

Request for Board of Commissioners' Action

From: Faye Hughes, County Administrator Date: March 5, 2018

Subject: MIDS TPO Service Agreement Contract Item Number: VIII-B

Please find attached the updated TPO agreement between Cook County and MIDS Transportation, Inc. This is after Cook County accepted our proposal in December 2017. This agreement replaces the expired agreement and is for January 2018 thru December 31, 2018 with 4 additional 1 year renewals. All terms and conditions are the same as previous TPO Agreement.

Please put it on the agenda to be signed at the next Commissioners meeting if this needs to be brought before the entire board. Please print two (2) copies and have them executed on your end and mail the two (2) copies to me and we will execute on our end and return a fully executed copy back to you for your files.

If you have any questions please contact me.

Danny Saturday
Director of Operations
MIDS Transportation, Inc.
1610 River Street
Valdosta, GA 31601
229-247-1800 Ext. 116
229-316-0031 Fax
229-630-2021 Cell

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed

THIRD PARTY OPERATOR AGREEMENT

2018

SERVICE AGREEMENT FOR OPERATIONS OF COOK COUNTY AREA TRANSIT SYSTEM BETWEEN THE BOARD OF COMMISSIONERS OF COOK COUNTY AND MIDS TRANSPORTATION, INC.

This Agreement is made and entered into this 1st day of January, 2018, by and between the Board of Commissioners of Cook County, Georgia, hereinafter referred to as the "COUNTY" and MIDS Transportation, Inc., as the Third Party Operator, hereinafter referred to as "TPO";

WHEREAS, the purpose of the Agreement is to provide for a cooperative agreement between the COUNTY and TPO for the operation of public transportation services, and the COUNTY, as the governing body, is authorized under the Official Code of Georgia Annotated Title 32 to provide directly or through agreement with other parties, public transportation services. The TPO has presented itself as a ready, willing and able provider duly authorized by the Georgia Business Corporation Code and appropriately qualified to enter into a service agreement with the COUNTY for the purpose of operating public transportation services; and

WHEREAS, because of mutual benefits and interest in providing public transportation services in Cook County, the following Agreement is agreed by and entered into between the parties. Nothing in this Agreement absolves or diminishes the contractual relationship (the "Master Agreement") between COUNTY and the State of Georgia Department of Transportation hereinafter referred to as "GDOT" for the provision of public transportation services.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter more fully set out, the parties agree as follows:

COUNTY RESPONSIBILITIES

1. Three (3) vehicles in good working condition, a copy of said vehicle inventory being attached to this Agreement as **Exhibit A** and incorporated herein (collectively, the "Vehicles" and individually, a "Vehicle");
2. Primary Vehicle insurance coverage as prescribed by the GDOT will be provided by COUNTY for the Vehicles and as prescribed in attached **Exhibit B**. TPO will be listed as an additional insured under the COUNTY vehicle policy. The TPO will reimburse the COUNTY the cost of this coverage;
3. Advisory assistance in obtaining purchase of service contracts, marketing

assistance of the system and record keeping as required by GDOT. All Purchase of Service Agreements must be between TPO and Service Recipient and recover the fully allocated cost;

4. The Cook County Drug and Alcohol Testing Policy for Transit System Employees dated February 23, 2017 (the "Testing Policy"); and
5. COUNTY agrees to allow TPO to purchase fuel from the COUNTY for any vehicles that are used in Cook County for the 5311 public transportation system.
6. COUNTY agrees to allow the use of all Capital Equipment of Cook County Transit for the TPO to utilize in the operation of the transit system.
7. The COUNTY will assist the TPO with conducting any advertising and/or public hearings as may be required for any Fare/Service Changes. The TPO will determine the fleet size required to operate the transit program.

