

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**TRIBAL TRANSIT PROGRAM MASTER AGREEMENT  
FOR TRIBAL TRANSIT PROGRAM GRANTS**

**For Federal Transit Administration Grant Agreements authorized by  
49 U.S.C. § 5311(c)(1).**

**Tribal Transit Program Master Agreement  
For Fiscal Year 2011**

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N.B. This Tribal Transit Program Master Agreement for the Public Transportation on Indian Reservations Program (Tribal Transit Program) is based on the standard Federal Transit Administration (FTA) Master Agreement, which is incorporated by reference into nearly all other FTA Grant Agreements. Inapplicable provisions of FTA's standard FTA Master Agreement are marked "Not Applicable" in this Tribal Transit Program Master Agreement and left in place for the benefit of Indian Tribes that also receive Federal assistance awarded by FTA and are familiar with the section numbers.

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**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**TRIBAL TRANSIT PROGRAM MASTER AGREEMENT**

The following terms and conditions apply to Federal assistance for the Public Transportation on Indian Reservations Program (Tribal Transit Program) authorized by 49 U.S.C. § 5311(c)(1) that has been awarded by the Federal Transit Administration (FTA) through a Grant Agreement between FTA and a Federally Recognized Indian Tribe (Indian Tribe). Irrespective of any reference to an FTA Master Agreement that may appear on any electronic Grant Agreement that may have been used for an award of funds authorized by 49 U.S.C. § 5311(c)(1), the Tribal Transit Program Master Agreement for the applicable Fiscal Year applies to the underlying Tribal Transit Project in lieu of the FTA Master Agreement for the same Fiscal Year.

This Tribal Transit Program Master Agreement includes a comprehensive listing of provisions applicable to the Tribal Transit Projects that will be funded under 49 U.S.C. § 5311(c)(1). FTA and the Indian Tribe understand and agree that not every provision of this Tribal Transit Program Master Agreement will apply to every Project for which FTA provides Federal financial assistance authorized by 49 U.S.C. § 5311(c)(1). The type of Project, the Federal laws and regulations authorizing Federal assistance for the Tribal Transit Project, will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Indian Tribe it must comply with all applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law or regulation, or failure to follow a Federal directive applicable to the Indian Tribe or its Project may result in penalties to the violating party.

This Tribal Transit Program Master Agreement does not have an Expiration Date. The provisions of this Tribal Transit Program Master Agreement will continue to apply to the Tribal Transit Project unless or until modified or superseded by subsequent Federal laws, regulations, or directives, Grant Agreements, or Tribal Transit Program Master Agreements.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Indian Tribe agree as follows:

**Section 1. Definitions.**

- a. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Indian Tribe and accepted or approved by FTA.



b. Approval, Authorization, Concurrence, Waiver means a deliberate written statement (transmitted in typewritten hard copy or electronic format or medium) of a Federal Government official authorized to permit the Indian Tribe to take or omit an action required by the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement, which action may not be taken or omitted without such permission. Except to the extent that FTA determines otherwise in writing, that approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.

c. Approved Project Budget means the most recent statement of the costs of the Tribal Transit Project, the maximum amount of Federal assistance for which the Indian Tribe is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the “Approved Project Budget,” the term “Scopes” means categories and the term “Scope Level Codes” means category codes. Although “Scopes” and “Scope Level Codes” generally indicate the type of activities encompassed by the Tribal Transit Project, the data listed under “Scopes” and “Scope Level Codes” (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the “Scope of the Project” when that term is used for legal purposes.

d. Federal Directive, for purposes of this Tribal Transit Program Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it takes the form of a published policy, administrative practice, circular, guideline, guidance document, or letter signed by the head of a Federal agency or his or her designee, that provides instructions or official advice concerning a Federal program, including application processing procedures, program management, or other similar matters. The term “Federal Directive” encompasses “FTA Directives,” “U.S. DOT Directives,” and similar documents issued by other agencies of the Federal Government.

e. Federal Government means the United States of America and any executive department or agency thereof.

f. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

g. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.

