two highest ranked Proposers must submit the required forms, including the supplemental section (if applicable), with the bid/proposal or within five (5) calendar days after the bid opening or proposal due date. Notwithstanding the date of submission of the mandatory DBE forms, all negotiations between a Bidder and any potential DBE subcontractor, subconsultant, or supplier shall be completed prior to the bid opening or cost proposal due date.

Bidders/Proposers shall identify all DBE and non-DBE subcontractors, subconsultants, and suppliers proposed to participate in and those solicited for this Contract, and shall complete and submit the mandatory DBE Forms A, A1, A2, and B. The two lowest Bidders or two highest ranked Proposers must also submit NJ Unified Certification Program (NJUCP) certificate or letter for all potential DBE subcontractors. Additionally, the two lowest Bidders or two highest ranked Proposers shall submit any applicable supplemental forms (AA, AA1, AA2, BB, and D). All DBE forms and NJUCP certificates or letters shall be submitted with the Bid or within five (5) calendar days of the bid opening date. However, Bidders are strongly encouraged to submit all mandatory documents with the Bid to prevent delay of the Contract award.

- 1.6.2 Bidders are requested to review carefully and complete the forms entirely, with no blank fields. Failure to satisfactorily complete or submit all required documentation and/or demonstrate documented evidence of good faith effort within five (5) calendar days shall result in rejection of a Bid as non-responsible.
- 1.6.3 If the two lowest Bidders/highest ranked Proposers submit the DBE forms, but fail to meet the DBE goal, the [NAME OF SUB-RECIPIENT] will consider the efforts made to determine if a Bidder/Proposer/Prime has in fact demonstrated a good faith effort. See article 2.0
- 1.6.4 If it is determined that satisfactory good faith efforts were not made to include DBE participation on the contract, [NAME OF SUB-RECIPIENT] shall consider awarding the contract to the next lowest bidder or highest ranked proposer who offers a reasonable price, meets the DBE goal and other bid requirements or requirements of 49 CFR Part 26 and/or satisfactorily demonstrates documented evidence of good faith effort.

## 2.0 GUIDANCE ON A GOOD FAITH EFFORT

- 2.1 To demonstrate a good faith effort to meet the DBE goal, a Bidder/Proposer/Prime shall provide written documentation in addition to Form D (article 2.3e), of the steps it has taken, prior to the bid opening/proposal due date, or during the life of the contract to obtain DBE participation. **The Bidder/Proposer/Prime can meet this requirement in either of two ways:**
- (1) The Bidder/ Proposer/Prime can meet the goal.
  - (2) The Bidder/Proposer/Prime shall exhaust the available options referenced in **article 2.2** in making a continuous good faith effort to meet the assigned contract goal for the life of the contract.
- (a) The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.
- (b) In determining a good faith effort, the OBD will consider the **quality, quantity, and intensity** of the different kinds of efforts that the Bidder/Proposer/Prime has made. Mere *pro forma* efforts will not be considered as demonstration of good faith effort to meet the DBE contract requirements.
- (c) The Bidder/Proposer/Prime shall use good business judgment and consider a number of factors in negotiating with subcontractors/subconsultants, including DBE subcontractors/ subconsultants, and should take a firm's price and capabilities as well as contract goals into consideration. **The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's/Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable as determined by [NAME OF SUB-RECIPIENT]. Primes are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.**
- (d) The Bidder/Proposer/Prime's **ability or desire to perform the work of a contract with its own organization (self-performance) does not relieve the Bidder/Proposer/Prime of the responsibility to meet the goal or demonstrate a good faith effort.**
- (e) The Bidder/Proposer/Prime shall not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder/Proposer/Prime's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder/Proposer/Prime's efforts to meet the assigned project goal.
- (f) The OBD will support the Bidder/Proposer/Prime in identifying ways to meet the assigned contract goal.

## 2.2 A GOOD FAITH EFFORT

The following is a list of actions that [NAME OF SUB-RECIPIENT] will consider as evidence of a Bidder/Proposer/Prime's good faith effort to obtain DBE participation. While exhausting the available options in this list may count as a good faith effort, this list is not intended to be a mandatory checklist, nor is this list intended to be exclusive or exhaustive of all the efforts a Bidder/Proposer/Prime might make to achieve the assigned DBE goal. [NAME OF SUB-RECIPIENT] may require a Bidder/Proposer/Prime to take action above and beyond those listed below to meet the assigned DBE goal.

- (a) The Bidder/Proposer/Prime shall solicit through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract.



- (1) The Bidder/Proposer/Prime must solicit this interest within sufficient time to allow the DBE to respond to the solicitation.
- (2) The Bidder/Proposer/Prime must take appropriate steps to follow up on initial solicitations in order to determine with certainty if the DBE firms are interested.
- (b) The Bidder/Proposer/Prime shall select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Prime might otherwise prefer to perform these work items with its own forces.
- (c) The Bidder/Proposer/Prime shall provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (d) The Bidder/Proposer/Prime shall negotiate with a DBE(s) with the intent to enter into a contract. It is the Bidder/Proposer's responsibility to make a portion of the work available to DBE subcontractors/subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE Primes and suppliers, so as to facilitate DBE participation.
- (1) **Evidence of such negotiation includes:** the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (e) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by [NAME OF SUB-RECIPIENT] or the Prime contractor.
- (f) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (g) The Bidder/Proposer/Prime shall effectively use the services of available minority/women community organizations; minority/women Prime contractors groups; local, State and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

## 2.3 REQUIRED FORMS

- (a) **Form A - First Tier DBE Utilization:** Lists all First Tier DBE firms scheduled to participate on this contract.
- (b) **Form A1 - Bidder/Proposer Solicitation and Contractor Information:** Lists all DBE and Non-DBE subcontractor/subconsultants, including suppliers, solicited for, and participating on this contract.
- (c) **Form A2- Non-DBE Sub Utilization:** Lists all DBE and Non-DBE subcontractors/ subconsultants, including suppliers, participating on this contract.
- (d) **Form B - Intent to Perform as a DBE Sub:** Identifies the work the 1<sup>st</sup> Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **DBE Good Faith Effort Form (if applicable):** Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) **Trucking Commitment Agreement (if applicable):** Identifies all trucking firms (DBE and Non-DBE) participating on this contract, at any tier.
- (g) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each First Tier DBE subcontractor/subconsultant.
- (h) **\*Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher (Post-Award):** Records monthly payments issued to each DBE subcontractor/subconsultant/supplier and monthly payments issued by [NAME OF SUB-RECIPIENT] to the Prime. Certifies that DBE subs have been paid for previous month's invoices.
- (i) **Form E2 – DBE's Monthly Payment Report (Post-Award):** Records monthly invoices submitted by the DBE, payments owed to the DBE on past due invoices and payments received from the prime by each DBE subcontractor/subconsultant.
- (j) **Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):** Records monthly payments issued to each DBE Prime by [NAME OF SUB-RECIPIENT] to.

\*This form is due from the Prime in each month following the notice to proceed issued by [NAME OF SUB-RECIPIENT]. Refer to article 5.2.4

## 2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)

- (a) **Form AA – Second Tier DBE Utilization:** Lists all Second Tier DBE firms scheduled to participate on the DBE sub-Prime's contract.
- (b) **Form AA1 – Second Tier Bidder/Proposer Solicitation and Contractor Information:** Lists all Second Tier DBE firms participating on this contract as indicated on Form AA and Form AA2.
- (c) **Form AA2- Second Tier Non-DBE Sub Utilization:** Lists all DBE and Non-DBE firms including suppliers participating on the DBE sub-Prime's contract.
- (d) **Form BB - Intent to Perform as a Second Tier DBE Sub:** Identifies the work the 2<sup>nd</sup> Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each Second Tier DBE subcontractor/subconsultant.