TPO RESPONSIBILITIES

1. All administrative services for the operation of a complete Section 5311 Rural Public Transportation System of Cook County (the "System") which will provide service with a goal of no fewer than 500 one-way trips per vehicle, per month, or vehicle utilization should exceed 120 hours per month per vehicle or 1000 miles/month per vehicle;
2. The program is to be operated 10 hours per day for 5 days per week, which excludes COUNTY legal holidays, in accordance with policies and guidelines set by COUNTY and GDOT;
3. Sufficient number of full-time and part-time drivers to operate the said Vehicles during the approved hours of service. In addition, TPO shall provide a full-time Dispatcher to receive incoming phone calls for transportation between the hours of 8:00 A.M. and 5:00 P.M. Monday-Friday.
3. Marketing of the System including the cost of such marketing;
4. Day-to-day supervision of the Transit drivers;
5. Insurance as specified in **Exhibit B** attached to this Agreement and incorporated herein by reference; COUNTY will be listed as an additional insured;
6. Fuel, maintenance and cleaning of, and repairs to, the Vehicles;
7. Full compliance by TPO and all of its employees, agents and contractors with the Testing Policy, including, without limitation, the substance abuse testing outlined in the Testing Policy;
8. Implementation of such service expansions or improvements as may be

recommended by TPO and approved by COUNTY in writing, or as may otherwise be agreed upon between the parties from time to time;

9. Encourage, obtain and enter into Purchase of Service Agreements. All Purchase of Service Agreements must recover the fully allocated costs; and
10. Permit GDOT or any other authorized representative of the COUNTY during the operating or office hours to review and inspect the System's activities, data collected and financial records pertaining to the System's operation.
11. Work with county in achieving the goals and objectives and carrying out the Action Plans as outlined in the Cook County Transit Development Plan, or any revisions thereafter.

SERVICIES TO BE OFFERED

Services to be offered under this Agreement by TPO may include fixed-route, route deviation, subscription, demand responsive service, or combination of any of the services as may be approved by COUNTY. Particulars of the service shall conform to the following requirements:

1. The term of this Agreement shall be as provided below under the heading "Term of Agreement and Termination of Agreement". TPO shall commence operation of the System January 1, 2018.
2. The Services will be curb-to-curb, shared ride, demand responsive transportation for residents of Cook County, as approved by COUNTY. The aforementioned services are defined as follows:
 - (a) Demand response Service - constitutes service with at least 24-hour advance notice. Any notice with at least 24 hours should be worked into regular schedule when feasible.
3. The demand responsive services shall be provided Monday through Friday.
4. Hours of service are from 7:30 A.M. to 5:30 P.M. (In no case shall a passenger be refused service within the regular service hours unless on extenuating circumstances).
5. Passenger constitutes any resident of Cook County and riders on coordinated trips while in service and a passenger-trip constitutes transporting one passenger one-way between two locations.

OPERATING SERVICE TO BE PROVIDED BY TPO

TPO is to provide all reservations and scheduling function as outlined in the following (all schedule changes shall be approved by the COUNTY):

1. **Demand-Responsive Service Reservation Procedures:** TPO shall accept reservations for demand-response service between 8:00 A.M. and 5:00 P.M. Monday through Friday. Reservations should be made one working day in advance of the trip. The dispatcher shall maintain a demand-response reservation log, recording the name, address and telephone number of the caller and the requested pick up times and locations for both the originating and the return trips. If the trip can be accommodated, the dispatcher will make the reservation; record the method of payment, type of trip, and Medicaid number if warranted. If this trip cannot be accommodated, the dispatcher shall note this on the demand-response log as designed by TPO and COUNTY.
2. TPO shall maintain all records required for operating a Section 5311 Rural Transportation Program, with guidance and assistance as necessary provided by the COUNTY and provide copies of such records to COUNTY.

SERVICE DELIVERY PROCEDURE

The following service delivery procedures will be adhered to by TPO:

1. The driver shall accept all trip requests related to him or her from the dispatcher so long as they are within the specified service area and within the specified service times. There shall be no right of refusal based on Vehicle availability (except the passenger maximum load factor) or any consideration other than verifiable catastrophic mechanical failure of the Vehicles in the fleet as scheduled on a reservation basis.
2. The Vehicles must be on time, unless there are extenuating circumstances beyond TPO's or driver's control. A 95% on-time performance rate is the goal. Notification must be given by TPO to the patron in the event of unavoidable delays.
3. For social services clients, drivers must wait 5 minutes after the appointed pick up time before a passenger can be considered a no-show (A passenger who is not at the appointed pick-up location at the scheduled time and who has not informed the TPO in advance that he would be absent will be considered a no-show).
4. Drivers shall offer assistance to all passengers as needed to board and depart from the Vehicle; secure all wheelchairs; and request passengers buckle their seatbelts.
5. Drivers shall refrain from smoking, eating, and drinking while passengers are in the Vehicle. Drivers shall request passengers to refrain from smoking, eating, and drinking in the Vehicle. Passengers will not be allowed to ride again if this rule is broken.

6. Drivers shall maintain daily records of mileage, time, type, and number of trips, and passenger types as required by GDOT and COUNTY, also daily Vehicle maintenance inspection sheets and weekly Vehicle clean inspection sheets. These records shall be turned into TPO and COUNTY on a monthly basis.
7. Drivers shall inform TPO of any passenger complaints, thereafter; the TPO shall complete passenger complaint forms and send copies to the COUNTY for record purposes or for any appropriate action if necessary. The complaint shall be filed with COUNTY not later than one (1) week from the date of the occurrence.
8. Drivers and TPO are prohibited from soliciting or accepting any tips or other forms of gratuity other than the approved fare from System riders. Moneys in excess of actual fares shall be transferred directly to TPO to supplant the cost of operating the transit System. Such revenues shall be constructed as System's in-kind income for purpose of accountability.
9. The COUNTY through TPO shall inform the appropriate social service agency representative regarding any difficulties experienced in transporting an agency client, whether related to safety, behavior or other reasons.

VEHICLE MAINTENANCE

All Vehicles under this Agreement must be maintained in safe and good mechanical condition. Each Vehicle shall be subject to inspections by GDOT representatives. GDOT inspections will occur on a semiannual basis and in accordance with the Vehicle Monitoring Form. TPO shall provide the personnel, parts, equipment and supplies necessary to perform all preventive and repair maintenance to keep Vehicles clean and in good working order and to maintain the continuity of services. As a rule, all cleaning shall be done by the drivers and all repairs, component replacement and preventive maintenance shall be done by the TPO through a local workshop. TPO shall submit the amounts of any work done on the Vehicle to the GDOT as a part of the reporting that is required. These same invoices shall be part of the Monthly Reports to the COUNTY. The TPO shall make the payments for these repairs and component replacement and any other charges to the current Section 5311 Program budget. Vehicles of COUNTY utilized for the Section 5311 Program shall be parked overnight and on weekends at places to be pre-designated by COUNTY.

QUALIFICATIONS AND TRAINING GUIDELINE

COUNTY and TPO agrees to the following qualifications and training guidelines for personnel:

1. Driver Qualifications:
TPO agrees that all drivers have or will be able to obtain a valid Georgia Driver's License; a Class C Georgia Commercial Driver's License (CDL) is required prior to operating a Vehicle that will transport more than 15 passengers (including driver); be able to read, write and make correct change; have the ability to physically

assist in the loading and unloading of elderly and handicapped passengers when necessary; a minimum of five (5) years driving experience; have a thorough knowledge of traffic safety and excellent driving record; have 20/20 vision (corrected) and be in good physical health; have the ability to deal effectively with the elderly, handicapped and general public; have ability to arrive at work on time; and have favorable job history and satisfactory references.

2. TPO will design and provide a driver training program that includes the following: Use of equipment; defensive driving techniques; and CPR training; passenger assistance techniques for proper care and handling of disabled riders; fare structures; System information; preventive maintenance requirements; and record keeping.
3. Dispatcher Qualifications - Dispatcher to be employed by TPO, should have the following qualifications: Knowledge of County and City roads; verbal communications skills (good telephone manners); high school graduate or equivalent; experience in dispatching; favorable job history and satisfactory references; an ability to coordinate variable routing need.
4. TPO agrees to comply with and be responsible for compliance by its employees, agents and contractors with the Testing Policy, including, without limitation, implementing the drug testing program of all TPO employees working on the Section 5311 Transit Program full-time or part-time, which is mandated by the GDOT and adopted by the COUNTY and to comply with the requirements of the U.S. Department of Transportation's (USDOT) Control of Drug Use in Mass Transportation by providing a drug free workplace. TPO is required to submit results from random drug testing to the COUNTY. These results will be sent to the COUNTY clerk quarterly. In the event of an audit, FTA requires the COUNTY to provide random drug testing results.
5. COUNTY also agrees to be responsible for implementing any drug testing program for all COUNTY employees working on the Section 5311 Program and to comply with the USDOT's requirements on Control of Drug Use in Mass Transportation by providing a drug free workplace for COUNTY employees that work on the Section 5311 Program.