## 2.5 INSTRUCTIONS FOR COMPLETING REQUIRED FORMS (see glossary for definition of terms)

### (a) **Form A - First Tier DBE Utilization:**

Form A is a formal agreement between the Bidder/Proposer and the DBE(s). Replacement/removal of DBE subcontractors/subconsultants/supplier identified on Form A is prohibited after the bid or proposal is submitted to [NAME OF SUB-RECIPIENT]. Refer to article 4.3. A DBE Bidder/Proposer, which lists itself on Form A, is committed to performing the work indicated with its own personnel.

DBEs performing as second tier sub(s) to a **non-DBE sub Prime** should be listed with the name of the non-DBE sub Prime's firm name in parenthesis next to the DBE sub's name. {Ex: DBE Electric Co. (Prime Contractor, Inc.)}

(1) A first Tier DBE is required to perform at least 51% of its subcontract value with its own forces.

Bidders/Proposers/Primes will not receive any credit for DBEs performing less than 51% and therefore must not be listed on this form.

(2) **For DBE suppliers**, identify all manufacturers, regular dealers, and brokers. If a DBE supplier is a **manufacturer**, indicate the full value of its subcontract. If a DBE supplier is a **regular dealer**, show its total contract value multiplied by 60% (Ex. \$100K x 60%= \$60K). If a DBE supplier is **neither a manufacturer nor a dealer**, indicate the fee/commission only, not the cost of materials or supplies. See **article 3.0** for direction on determining credit toward the goal.

(3) **A detailed scope of work must be provided; one-word descriptions are not acceptable.** (Ex. *Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton*).

### (b) **Form A1 - Bidder/Proposer/Prime Solicitation and Contractor Information:**

The Bidder/Proposer must complete and submit page one (1). The DBE and non-DBE subcontractors/subconsultants, including suppliers, solicited for, participating on, or expressed interest in this contract must complete page two (2).

### (c) **Form A2- Non-DBE Sub Utilization:**

Bidders/Proposers are required to report and submit all dollars committed to non-DBE subcontractors/subconsultants/suppliers. The non-DBE portion of work is not counted toward the assigned DBE goal. See **article 3.0**

**A detailed scope of work must be provided; one-word descriptions are not acceptable.**

(Ex. *Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton*).

### (d) **Form B - Intent to Perform as a First Tier DBE Sub:**

Each DBE subcontractor/subconsultant/supplier listed on Form A must complete and sign Form B. **Note:** The Bidder/Proposer/Prime is prohibited from completing any portion of the form and from directing DBE(s) to sign a blank form.

(1) The Bidder/Proposer/Prime must provide interested DBEs with a copy of appropriate plans, specifications, and requirements of the contract in a timely manner to allow the DBE to prepare an appropriate price quote and submit on time.

(2) First Tier DBEs must perform at least 51% of the total dollar value of its subcontract, with its own forces. The firm must indicate the percentage of the total portion of work to be subcontracted to DBE and non-DBE firms. The non-DBE percentage of work is not counted toward the assigned goal.

(3) The OBD encourages DBE-to-DBE subcontracting in order to preserve DBE participation credit. **See article 3.0**

(4) The DBE must provide a detailed scope of work; one-word descriptions are not acceptable. Descriptions should include: *type of services provided, total number of units, price per unit, total cost, etc.*

**(e) DBE Good Faith Effort: (If Applicable)**

Form D applies to any Bidder/Proposer/Prime who failed to meet the assigned DBE goal. This form will assist the Bidder/Proposer/Prime in demonstrating a good faith effort.

If the DBE(s) solicited declines to sign this form, the completed form should be submitted with the Bidder/Proposer's signature only and the OBD will verify the information provided with the firm. **Refer to articles 2.0-2.2** for guidance.

**(f) Trucking Commitment Agreement: (If Applicable)**

DBEs must provide information for all DBE and non-DBE trucking firms it will lease from or subcontract to. Subcontracting to a non-DBE trucker means that the non-DBE will perform a portion of the DBE firm's subcontract. **Refer to article 3.4**

The following documents must be attached for all trucks owned: copy of title(s)/finance agreement(s), registration card(s), insurance card(s), apportioned cab card(s) and/or hazardous material license(s) if applicable. A copy of the title or finance agreement is the only acceptable proof of ownership.

The following documents must be attached for all trucks leased: copy of lease agreement(s) established between both firms, title(s), registration card(s), insurance card(s), lease agreement(s), apportioned cab card(s) and/or hazardous material license(s) if applicable.

**(g) NJ UCP DBE Certification and NAICS Code Verification:**

All DBEs listed on Form A must be certified at the time of contract award. It is the Bidder/ Proposer's responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through [www.njucp.net](http://www.njucp.net) and <http://www.census.gov/eos/www/naics>

**(h) Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher:**

Beginning the month following the contract's notice to proceed, the Prime must report monthly payment activity for each DBE subcontractor/subconsultant/supplier; certifies each DBE sub has been paid any amounts due from previous or current progress payments paid to the Prime. **(article 5.2.4)**

All invoices 30 days past due from [NAME OF SUB-RECIPIENT] must be listed in the appropriate field.

This report is due even if there is no payment activity. This form must be completed and submitted to the OBD **by the 7<sup>th</sup> of each month** to the attention of the OBD's Manager of Contract Compliance.

**(i) Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only)**

Beginning the subsequent month following the contract's execution date, the DBE Prime must report its monthly payments received by [NAME OF SUB-RECIPIENT]. **Refer to article 5.2.5.**

All invoices 30 days past due from [NAME OF SUB-RECIPIENT] must be listed in the appropriate field.

This report is due even if there is no payment activity. This form must be completed and submitted to the OBD **by the 7<sup>th</sup> of each month** to the attention of the OBD's Manager of Contract Compliance.

**(j) Form E2 – DBE's Monthly Payment Report:**

The Prime must provide a copy of the Form E2 to each DBE subcontractor/subconsultant/ supplier(s).

Beginning the subsequent month following the DBE's execution date, the DBE firm must report its monthly payment activity.

This report is due even if there is no payment activity. **This form must be completed and submitted by the DBE only** to the OBD **by the 7<sup>th</sup> of each month** to the attention of the OBD's Manager of Contract Compliance.

All invoices 30 days past due must be listed in the appropriate field. Identify concerns or issues in the comments section to be addressed by the OBD. (Refer to article 5.2.6)

## 2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:

- (a) **Form AA – Second Tier DBE Utilization:** The Second Tier DBE **must perform 100%** of its subcontract with its own forces. A formal request to waive this requirement may be granted, solely at the discretion of the OBD; however, approval is required.

**A detailed scope of work must be provided; one-word descriptions are not acceptable.**

*(Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).*

- (b) **Form AA1 – Second Tier Bidder/Proposer Solicitation and Contractor Information:**

The DBE sub-Prime must submit and complete page one (1). Second Tier DBE(s) solicited for and participating on this contract must complete page two (2).

- (c) **Form AA2- Second Tier Non-DBE Subcontractor Utilization:**

DBE sub-Primes are required to report and submit all dollars committed to non-DBEs. The non-DBE portion of work is not counted toward DBE participation credit. Refer to article 3.0

**A detailed scope of work must be provided; one-word descriptions are not acceptable.**

*(Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).*

- (d) **Form BB - Intent to Perform as a Second Tier DBE Subcontractor:**

Each DBE firm listed on Form AA, must complete, and sign. **Only Second Tier DBE(s) must complete and sign this form.**

**The Second Tier DBE must provide a detailed scope of work; one-word descriptions are not acceptable. Descriptions should include: type of services provided, total number of units, price per unit, total cost, etc**

- (e) **NJ UCP DBE Certification & NAICS Code Verification:**

responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through [www.njcup.net](http://www.njcup.net) and [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/).

## 3.0 GUIDANCE ON COUNTING DBE PARTICIPATION

- 3.1 If a firm is not currently certified as a DBE in accordance with 49 CFR part 26 at the time of the execution of the contract, the firm's participation will not count toward the DBE goal.

- 3.1.1 A DBE performing less than 51% of its subcontract will not count toward the assigned goal and should not be listed on any forms.

- 3.1.2 When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor/subconsultant is a DBE.