TPO ADMINISTRATIVE RESPONSIBILITIES

TPO shall operate the Section 5311 Program services in such a manner as to maintain the guidelines and policies set by the GDOT. TPO further agrees to maintain appropriate books, records, documents, papers and other evidence pertaining to public transportation operations for the period of this Agreement and will make such materials available for inspection, upon request by the COUNTY and the GDOT, or their representatives for the period specified in the Master Agreement between the COUNTY and GDOT. TPO shall be responsible for submitting GDOT monthly reports (Monthly Reporting Forms), from information recorded by drivers and from information furnished by the COUNTY. These reports are to be sent to GDOT District 4, Tifton, Georgia or the designated GDOT location. These reports for the month ended shall be submitted to the

GDOT District office by the tenth of the following month and copies of the reports shall be sent concurrently to COUNTY.

AUDITING

TPO shall maintain an acceptable accounting System in according with Federal and State Regulations. The TPO shall use monthly P&L data computed by a licensed CPA firm to prepare all monthly financial reporting. TPO shall provide a copy of monthly USDOT reports, including supporting documentation, to the COUNTY. TPO shall make its related records available on an annual basis for review by the COUNTY, at the expense of the COUNTY, and report findings to GDOT.

REVENUE AND EXPENSE REPORTING AND INVOICING

Revenue: COUNTY shall determine the fare for general public for trips within Cook County. The basic fares for regular service are as follows: Farebox- Pre-scheduled/Demand -Response - Trips 10 miles or less and within the county - \$3.00; Trips over 10 miles and within the county - \$5.00 to county line plus \$.50/mile. Senior Citizens (62 yrs. and older) and Children 5 years and under are half-fare. The fare schedule shall remain in force until COUNTY & TPO decides otherwise. Social service agency riders will be subsidized or paid for by the social service agency or other funding source. TPO shall be responsible for billing social service transportation expenses to the appropriate party on a monthly basis or at other times. All fares and purchase of service income received shall be documented on the invoice submitted to COUNTY. All revenue shall belong to TPO.

Expenses and Invoicing: TPO shall submit monthly invoices to the Cook County Clerk as part of the Monthly Operating Report. TPO shall prepare and submit monthly the GDOT Reimbursement Form, together with TPO Monthly Invoice attached. The Chairman, Board of Commissioners of Cook County shall after review and approval sign and return to TPO the Reimbursement Form. TPO shall make sure that the Reimbursement Form shall be ready for the signature of the Chairman of the Board of Commissioners of Cook County in a timely manner. TPO shall receive all reimbursement from GDOT.

ACCIDENT REPORTING

Drivers shall report any accidents to TPO and COUNTY within one (1) hour of the occurrence or, if the offices are closed, by 9 A.M. on the following workday. The driver shall give TPO a copy of the investigating officer's accident report. The TPO shall send copies of the report to COUNTY and GDOT District Representative in Tifton within three (3) working days from the date of the accident. All persons involved in movement control (Driver, Dispatcher, etc.) at the time of the accident are required to submit to alcohol and drug testing as outlined in the Cook County Substance Abuse Policy for the Section 5311 program.

FEDERAL COMPLIANCE

TPO must agree as a condition to receiving federal assistance under Section 5311 of the Federal Transit Act that:

1. No person shall on the grounds of race, color, creed, national origin, sex, age, or handicap be excluded from participation in, or be denied the benefits of, or be subject to discrimination under any project, program, or activity for which this recipient receives Federal financial assistance from the Federal Transit Administration;
2. TPO shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or natural origin, and shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin; and
3. TPO will conduct any program or operate any facility that receives or benefits from Federal financial assistance administered by the Department of Transportation in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, Non-discrimination on the Basis of Handicap in Federally Assisted Programs and Activities received or Benefiting from Federal Financial Assistance.

PERFORMANCE EVALUATION

TPO shall use the following service criteria as a guide for evaluation of System services:

1. Services should not be duplicative of other transportation services;
2. Monthly ridership goal is to exceed 500 person trips per Vehicle; or
3. Vehicle utilization should exceed 120 hours per month per Vehicle or 1000 miles/month per vehicle;
4. Vehicles should be available for service on a daily basis;
5. Vehicle trips for contract or subscription service should recover fully allocated costs;
6. Service ridership should exceed 0.5 passenger per Vehicle service mile; and
7. The System's target is to recover a minimum of 10% of its operating cost from farebox revenues generated through regular operations.

CONTRACTS FOR SERVICE

Contracts for service with any social service agencies or any other organizations shall be negotiated by TPO and submitted to COUNTY for approval. All Contracts for service shall

be entered into between TPO and the applicable agency or organization. All Purchase of Service Agreements must at a minimum recover fully allocated cost.

COMPLIANCE WITH LAWS

TPO shall comply with all applicable Federal and State laws, statutes, rules, regulations, orders, procedures, ordinances and resolutions pertaining to its operation of the System and performance of services hereunder, including, without limitation, Federal Transit Act Section 5311 Program Funds, including the Office of Management and Budget Circular 74-7 in the Hatch Act.

TERM OF AGREEMENT AND TERMINATION OF AGREEMENT

This Agreement shall commence upon the date first written above and, unless earlier terminated as provided below, shall thereafter continue through December 31, 2018.

Thereafter, COUNTY shall have the option to extend the term of this Agreement for up to four (4) additional one-year terms as follows:

- (a) January 1, 2019 through December 31, 2019;
- (b) January 1, 2020 through December 31, 2020;
- (c) January 1, 2021 through December 31, 2021; and
- (d) January 1, 2022 through December 31, 2022;

In order to non-renew this Agreement for an additional one-year term, COUNTY shall give TPO notice not less than 90 days prior to the expiration of the then-current term. This Agreement may be terminated at any time as follows:

- (a) By COUNTY upon 30 days' written notice to TPO in the event the Master Agreement between COUNTY and GDOT is terminated or rescinded; or
- (b) By either party upon 30 days' written notice in the event the other party has materially breached the terms of this Agreement.

COMPENSATION

TPO shall be reimbursed for the costs for the performance of this Agreement from farebox collections, purchase of services agreements, and GDOT in accordance with their rules and regulations. COUNTY shall at no time reimburse TPO for services rendered or have any monetary liability to TPO and TPO shall look solely to fares collected or received pursuant to service agreements and to GDOT for compensation under this Agreement. All profits and losses resulting from operation of this program shall belong to, and be the sole responsibility of, TPO.

PROMPT PAYMENT MECHANISMS

The COUNTY agrees to pay the TPO under this contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the COUNTY receives from GDOT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the TPO. This clause applies to both DBE and non-DBE subcontracts.

RETAINAGE

The COUNTY agrees to return retainage payments to TPO within (10) days after the TPO's 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 TPO. This clause applies to both DBE and non-DBE subcontracts.

LIABILITY AND INDEMNITY

To the fullest extent permitted by law, the COUNTY shall not be liable to TPO or to any other person or entity whatsoever for any damages or injury from any cause whatsoever relating to the System or arising out of the services to be provided pursuant to this Agreement. TPO shall indemnify, defend and hold harmless the COUNTY from and against any and all claims of whatever nature, arising from TPO's actions or omissions relating to services to be provided under this Agreement or TPO's operation of the System. This indemnification shall be in addition to any other rights and remedies (including, without limitation, insurance proceeds) to which the COUNTY may be entitled under this Agreement, at law or in equity, and shall include all costs, expenses and liabilities incurred in connection with any claim or proceeding brought, including the reasonable expense of investigating and defending any such claim.

THE COUNTY SHALL NOT BE LIABLE TO TPO OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH, WHETHER SUCH CLAIM IS BASED ON A BREACH OF THIS AGREEMENT, TORT OR NEGLIGENCE OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. IN NO EVENT SHALL THE COUNTY HAVE ANY LIABILITY TO TPO FOR ANY COSTS, EXPENSES OR LOSSES RELATING TO OR ARISING OUT OF THE SYSTEM OR TPO'S SERVICES TO BE PROVIDED HEREUNDER.