- (a) Work that a DBE subcontracts to a **non-DBE** firm does not count toward the DBE contract goal.

- (b) When a DBE performs as a participant in a **joint venture with a Non-DBE**, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

- (c) A DBE performs a *commercially useful function* when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

**A DBE does not perform a *commercially useful function* if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.**

## 3.2 COUNTING DBE PARTICIPATION

321 When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.

(a) The entire amount of that portion of a contract that is performed by the DBE's own forces is counted. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, as well as supplies purchased or equipment leased by the DBE (*except supplies and equipment the DBE subcontractor/subconsultant purchases or leases from the Prime contractor or its affiliate*).

322 The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, is counted toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services by a DBE.

### 3.3 DBE PRIME CONTRACTOR GUIDANCE

331 If a **DBE Prime**, expenditures are counted toward DBE goals only if the DBE is performing a commercially useful function on that contract.

332 A DBE Prime must perform or be responsible at least 51% of the total cost of its contract with its own workforce.

**333 If a DBE Prime does not perform or exercise responsibility for at least 51% of the total cost of its contract with its own workforce** or subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, [NAME OF SUB-RECIPIENT] will consider that it is not performing a commercially useful function and the DBE Prime shall be in breach of the contract and subject to the appropriate remedies and penalties. **Refer to Articles 5.6-5.7**

### 3.4 DBE TRUCKING FIRMS GUIDANCE

341 A DBE **trucking firm** is performing a commercially useful function if:

(a) The DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there is not a contrived arrangement for the purpose of meeting DBE goals.

(b) The DBE itself **owns and operates at least one** fully licensed, insured, and operational truck to be used on the contract.

342 The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

### 3.5 LEASING TRUCKS

3.5.1 Leased trucks must display the name and identification number of the DBE.

3.5.2 The DBE may lease trucks from another DBE firm, including an owner-operator that is certified as a DBE.

The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

3.5.3 The DBE may also lease trucks from a **non-DBE firm**, including an owner-operator.

(a) **The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.**

3.5.4 For the purposes of this section (Leasing), a lease must indicate that the DBE has exclusive use of and control over the truck.

(a) This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

### 3.6 COUNTING MATERIALS AND SUPPLIES

3.6.1 Expenditures with DBEs for materials or supplies are counted toward DBE goals as provided in the following:

(a) If the materials or supplies are obtained from a **DBE manufacturer**, 100% of the cost of the materials or

supplies are counted toward DBE goals.

(1) For purposes of this paragraph 3.6.1(a), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

**(b)** If the materials or supplies are purchased from a **DBE regular dealer**, sixty percent (60%) of the cost of the materials or supplies is counted toward DBE goals.

(1) For purposes of this paragraph 3.6.1(b), a regular dealer is a firm that owns, operates, maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(2) The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(3) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(4) Packers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph 3.6.1(b).

**(c)** With respect to materials or supplies purchased from a **DBE, which is neither a manufacturer nor a regular dealer**, only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, is counted toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar service. **However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.**

#### **4.0 TERMINATION OF DBE(s)**

**4.1** The Bidder/Proposer/Prime may not terminate for convenience, or any other reason, and then perform the work of the terminated subcontractor/subconsultant with its own forces or those of an affiliate without [NAME OF SUB-RECIPIENT]'s prior written consent. **Refer to Article 4.3.**

**Submission of all REQUIRED FORMS is mandatory for the following Articles 4.2 through 4.5**

#### **4.2 ADDITION OF DBE(s)**

**4.2.1** Should the Bidder/Proposer/Prime wish to add a DBE not listed on Form A, a written request for the addition of a DBE(s) must be submitted by the Bidder/Proposer/Prime.

**4.2.2** The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** the addition of the DBE subcontractor/subconsultant in order for the addition to be credited toward the goal.

#### **4.3 REPLACEMENT OR REMOVAL OF DBE(s)**

**4.3.1** When a Prime is considering replacing or removing a DBE due to performance issues, the OBD must be contacted as soon as possible.

**4.3.2** Request for DBE replacement or removal may be made under the following conditions:

1) The DBE materially fails to successfully perform the contract tasks.

2) Under unusual situations referenced in article 4.3.8.

**4.3.3** A written request for replacement or removal of a DBE(s) listed on Form A, must be submitted by the Bidder/Proposer/Prime to the OBD with complete justification for the request. The process to follow such requests is as follows:

**(a)** Written communications (over a period) from the Prime and/or [NAME OF SUB-RECIPIENT]'s PM/CM team to the DBE, notifying the DBE of its poor performance must be provided to the OBD.

- (b) **The OBD will arrange a meeting with the DBE, the Prime, and a representative from Procurement and project management to discuss the specifics of the performance issue.**
- (c) The DBE must provide a written plan identifying the efforts it will make to correct the deficiencies.
- (d) The Prime must provide the DBE with a minimum of 30 calendar days from acceptance of its plan to improve its performance. Throughout the 30-day window, the Prime and/or [NAME OF SUB-RECIPIENT] PM/CM team must provide written communication to the DBE of any additional/continued performance issues, with a copy to the OBD.
- 4.3.4 The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** replacement or removal of the DBE subcontractor/subconsultant can be made, regardless of the reason for the replacement or removal.
- 4.3.5 If the OBD issues written approval for the removal of a DBE(s), [NAME OF SUB-RECIPIENT] will require a Bidder/Proposer/Prime to continue to demonstrate a good faith effort to replace the removed DBE to the extent needed to meet the contract goal established by [NAME OF SUB-RECIPIENT] for the procurement.  
**These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**
- 4.3.6** Failure to obtain approval from the OBD **prior to** replacing or removing a DBE shall result in the Bidder/Proposer/Prime being found in breach of the contract and subject to the appropriate remedies, audits and penalties. **Articles 5.6-5.7**
- 4.3.7 If [NAME OF SUB-RECIPIENT] finds that the Bidder/Proposer/Prime upon submission of its bid/proposal committed itself to the goal in good faith, the Bidder/Proposer/Prime may, in "unusual situations", be permitted to substitute a DBE subcontractor(s)/subconsultant(s).
- 4.3.8 The term "unusual situations", includes, but is not limited to, the following circumstances:
- (a) Failure to qualify as a DBE, or maintain DBE certification status.
- (b) Death or physical disability of a key individual.
- (c) Dissolution, if a corporation or partnership.
- (d) Bankruptcy of the subcontractor/subconsultant, subject to applicable bankruptcy law, and only in instances where the bankruptcy affects the subcontractor/subconsultant's ability to perform.
- (e) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (f) Failure or inability to comply with a requirement of law applicable to Primes or, subcontractors/subconsultants.

#### **4.4 WITHDRAWN DBE(s)**

- 4.4.1** When a DBE is unable to complete a subcontract (withdraws), for any reason, [NAME OF SUB-RECIPIENT] will require a Bidder/Proposer/Prime to make a good faith effort to replace a withdrawn DBE at least to the extent needed to ensure that the Prime contractor is able to meet the contract goal established by [NAME OF SUB-RECIPIENT] for the procurement. **These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**
- 4.4.2 The Bidder/Proposer/Prime is required to make a good faith effort to seek other DBE subcontractors/subconsultants in substitution of the original DBE. The good faith efforts described in **article 2** are required in finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

#### **4.5 DECERTIFIED DBE(S)**

- 4.5.1 If the Prime has reason to doubt that a proposed DBE is still eligible due to change in ownership, management, or size, the Prime shall, within 10 days of learning this information, notify [NAME OF SUB-RECIPIENT] of that fact in writing.
- 4.5.2 If the subcontract has not been executed before the DBE's ineligibility occurs, the Prime will not receive credit toward the contract goal for the ineligible DBE. The Prime may continue to use the ineligible DBE, however, DBE participation credit will not be granted.
- (a) To the extent necessary to meet the assigned contract goal, the Prime will make a good faith effort to replace the ineligible DBE within 10 days after notification by the OBD. The OBD will support the Prime in its efforts to replace with an eligible DBE firm in order to meet the contract goal.