NO ASSIGNMENT WITHOUT CONSENT

Neither party may assign or suffer or permit the assignment, subcontracting or delegation of this Agreement, in whole or in part, whether voluntarily, involuntarily or by operation of law, without the express written consent of the other party. For purposes of this Agreement, a sale or transfer of all or substantially all of TPO's assets or the sale or transfer of voting control of TPO shall be deemed to be an assignment of his

Agreement. No assignment of this Agreement shall relieve the assigning party of responsibility or liability for any of its duties and obligations hereunder.

[Signatures contained on following page]

IN WITNESS WHEREOF, COUNTY and MIDS Transportation, Inc. have caused this Agreement to be duly executed by their authorized representatives as of the day and year first above written.

On behalf of the Board of Commissioners of
Cook County, Georgia

Chairman
Board of Commissioners

Date

Witness

Notary Public

MIDS Transportation, Inc.

By: _____
Deborah T. Hobdy, CEO

Date

Witness

Notary Public

“EXHIBIT A”

Vehicle Inventory

1. 2013 Ford Shuttle Van; 10 passenger; with wheelchair lift; Vehicle Identification Number- (1FTDS3EL9DDB02024) - GDOT# (3329)
2. 2015 Ford Shuttle Van; 10 passenger; with wheelchair lift; Vehicle Identification Number- (1FDEE3FS7FDA09681) - GDOT# (3515)
3. 2015 Ford Shuttle Van; 13 passenger; without wheelchair lift; Vehicle Identification Number- (1FDEE3FS0FDA12888) - GDOT# (3516)
4. 2017 Ford Shuttle Van; 10 passenger; with wheelchair lift; Vehicle Identification Number- (1FDEE3FS3HDC30164) - GDOT# (3693)
5. 2017 Ford Shuttle Van; 10 passenger; with wheelchair lift; Vehicle Identification Number- (1FDEE3FS5HDC35480) - GDOT# (3787)
6. 2017 Ford Shuttle Van; 10 passenger; with wheelchair lift; Vehicle Identification Number- (1FDEE3FS7HDC35481) - GDOT# (3788)

“EXHIBIT B”

Insurance Requirements

1. TPO shall procure and maintain insurance of the types and to the limits specified in paragraphs (a) through (b) inclusive below. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:
 - a) **Worker’s Compensation** - Coverage to apply for all employees for STATUTORY limits, no exemptions, in compliance with applicable state and federal laws;
 - b) **Commercial General Liability** - Coverage must be afforded, under an occurrence form policy, including Premise Operations, Independent Contractors, Products and Completed Operations, Broad Form Property Damage Endorsement, with a Hold Harmless and additional insured listing the COUNTY in the TPO’s Commercial General Liability Policy in limits not less than \$1,000,000/each occurrence; \$1,000,000/personal & advertising injury; and \$2,000,000 general aggregate. \$2,000,000 products/completed operations aggregate.
 - c) **Automobile Liability** - Primary coverage will be provided by COUNTY as prescribed by GDOT - \$1,000,000/combined single limit (bodily injury/property damage). TPO will be listed as an additional insured under the COUNTY vehicle policy and will reimburse the COUNTY the cost of this coverage.
 - d) **Certificate of Insurance** - The Employers Liability Insurance described in Section 1(a) and the policies described in Sections 1(b) shall contain a waiver of subrogation in favor of COUNTY. Certificates of all insurance required from TPO shall be filed with the COUNTY and shall be subject to its approval for adequacy and protection. Certificates from the insurance carrier, stating the types of coverage provided, limits of liability and expiration dates, shall be filed with the COUNTY before operations are commenced. COUNTY shall be listed as an additional named insured for each type of coverage required by paragraphs (a) through (b) above. The required certificates of insurance shall not only name types of policies provided, but shall also refer specifically to this contract/proposal.
2. TPO shall provide a Certificate of Insurance to the COUNTY with a thirty (30) day notice of cancellation. In addition, the COUNTY will listed as an additional named insured, with a Hold harmless Agreement in favor of the COUNTY. The certificate should also indicate if the coverage is provided under a "claims made" or "per occurrence" form. If any coverage is provided under a claim made form, the certificate will show a retroactive date (in instances of contract renewals or extensions), which should be the same date of the original/first contract or prior.
3. If the initial insurance expires prior to the end of the contract term, renewal certificates shall be furnished thirty (30) days prior to the date of their expiration.