- 4.5.3 If the contract has been executed before the firm has been notified of its ineligibility, the Prime may continue to use the firm on the contract and receive credit toward its DBE goal for the duration of that particular phase of or option in the contract. This may not apply to future phases or options, which will be handled on a case-by-case basis at the sole discretion of the OBD.
- 4.5.4 **Exception:** If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract the Prime may continue to count its participation on that contract only toward the contract goals. This may not apply to future phases or options and will be subject to determination by the OBD.

## 5.0 AWARD OBLIGATIONS

- 5.1 The Prime must designate a **DBE Liaison Officer**. The liaison officer will be responsible to [NAME OF SUB-RECIPIENT] regarding DBE subcontract matters.
- 5.1.1 If at any point during the contract's life, the Prime's DBE participation falls below the assigned goal, the Prime must identify additional work or new work items for which it will subcontract to DBEs to the extent necessary to meet the assigned goal. Any new scope of work issued to the Prime shall still be subject to the assigned goal.
- 5.1.2 The OBD will support the Prime in identifying current/future opportunities in the contract to meet the assigned contract goal.
- 5.1.3 Should the Prime seek a change that addresses the DBE's performance, or affects the work scope and/or compensation, the OBD must be notified, prior to implementation, for its review and approval of the changes as soon as possible. No change will be allowed without prior review and approval by the OBD. Failure to notify the office and obtain approval prior to a change shall result in breach of the contract and may be subject to the appropriate remedies, audits, and penalties.
- 5.1.4 Whenever [NAME OF SUB-RECIPIENT] issues project change orders the goal may still apply; the OBD will determine if increased DBE participation will be required.
- 5.1.5 To ensure that all obligations under subcontracts awarded to DBEs are met [NAME OF SUB-RECIPIENT] shall review the Prime's DBE involvement efforts during the performance of the contract.

## 5.2 POST AWARD DELIVERABLES

- 5.2.1 After the execution of a contract with [NAME OF SUB-RECIPIENT], **signed copies** of subcontractor/subconsultant agreements between the Prime and DBE subcontractors must be submitted to the OBD no later than 10 business days after the Prime's contract execution date. The agreement between the Prime and DBE subcontractor shall remain firm for the duration of the contract.
- 5.2.2 The Prime shall provide a list of the anticipated job start date for all DBE subcontractors/subconsultants **no later than two days** after the initial pre-construction meeting.
- 5.2.3 **Certification of DBE(s) Payments** – submit monthly with the Form E to the Manager of the OBD and with its monthly invoice submittal to [NAME OF SUB-RECIPIENT] project manager of this project. **Refer to article 5.3.2**
- (a) The Prime will certify, prior to the issuance of each progress payment by [NAME OF SUB-RECIPIENT], that all DBE subs have been paid any amounts due on past due invoices from previous or current progress payments.
- 5.2.4 **Form E (Contractor's Monthly DBE Payment Report & DBE Payment Certification Voucher)** - submit monthly to the Manager of the OBD. **Refer to articles 2.5h and 5.3.2.**
- Failure to submit this report on a monthly basis may result in breach of the contract and be subject to the appropriate remedies, penalties or liquidated damages as indicated in articles 5.6-5.7.
- 5.2.5 **Form E1 (DBE Prime's Monthly Payment Report) (For DBE Prime Only)** - submit monthly to the Manager of the OBD.
- 5.2.6 **Form E2 (DBE's Monthly Payment Report) – Refer to article 2.5j**
- (a) Forms E/E1 and E2 will be reviewed monthly to determine compliance with the assigned DBE goal, the subcontractor prompt payment regulation, and the DBE Program.
- (b) Attainment of goals will be monitored and based upon actual payments received by the DBE.
- Failure to submit Form E/E1 may result in suspension of payments or such other remedies as provided in **article 5.6**. *If at any time, [NAME OF SUB-RECIPIENT] has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the USDOT for inquiry.*



### 5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS

5.3.1 The Prime must pay each subcontractor under this contract for satisfactory performance of its work **no later than ten (10) days** from the receipt of each payment the Prime receives from [NAME OF SUB-RECIPIENT] for the subcontractor's work. Failure to comply with this requirement shall result in breach of the contract and shall be subject to the appropriate remedies as determined by OBD.

**5.3.2** In accordance with 49 CFR 26.29, the Prime shall certify, prior to the issuance of a progress payment by [NAME OF SUB-RECIPIENT] that all subcontractors have been paid any amounts due on past due invoices (greater than 30 days) from previous or current progress payments. **The Prime must submit the Certification of DBE(s) Payments with its monthly invoice submittals to [NAME OF SUB-RECIPIENT] project manager, and with its Form E to the OBD.**

5.3.3 The Prime will not be reimbursed for work performed by subcontractors/subconsultants unless and until the Prime ensures that the subs are promptly paid for the work performed. Alternatively, the Prime shall certify that a valid basis exists under the terms of the subcontractor's/subconsultant's or supplier's contract to withhold payment from the subcontractor/subconsultant and therefore payment is withheld.

5.3.4 If the Prime withholds payment from the subcontractor/subconsultant, the Prime shall provide to the subcontractor/subconsultant or supplier written notice thereof. The notice shall detail the reason for withholding payment and state the amount of the payment withheld. If a performance/payment bond has been provided under this contract, the Prime shall send a copy of the notice to the surety providing the bond for the Prime. A copy of the notice shall also be submitted to [NAME OF SUB-RECIPIENT] with the certification that payments are being withheld.

5.3.5 If withholding payment is due to the Prime's failure to promptly pay the DBE in accordance with the prompt payment of invoices and/or retainage clauses, the OBD may request proof of payment to DBE(s) for delinquent invoices and/or retainage in order to issue release of payment to Prime.

**5.3.6** Failure to comply with the above shall result in breach of the contract and may be subject to the appropriate penalties. **See article 5.6**

### 5.4 SUBCONTRACTOR PAYMENT DISPUTE RESOLUTION

5.4.1 The Prime is required to notify the OBD of its intention to withhold payment from a DBE as soon as possible and in advance of taking action. Should the Prime provide notice and proceed to withhold payment from any subcontractor/subconsultant or supplier due to a performance issue or unapproved work performed, an OBD representative shall make an effort to resolve the dispute.

(a) OBD's efforts shall be limited to meeting with the Prime and the subcontractor/ subconsultant, and reviewing the relevant facts with both parties.

(b) OBD will not act as a decider of fact nor will OBD direct a settlement to the dispute.

(c) Any OBD effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute. The Prime is required to send written notification of the above to the OBD immediately.

5.4.2 Should payments be withheld that are not related to the previous items mentioned, and/or a determination can be made that the withholding of payments violates the prompt payment clause, [NAME OF SUB-RECIPIENT] may execute the appropriate remedies in accordance with article 5.6.

### 5.5 PROMPT PAYMENT OF SUBCONTRACTOR RETAINAGE (FOR CONSTRUCTION CONTRACTS ONLY)

5.5.1 The Prime must include a contract clause in the subcontractor agreement obligating the Prime to pay all retainage owed to the subcontractor/subconsultant for satisfactory completion of the accepted scope of work no later than 15 days after the DBE subcontractor's/subconsultant's work is satisfactorily completed.

5.5.2 Only subcontractors/subconsultants whose work has been 100% completed, including all punch list work or remaining work, and who have supplied closeout documents shall be eligible for release of retainage. *Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of [NAME OF SUB-RECIPIENT].*

5.5.3 [NAME OF SUB-RECIPIENT] may agree to release an equivalent amount of Prime retainage provided that:

- (a) There is no offsetting claims from [NAME OF SUB-RECIPIENT] (including, but not limited to, liquidated damages), other subcontractors/subconsultants, material men, or workers;
- (b) None of the other reasons to withhold payments specified under the Prime contract exists.