All insurance provided under this agreement shall have an A.M. Best rating of a minimum of A- for the insurance company.

“Exhibit C”

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION IN LOWER TIER COVERED TRANSACTION

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor the principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department, or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principle,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all certifications for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the No procurement List (Telephone 202/245-0720).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant is a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

"Exhibit D"

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Loans and Cooperative Agreements

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, MIDS Transportation, Inc., 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.

By: _____
Signature of Authorized Official Date

Name and Title of Authorized Official

“Exhibit E”

CERTIFICATIONS, ASSURANCES AND REQUIRED CLAUSES FTA REQUIRED CLAUSES FOR THIRD PARTY CONTRACTORS AND SUBAGREEMENTS

To the extent applicable, Federal requirements extend to third party contractors and their subcontracts and sub-agreements at every tier. The Contractor, will agree to meet the following Federal requirements in order to enter into this Agreement.

DRUG & ALCOHOL TESTING

49 U.S.C. 5331

49 CFR Parts 653 and 654

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations or, the Cooperative Alliance for Regional Transportation, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and to submit applicable Management Information System (MIS) reports to Eileen Maloney, Executive Director, CART, 50 Nashua Road, Suite 102, Londonderry, New Hampshire 03087. **To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.** The Contractor agrees further to annually submit a copy of the Policy Statement developed to implement its drug and alcohol testing program.

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

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

SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(f)

49 CFR Part 605

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

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this

contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

FEDERAL CHANGES

49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (***Form FTA MA (2) dated October, 2000***) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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 AND SAFETY STANDARDS ACT

40 U.S.C. § 327 -333 (1995)

29 C.F.R. § 5 (1995)

29 C.F.R. § 1926 (1995)

- (1) No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) In the event of any violation of the clause set forth in the first paragraph of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the first paragraph of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in the first paragraph of this section.
- (3) CART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work

performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in the second paragraph of this section.

- (4) The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (5) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of

1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1D

- a. Termination for Convenience (General Provision) - CART may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CART to be paid the Contractor. If the Contractor has any property in its possession belonging to CART, the Contractor will account for the same, and dispose of it in the manner CART directs.
- b. Termination for Default [Breach or Cause] (General Provision) - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, CART may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and

accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

If Contractor fails to remedy to CART'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 CART setting forth the nature of said breach or default, CART 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 CART 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 CART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by CART shall not limit CART's 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) - CART, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, CART 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 the 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, CART may terminate this contract for default. CART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of CART.

- g. Termination for Default (Transportation Services) - If the 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 the Contractor fails to comply with any other provisions of this contract, CART may terminate this contract for default. CART shall terminate by delivering to the Contractor a Notice of Termination specifying the

nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

PRIVACY ACT **5 U.S.C. 552**

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 **29 U.S.C. § 623, 42 U.S.C. § 2000** **42 U.S.C. § 6102, 42 U.S.C. § 12112** **42 U.S.C. § 12132, 49 U.S.C. § 5332** **29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §

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

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

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49

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

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

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

- (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE
(DBE)

49 CFR Part 26

Disadvantaged Business Enterprise Provision

1. The Federal Fiscal Year goal has been set by CART in an attempt to match projected procurements with available qualified disadvantaged businesses. CART goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by CART as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, CART may declare the Contractor

non-complaint and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- (a) Policy - It is the policy of the Department of Transportation and CART that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of CART to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of CART procurement activities is encouraged.

- (b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- (c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, CART may declare the Contractor non-complaint and in breach of contract.

- (d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with CART DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of CART and will be submitted to CART upon request.

- (e) CART will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies

- (a) Disadvantaged business "means a small business concern":

- i. 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

- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
or
 - iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
 - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
- (b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
- * Holding bid conferences to emphasize requirements
2. DBE Program Definitions, as used in the contract:
- (c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
- I. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
 - v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

STATE AND LOCAL LAW DISCLAIMER

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

FLY AMERICA

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent

service by U.S.-flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-131 through 301.143.

INCORPORATION OF FEDERAL TRANSIT
ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1D

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, 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 CART requests, which would cause CART to be in violation of the FTA terms and conditions.