5.5.4 Prior to release of the Prime's retainage, the Prime shall provide to [NAME OF SUB-RECIPIENT] executed copies of the following subcontractor closeout documents, (shown in Appendix A of the contract) as appropriate:

- (a) Consent of Surety to Final Payment to the Subcontractor
- (b) Certificate of Amounts Due and Owing to Subcontractor Employees
- (c) Subcontractor Release of Claims
- (d) Subcontractor Release of Liens and a Certificate of Final Acceptance of Subcontractor Work

5.5.5 Notwithstanding [NAME OF SUB-RECIPIENT]'s release or partial release of retainage, nothing in this clause shall be deemed to constitute [NAME OF SUB-RECIPIENT]'s partial or final acceptance of the work, or any portion thereof, unless either a Certificate of Partial Acceptance or a Certificate of Final Acceptance has been executed by [NAME OF SUB-RECIPIENT], in the form(s).

## **5.6 REMEDIES AND PENALTIES**

5.6.1 Where a Prime is found to be in breach of the requirements of the DBE Program during the performance of the contract, and does not promptly take corrective action, the following sanctions may be instituted (singularly, in any combination, and in addition to any other contractual remedies or otherwise provided by law):

- (a) The Prime may be ordered to stop work without penalty to [NAME OF SUB-RECIPIENT].
- (b) The contract may be terminated for breach.
- (c) Suspension or debarment proceedings may be commenced in accordance with New Jersey law.
- (d) The relevant performance bond may be enforced.
- (e) [NAME OF SUB-RECIPIENT] may withhold payment of specific invoices.

## **5.7 LIQUIDATED DAMAGES**

5.7.1 Liquidated damages (LD) may be assessed when the Prime fails to meet the established DBE goal on the contract.

5.7.2 If the DBE goal is not met, and the Prime has not demonstrated a good faith effort to do so, [NAME OF SUB-RECIPIENT] may elect to subtract from the Prime's payment, as liquidated damages and not a penalty, the following:

The amount equal to the difference (in dollars) between the total contract value multiplied by the assigned DBE goal percentage, (originally established or as subsequently modified) and the actual DBE participation percentage (total dollars paid to DBEs divided by total dollars paid to the Prime).

5.7.3 This may be withheld from a series of payments or from the Prime's final payment, depending on the size of the liquidated damage.

5.7.4 If the Prime's final payment is not sufficient to satisfy the LD in full, the balance shall be due and owing from the Prime and subject to repayment terms as determined by [NAME OF SUB-RECIPIENT]. [NAME OF SUB-RECIPIENT] shall waive liquidated damages where good cause is shown for the deficiency in DBE participation upon determination by the OBD.

## APPENDIX I - DBE GLOSSARY

**A Good Faith Effort** - the efforts employed by the bidder, which should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

**Certification** - means the process by which a business is determined to be a bona fide DBE. Any business applying for DBE certification must complete the appropriate NJ Unified Certification Program Application. Certification Applications are available at the OBD.

**Disadvantaged Business Enterprise or DBE** - means a small business concern: Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and where one or more of the socially and economically disadvantaged owners controls management and daily business operations. A DBE shall not include a small business concern where that concern or a group of concerns controlled by the same socially and economically disadvantaged individual or individuals has annual average gross receipts in excess of **\$22,410,000** over the previous three fiscal years or is not otherwise eligible as a small business as defined by the Small Business Administration in 13 CFR Part 121.

**DBE Goal** - means numerically expressed objectives for DBE participation on federal contracts Prime contractors are required to make a good faith effort to achieve to the extent necessary to meet the assigned DBE goal. **DBE Sub-Prime** - means any 1<sup>st</sup> Tier DBE subcontractor/subconsultant listed on the Form A that will subcontract any portion of its subcontract/scope of work to a DBE(s) and/or non-DBE(s) firm(s).

**DBE Ineligibility** - means a firm's DBE status changes or ceases due to change in ownership, management, or size, etc.

**DBE Prime** - means the successful Bidder is a DBE firm and has a direct contract with [NAME OF SUB-RECIPIENT].

**DBE Trucking Firm** - owns and operates at least one fully licensed, insured, and operational truck used on the contract. Is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

**First Tier DBE** - refers to any DBE listed on the Bidder/Proposer/Prime's Form A and having a direct contract with the Prime.

**Joint Venture** - means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Prime** - means any contractor or consultant, including a DBE contractor/consultant, who enters into a direct contractual relationship with [NAME OF SUB-RECIPIENT].

**Race-conscious Measure or Program** - is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral Measure or Program** - is one that is focused specifically on assisting all small businesses equally, including DBEs. Such activities include bonding, insurance, and technical assistance. For the purposes of this part, race-neutral includes gender-neutrality.

**Reasonable Bid Price** - means a price that shall be considered reasonable if the Bidder/Proposer/Prime would have been awarded the contract had the firm submitted the only bid.

**Regular Dealer** - means a firm that owns, operates, or maintains an establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock and regularly sold to the public in the usual course of business.

The firm must engage in, as its principal business, and in its own name, the purchase and sale of products in question. Bulk items such as steel, cement and petroleum products need not be stocked, if the dealer owns or operates distribution equipment.

**Note: Brokers and packagers are not regarded as regular dealers.**

**Second Tier DBE** - refers to any DBE listed on the DBE Sub-Prime's Form AA.

**Subcontractor/ Subconsultant** - means any contractor/consultant, including suppliers, who enters into a contract issued by a Prime contractor.

**Transit Vehicle Manufacturer (TVM)** - is a manufacturer of vehicles used by [NAME OF SUB-RECIPIENT] for the primary program purpose of public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms, which rehabilitate old vehicles, or to manufacturers of locomotives or ferryboats. The term refers to distributors of or dealers in transit vehicles with respect to the requirements of 49 CFR Section 26.49.

**U.S. DOT** - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Railroad Administration (FRA).

**Withdrawn DBE** - a DBE withdraws, or drops out of its contract, or fails to complete its work on the contract for any reason.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

**DOCUMENTS APPLICABLE TO**

ELDERLY AND PERSONS WITH DISABILITIES FORMULA PROJECTS (Section 5310)

JOB ACCESS AND REVERSE COMMUTE GRANT (Section 5316)

NEW FREEDOM (Section 5317)

NONURBANIZED AREAS FORMULA PROJECT (Section 5311)

URBANIZED AREA FORMULA PROJECT (Section 5307)

**SUBRECIPIENT DBE REQUIREMENTS FOR**

**RACE NEUTRAL FEDERAL PROCUREMENT ACTIVITIES**

**Forms A, A1 and A2 must be completed by all bidders/vendors (regardless of DBE utilization) at time of procurement.**

**Form B must be completed by bidders/vendors at of time of procurement only if bidder/vendor is a DBE.**

**Upon approval of service and/or capital contracts with identified DBE vendors, Forms E/E1 and E2 should be completed monthly for the duration of the contract.**

**SUBRECIPIENTs must maintain DBE vendor documentation.**

(NJT Form A Rev. Sept. 2010)  
**First Tier DBE UTILIZATION - FORM A**

Project Name: \_\_\_\_\_ SUBRECIPIENT Contract No: \_\_\_\_\_

Assigned DBE Goal %: \_\_\_\_\_ SUBRECIPIENT Procurement Specialist: \_\_\_\_\_ Contract Value (\$): \_\_\_\_\_

**First Tier DBE must perform at least 51% of its subcontract value if subcontracting to a Second -Tier DBE or Non-DBE. Do not count Non-DBE portion toward the goal.**

Name, Address and Telephone # of DBE Subcontractor/Subconsultant	Provide Detailed Scope of Work to be Performed (Identify all suppliers)	Dollar Value of Subcontract/Sub-consultant Work (\$) Awarded	Percentage of Subcontract Work (%)
			%
			%
			%
			%
			%
			%
<b>For DBE suppliers, show original subcontract value multiplied by 60% (\$2,000*60%=\$1200). For DBE portion of work, subtract Non-DBE portion of work from original subcontract value.</b> <b>1.</b>	<b>J. TOTALS</b>	\$	%

The undersigned will enter into a formal agreement with the DBE(s) listed in this schedule conditioned upon execution of a contract with SUBRECIPIENT for the above referenced project. The undersigned understands that removal/replacement of the DBE(s) listed is NOT PERMISSIBLE for any reason (pre or post-award), without submitting a written request to the Office of Business Development and receiving WRITTEN APPROVAL from the Office of Business Development. Failure to obtain written approval shall result in the breach of contract and subject to corrective action to be determined by [SUBRECIPIENT]

Company Name: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_

Company Address: \_\_\_\_\_ Print Name: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_ Prime Contractor's DBE Liaison Officer: \_\_\_\_\_

A. Company Tel #: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1**

SUBRECIPIENT Contract No: \_\_\_\_\_

Project Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

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

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

*Complete the information below for Bidder/Proposer/Prime(s) working on the project. Use Page 2 for all subcontractors/subconsultants participating on or solicited for this project.*

	B. Bidder/Proposer/Prime	C. Bidder/Proposer/Prime	D. Bidder/Proposer/Prime
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: <b>DBE or Non-DBE</b>			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A – Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over <b>indicate the letter that applies</b>			
Primary NAICS Code:			

**BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1**

SUBRECIPIENT Contract No: \_\_\_\_\_

Project Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

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

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

*Complete the information below for "all" subcontractors/subconsultants solicited for or participating on this project.*

	E. Subcontractor/Subconsultant	F. Subcontractor/Subconsultant	G. Subcontractor/Subconsultant
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: <b>DBE or Non-DBE</b>			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A – Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over <b>indicate the letter that applies</b>			
Primary NAICS Code:			

**NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2**

**Directions: To be completed by any Bidder/Proposer/Prime for “all” subs including suppliers participating on this contract.**

*SUBRECIPIENT Contract No:* \_\_\_\_\_

*Date:* \_\_\_\_\_ *Prime Contract Value:* \_\_\_\_\_

*Bidder/Proposer Prime Name:* \_\_\_\_\_ *Project Title:* \_\_\_\_\_

<i>Name, Address and Telephone # of all Subcontractor/Subconsultants</i>	<i>FEIN #</i>	<i>Provide Detailed Scope of Work to be Performed</i>	<i>Dollar Amount of Subcontractor/Sub-consultant Work (\$)</i> <i>Awarded</i>	<i>Percentage of Subcontractor Work (%)</i>
			\$	%
			\$	%
			\$	%
			\$	%
			\$	%
<i>Must provide a detailed scope of work; one-word descriptions are not acceptable.</i>		<b>TOTALS</b>	\$	%



**PRIME CONTRACTOR Monthly DBE Payment Report - Form E**

Name of Project: \_\_\_\_\_

[**SUBRECIPIENT.**] Contract #: \_\_\_\_\_

Prime Original Contract Value: \_\_\_\_\_

Report for the Month of: \_\_\_\_\_

Change Orders (Overall Inc/Dec.): \_\_\_\_\_

Notice to Proceed Date: \_\_\_\_\_

Total Contract Amount to Date: \_\_\_\_\_

NJT Project Mgr Name: \_\_\_\_\_

Total Payments Received from [**SUBRECIPIENT.**] Date: \_\_\_\_\_

Assigned DBE Goal %: \_\_\_\_\_

Name of DBE Subcontractor	Work Task Performed	Original Contract Amount \$	Change Order Amount \$ (+/-)	Amount of Invoice Received this Month (\$)	Date of Invoice Received in this Month	Payment(s) Made to DBE in this Month in \$\$ (Itemize)	Date(s) Payment Made This Month	Total DBE Payments made to Date in (\$)	% Overall Work Finished	Final Pmt (Y/N)
Total(s)→		\$	\$	\$	Total(s)	\$	Total(s)	\$		

Itemize payments/invoices and dates if paid/received more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of THIS Month.

**Prime Contractor Information:**

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

Project Director Name: \_\_\_\_\_

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

Project Director Signature: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Date: \_\_\_\_\_

Federal TIN #: \_\_\_\_\_

**Prime's Past Due Invoice Information:** List any invoice more than 40 days past due from the date **submitted** to [**SUBRECIPIENT.**] at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments:

**Form E - Prime Contractor's DBE Payment Certification**

1. Have **all** DBE subcontractors with executed subcontracts been paid amounts due from previous progress payments?

┆ **If yes, skip the next section and go to number 3.**

┆ **If no, please complete fields in box below: (Use additional paper, if needed)**

DBE SubContractor Name	Amount Withheld From Invoice (\$)	Total of Invoice Amount (\$)	Invoice Number	Invoice Date	Specific Reason for Withholding

2. Have you notified the DBE subcontractor(s) that you are withholding payment and the reason(s) why?

┆ **If yes,** provide a copy of written notification to the DBE subcontractor with this form, indicating the date of notification.

┆ **If no,** lack of prior written notification to the DBE(s) that you are withholding payment violates the prompt payment clause guidelines. **Please contact the DBE immediately, and provide a copy of written notification to the subcontractor with this form.**

3. By signing this form, I certify that all of the above represent true and accurate information.

**Note: CFO or equivalent Sr. Manager must complete and sign off on this form.**

\_\_\_\_\_  
PROJECT DIRECTOR NAME (PRINT)

\_\_\_\_\_  
PROJECT DIRECTOR (SIGNATURE)

\_\_\_\_/\_\_\_\_/\_\_\_\_  
DATE

Additional Reasons/Comments for Withholding Payment:

---

THIS FORM IS DUE ON THE 7TH OF EACH MONTH Please forward to:  
Sub-Recipient Info

DO NOT WRITE BELOW. DEPARTMENTAL USE ONLY.

┆ Approved

┆ Denied

**DBE PRIME CONTRACTOR’S MONTHLY PAYMENTS FROM [SUBRECIPIENT]  
INFORMATION ON CONTRACT**

**DATE CONTRACT EXECUTED:** \_\_\_\_\_ **CONTRACT NUMBER:** \_\_\_\_\_ **REPORT FOR THE MONTH OF:** \_\_\_\_\_ **YEAR:** \_\_\_\_\_

**ORIGINAL CONTRACT AMOUNT:** \_\_\_\_\_ **FED TAX ID #:** \_\_\_\_\_

**CHANGE ORDERS (OVERALL INC/DEC.):** \_\_\_\_\_ **PURCHASE ORDER #:** \_\_\_\_\_

**TOTAL CONTRACT AMOUNT TO DATE:** \_\_\_\_\_ **NAME OF PROJECT:** \_\_\_\_\_

<i>Original Contract Value</i>	<i>Change Order Amount +/-</i>	<i>Date of Change Order</i>	<i>New Contract Value</i>	<i>Payments Received This Month</i>	<i>Total Payments Received to Date</i>	<i>% Work Completed To Date</i>	<i>Final Pmt Y/N</i>
<i>TOTALS:</i>							

**PRIME INVOICE 30 DAYS PAST DUE FROM NJT:**

[SUBRECIPIENT]

<b>Invoice Date</b>	<b>Reference #</b>	<b>No. Days Past Due</b>	<b>Amount</b>

**Project Manager (Name):** \_\_\_\_\_

**Telephone #:** \_\_\_\_\_

**PRIME CONTRACTOR INFORMATION**

**Firm Name:** \_\_\_\_\_  
**Compliance Officer (Name):** \_\_\_\_\_  
**Date:** \_\_\_\_\_ **Telephone #:** \_\_\_\_\_

**FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH.  
PLEASE FORWARD TO:  
[SUBRECIPIENT  
STREET ADDRESS  
CITY, STATE, ZIP  
FAX NUMBER  
E-MAIL ADDRESS]**

**DBE SUBCONTRACTOR Monthly Payment Report - Form E2**

Name of DBE Firm: \_\_\_\_\_

Report for the Month of: \_\_\_\_\_

DBE's FEIN#: \_\_\_\_\_

Contract Number: \_\_\_\_\_

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

Contract Name: \_\_\_\_\_

DBE Telephone #: \_\_\_\_\_

DBE Contract Start Date: \_\_\_\_\_

**Prime Contractor's Information:**

Name of Prime: \_\_\_\_\_ Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_

**DBE PAYMENT INFO:** Itemize payments/invoices and dates if received/submitted more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of **THIS** Month.

Work Task Performed	Original Subcontract Amount \$	Change Order Amount (+/-)	Invoice #(s) Submitted in this month	Dollar Amount of Each Invoice Submitted in this Month	Date of Invoices(s) Submitted this Month	Total Payments Received by DBE In this Month* (\$)	Date Payment(s) Received in this Month	Total Payments Received by DBE to Date (\$)	Total % Work to Date	Final Payment? Y or N
<b>TOTALS▶</b>	\$	\$	<b>TOTALS▶</b>	\$	<b>TOTALS▶</b>	\$	<b>TOTALS▶</b>	\$		

Is retainage held on your subcontract? **Yes** or **No** (circle one) If yes, how much? \$ \_\_\_\_\_. Did your final payment include retainage? **Yes** or **No** (circle one)

**Past Due Invoice(s) Information:** List any invoice more than 40 days past due from date submitted to prime at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments: use additional paper if necessary

Note: CFO or equivalent Sr. Manager must complete and sign off on this form.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

THIS FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH IMMEDIATELY FOLLOWING DBE'S SUBCONTRACT START DATE, EVEN IF PAYMENT NOT RECEIVED.

Please mail this form to: <Sub-recipient Info>

**INTENT TO PERFORM AS A 1<sup>ST</sup> TIER DBE - FORM B**

*The Bidder/Proposer/Prime is prohibited from completing any portion of this form and directing the DBE to sign a blank form.*

**DIRECTIONS:** DBE(s) listed on the Form A must complete all information on this form.

\_\_\_\_\_  
*Name of Bidder/Proposer/Prime:*

\_\_\_\_\_  
*Name of DBE Firm:*

**Project/Contract Name:** \_\_\_\_\_

**IFB/RFP Contract Number:** \_\_\_\_\_

Does the undersigned DBE (Answer Accordingly):

**Intend to perform subcontract work in connection with the above-mentioned project as a Joint Venture? Circle one.** (Yes or No)

**Intend to subcontract any portion of its scope of work to a DBE(s)? Circle one.** (Yes or No)

*If yes, DBE Sub-Primes must complete and submit Form AA. At what percent? \_\_\_\_\_%*

**Intend to subcontract any portion of its scope of work to a Non-DBE(s)? Circle one.** (Yes or No)

*If yes, must complete and submit Form AA2. At what percent? \_\_\_\_\_%*

*The undersigned will perform the following described work on the above-referenced project: (Provide a detailed description of the type of work you will perform on your subcontract. Attach a copy of quote approved and signed by Bidder (optional)).*

\_\_\_\_\_  
\_\_\_\_\_

**Dollar Value of DBE Subcontract: \$** \_\_\_\_\_

**Total Quantity/Units (if applicable):** \_\_\_\_\_ **Per Unit Cost (if applicable):** \$ \_\_\_\_\_

*The undersigned based the above scope of work and subcontract value on detailed project specs received from the Bidder contractor named above. Circle one.* (Yes or No)

*The Prime Contractor projected the following commencement and completion date for such work as follows:*

*DBE Contract Start Date:* \_\_\_\_\_ *DBE Contract Completion Date* \_\_\_\_\_

The undersigned DBE will enter into a formal agreement for the above work with the Prime Contractor conditioned upon execution of a contract with [SUBRECIPIENT.] As a DBE subcontractor, I will cooperate with the certification, compliance and monitoring process set forth by [SUBRECIPIENT.] I attest that I will perform at least 51% of my subcontract with my own workforce for the referenced project.

**H. Signature of 1<sup>st</sup> Tier DBE** \_\_\_\_\_

**Date**

**Title**

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Telephone #:*

**Failure to adhere to these instructions or the falsification of any information on this form shall result in breach of contract and subject to the appropriate penalties to be determined by [SUBRECIPIENT].**

# EXHIBIT J

## 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

1. 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



## EXHIBIT K (continued)

### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency.) Include prefixes, e.g. "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter last name, first name and middle initial (MI).
11. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collect is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget Paperwork Reduction Project (0348-10046). Washington, DC 20503.



IMPORTANT NOTICE TO ALL SUBRECIPIENTS AND CONSULTANTS/VENDORS

**ELDERLY AND PERSONS WITH DISABILITIES FORMULA PROJECTS (49 U.S.C. §5310)  
JOB ACCESS AND REVERSE COMMUTE GRANT  
NONURBANIZED AREAS FORMULA PROJECT (49 U.S.C. §5311)  
URBANIZED AREA FORMULA PROJECT (49 U.S.C. §5307)  
SCDR TAP- Senior Citizens Disabled Residents Transportation Assistance Program**

NJ Transit is an instrumentality of the State of New Jersey and its employees and officers, including **members of the NJ Transit Board of Directors, are public servants. NJ Transit, its employees and officers** are governed by a number of civil and criminal laws, which control how NJ Transit and its personnel do business with contractors and consultants. These provisions include the Conflicts of Interest Law, NJS 52:13D-12; the Gifts to Public Servants Law, NJS 2C:27-6; and the Compensation for Past Official Behavior Law, NJS 2C:27-4. These provisions contain unequivocal and stringent restrictions relating to gifts and gratuities.

Be advised that the law prohibits the receipt of gifts and gratuities by any NJ Transit employee or officer from any person, company or entity doing business – or wanting to do business – with NJ Transit. Concomitantly, NJ Transit's own Code of Ethics and code of Ethics for Vendors, prohibits NJ Transit employees from accepting gifts and prohibits you, the contractors and consultants, from offering any gifts to any NJ Transit employee.

The term "gift" is broadly and widely defined. It includes all things and objects, tangible or intangible, including services, gratuities, meals, entertainment, tickets to events, access to membership clubs, travel costs and lodging. Simply put, a "gift" is anything of value.

Do not, under any circumstance, tempt or put a NJ Transit employee in an awkward position of having to refuse a gift or return a gift, no matter how well intentioned or innocuous the gift may be in your eyes.

The bright line rule for you and your staff in doing business with NJ Transit is simple: Offer nothing and give nothing to any NJ Transit employee or officer. It is your responsibility to circulate this Notice in your company and educate accordingly all personnel who do business with NJ Transit.

(Continue to next page and sign affidavit)

# EXHIBIT L

## ANNUAL AFFIDAVIT OF COMPLIANCE WITH NJ TRANSIT'S CODE OF ETHICS FOR VENDORS AND STATE OF NEW JERSEY ETHICS LAW

## ANNUAL AFFIDAVIT OF COMPLIANCE WITH NJ TRANSIT'S CODE OF ETHICS FOR SUBRECIPIENTS, VENDORS AND CONSULTANTS AND STATE OF NEW JERSEY ETHICS LAW

I, \_\_\_\_\_ (*Name of Individual*), executing this document on behalf of the undersigned company, partnership, corporation, or entity hereinafter referred to as "Subrecipient", presently doing business with NJ Transit, hereby warrant and affirm to NJ Transit as follows:

1. I warrant and affirm that the Subrecipient has received a copy of NJ Transit's Code of Vendor Ethics and that I have read and studied this document and distributed this document to all of the Subrecipient's personnel doing business with NJ Transit and required said personnel to fully read this document. In addition, I further warrant and affirm that the Subrecipient has received from NJ Transit a document entitled "Important Notice to All Subrecipients and Consultants" and that I have read and studied this document, including the page setting forth various New Jersey statutory provisions, and that the Subrecipient has distributed this document to all of the Subrecipient's personnel doing business with NJ Transit and required said personnel to fully read this document.
2. The Subrecipient warrants and affirms that it has issued written instructions to all of the Subrecipient's personnel doing business with NJ Transit instructing and requiring same to strictly adhere to the Subrecipient's responsibilities as set forth in NJ Transit's Code of Vendor Ethics and in the "Important Notice to all Subrecipients and Consultants."
3. The Subrecipient warrants and affirms that during the term of the contract with NJ Transit no gratuities or other inducements have been offered or given or will be offered or given in any form including gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment, or any other thing of value or favors of any kind to any member of NJ Transit's board of Directors, officer or employee of NJ Transit, except as Subrecipient has heretofore disclosed to NJ Transit.
4. The Subrecipient warrants and affirms that during the term of the contract with NJ Transit, the Subrecipient has not and will not make any offers of employment to any NJ Transit officer or employee directly involved with this contract of solicit or interview therefore, directly or indirectly, without first seeking and obtaining written approval from NJ Transit's Ethics Liaison Officer.
5. The Subrecipient warrants and affirms that it has promptly reported in writing to NJ Transit, and, that in the future, it shall so report to NJ Transit every instance that comes except as Subrecipient has heretofore disclosed to NJ Transit., to the Subrecipient's attention and knowledge regarding any member of NJ Transit's Board of Directors, officer or employee of NJ Transit who has, during the term of the contract between NJ Transit and the Subrecipient, solicited or asked Subrecipient to provide gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment or any other thing of value or favors of any kind or has made any solicitation or request, directly or indirectly, for employment with or through the Subrecipient
6. The Subrecipient acknowledges and accepts that for breach or violation of the foregoing warranties and affirmations, NJ Transit shall have the discretion and legal right to terminate the contract between the Subrecipient and NJ Transit without any fee, cost, assessment, liability or penalty of any kind and NJ Transit has the right to take any other action permitted or required by law.

\_\_\_\_\_  
(*Print Name of Subrecipient Agency*)

\_\_\_\_\_  
(*Signature of Authorized Principal or Officer*)

\_\_\_\_\_  
(*Print Name and Title of Signatory*)

Sworn to and subscribed to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

# EXHIBIT M

## ANNUAL AFFIDAVIT OF COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

I, \_\_\_\_\_ (Name of Individual), executing this document on behalf of the undersigned company, partnership, corporation, or entity hereinafter referred to as “SUBRECIPIENT”, presently doing business with NJ TRANSIT, hereby warrant and affirm to NJ TRANSIT as follows:

- The SUBRECIPIENT certifies that its transportation service is in compliance with the DOT ADA Regulations as per 49 CFR Parts 37, 38 and 39.
- The SUBRECIPIENT certifies that any contractors operating some or all of the SUBRECIPIENT’s service complies with the DOT ADA regulations are per 49 CFR Parts 37, 38 and 39.
- The SUBRECIPIENT certifies that the transportation service offered to individuals with disabilities, including individuals who use mobility devices, is equivalent to the level and quality of service offered to individuals without disabilities.
- The SUBRECIPIENT shall not deny service to a person with a disability based on what it perceives to be “safe” or “unsafe” for that individual. Individuals with disabilities have the right to decide the level of risk they are willing to take to travel independently.
- The SUBRECIPIENT shall not impose special charges for providing required accessible services to individuals with disabilities.
- The SUBRECIPIENT shall not require that an individual with disabilities be accompanied by an attendant.
- The SUBRECIPIENT shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.
- The SUBRECIPIENT may refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, a SUBRECIPIENT shall not refuse to provide service to an individual with disabilities solely because the individual’s disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the SUBRECIPIENT or other persons.
- The SUBRECIPIENT shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by Part 38 of the ADA.
- The SUBRECIPIENT shall maintain in operative condition those features of vehicles that are required to make the vehicle readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and ramps, lighting, mobility aid securement areas and systems, and seat belts and shoulder harnesses.
- The SUBRECIPIENT shall promptly repair accessibility features if they are damaged or out of order.

- The SUBRECIPIENT shall establish a system of regular and frequent maintenance checks of lifts and ramps sufficient to determine if they are operative. The SUBRECIPIENT shall ensure that vehicle operators report, by the most immediate means available, any failure of a lift or ramp to operate in service. When a lift or ramp is discovered to be inoperative, the SUBRECIPIENT shall take the vehicle out of service before beginning the vehicle's next service day and ensure that the lift/ramp is repaired before the vehicle returns to service.
- The SUBRECIPIENT should carry the occupant and their wheelchair if the lift and vehicle can accommodate them.
- The SUBRECIPIENT is not required to permit riders who use wheelchairs to ride in places other than designated securement locations on the vehicle.
- The SUBRECIPIENT shall allow riders who use wheelchairs to board and ride accessible vehicles. A wheelchair is defined as "a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered." A wheelchair does not require specific elements or equipment such as front rigging (footplates or leg rests), wheel locks or brakes, push handles, or positioning belts or harnesses.
- The SUBRECIPIENT may require that an individual permit his or her wheelchair to be secured. The SUBRECIPIENT may not deny transportation to a wheelchair or its user on the ground that the device cannot be secure or restrained satisfactorily by the vehicle's securement system.
- The SUBRECIPIENT may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.
- The SUBRECIPIENT shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.
- When necessary or upon request, the SUBRECIPIENT's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.
- The SUBRECIPIENT shall permit service animals to accompany individuals with disabilities in vehicles.
- The SUBRECIPIENT shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply.
- The SUBRECIPIENT shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.
- The SUBRECIPIENT shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.
- SUBRECIPIENTS that are public entities that provide general public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services.

The SUBRECIPIENT shall make information about how to contact the agency to make requests for reasonable modifications readily available to the public on agency website and marketing materials, and must be accessible.

- SUBRECIPIENTS are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. SUBRECIPIENTS are required to sufficiently advertise the ADA complaint process through means such as websites and marketing materials. The ADA complaint process must include the contact information (name and/or title, address, telephone number, and email address) for the individual designated to coordinate compliance, process for filing an ADA-related complaint and information on how they will response promptly to any individual filing a complaint. SUBRECIPIENTS must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. If the SUBRECIPIENT does not operate service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

**Any and all ADA complaints shall be reported to NJ TRANSIT:**

<b>COMPLAINTS</b>	
<b>Has your agency received any complaints, investigations or lawsuits alleging discrimination in the delivery of transportation service in the last year?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>If YES, provide a detailed description of the allegation and the current status and/or outcome.</b>	
<b>Has any federal entity conducted an ADA compliance review of your agency within the last three years?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>If YES, provide the purpose/reason for the review, the name of the agency that performed the review, a summary of Findings/Recommendations, and the status and/or disposition.</b>	
<b>Has your agency had a finding of non-compliance by any other federal agency?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

## Certification of ADA Compliant Service

This is to certify that \_\_\_\_\_ (Name of Agency) transportation services meet the requirements as listed above and those of 49 CFR part 37 Transportation Services for Individuals with Disabilities (ADA) as applicable.

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Signature

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Print Name of Authorized Official

---

Title

---

Date

# EXHIBIT N

## VERIFICATION OF TITLE VI ACTIVITIES BY SUBRECIPIENT

Please read enclosed document before completing this form.

**Subrecipient Name and address:**

**Agency's Designated Title VI Person:**

**E-mail:**

**Phone #:** - -

### NOTICE TO BENEFICIARIES

**Have you made a change to the locations where your Notice is Published?**

YES  NO

**If YES, where is notice published?**

- Website  
 Brochure/Timetable  
 On-board the Vehicles  
 Signs Posted at Facility/ Office  
 Other

**If Other, please explain.**

### COMPLAINTS

**Has your agency received any complaints, investigations or lawsuits alleging discrimination in the delivery of transportation service in the last year?**

YES  NO

**If YES, provide a detailed description of the allegation and the current status and/or outcome.**

**Has any federal entity conducted a Title VI compliance review of your agency within the last three years?**

YES  NO

**If YES, provide the purpose/reason for the review, the name of the agency that performed the review, a summary of Findings/Recommendations, and the status and/or disposition.**

**Has your agency had a finding of non-compliance by any other federal agency?**

YES  NO