- h. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”
- i. Federally Recognized Indian Tribe means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended.
- j. Grant Agreement, for purposes of the Tribal Transit Program, means the instrument by which FTA awards Federal assistance authorized by 49 U.S.C. § 5311(c)(1) to a specific Indian Tribe to support a particular Project in which FTA does not take an active role or retain substantial control. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Tribal Transit Project, an Execution statement signed by the Indian Tribe, and may include additional Special Conditions, Special Requirements, or Special Provisions. The Tribal Transit Program Master Agreement for the latest applicable Fiscal Year is incorporated by reference and made part of the Grant Agreement, except to the extent FTA determines otherwise in writing.
- k. Indian Tribe, as used in this Tribal Transit Program Master Agreement, means a Federally Recognized Indian Tribe that receives Tribal Transit Program assistance authorized by 49 U.S.C. § 5311(c)(1) directly from FTA to support its Tribal Transit Project. As used in this Tribal Transit Program Master Agreement, “Indian Tribe” means a Grantee or Recipient of Tribal Transit Program assistance.
- l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement for the Tribal Transit Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Tribal Transit Project. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data set forth in FTA’s electronic management system under “Scopes” and “Scope Level Codes” of the “Approved Project Budget” to determine what constitutes the Scope of or eligible project activities.
- m. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term “public transportation” also includes “mass transportation” and “transit.”
- n. Subagreement means an agreement through which an Indian Tribe provides Federal assistance authorized by 49 U.S.C. § 5311(c)(1) awarded to it by FTA to a subrecipient as defined below. The term “subagreement” also includes the term “subgrant,” but does not include the terms “third party contract” or “third party subcontract.”

- o. Subrecipient, as used in this Tribal Transit Program Master Agreement, means any entity (except a third party contractor or third party subcontractor) that receives Federal assistance authorized by 49 U.S.C. § 5311(c)(1) from the Indian Tribe, rather than from FTA directly. The term “subrecipient” also includes the term “subgrantee,” but does not include “third party contractor” or “third party subcontractor.”
- p. Third Party Contract, for purposes of the Tribal Transit Program, means a contract or purchase order awarded by the Indian Tribe or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance authorized 49 U.S.C. § 5311(c)(1) and awarded by FTA.
- q. Third Party Subcontract, for purposes of the Tribal Transit Program, means a subcontract at any tier financed in whole or in part with Federal assistance authorized 49 U.S.C. § 5311(c)(1) originally derived from FTA that is entered into by the third party contractor or third party subcontractor.
- r. Tribal Transit Program means the Public Transportation on Indian Reservations Program authorized by 49 U.S.C. § 5311(c)(1) that provides Federal assistance directly to Federally Recognized Indian Tribes.
- s. Tribal Transit Project means the underlying Project financed with Tribal Transit Program assistance authorized by 49 U.S.C. § 5311(c)(1) and awarded by FTA to the Indian Tribe.
- t. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## **Section 2. Project Implementation.**

- a. General. The Indian Tribe agrees to carry out the Tribal Transit Project as follows:
  - (1) Project Description. The Indian Tribe agrees to perform the work as described its Application, which is incorporated by reference in the approved Grant Agreement for the Tribal Transit Project.
  - (2) Effective Date. The effective date of the Grant Agreement or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement or Amendment thereto. The Indian Tribe agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Tribal Transit Project.
  - (3) The Indian Tribe’s Capacity. The Indian Tribe agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to plan, manage, and complete the Tribal Transit Project, provide for the use of Tribal Transit Project facilities and equipment, carry out the safety and security aspects of the Tribal Transit Project, and

comply with the terms of the Grant Agreement for the Tribal Transit Project, including this Tribal Transit Program Master Agreement, the Approved Project Budget, the Tribal Transit Project schedules, the Indian Tribe's annual certifications and assurances, and all Federal laws and regulations, in accordance with Federal directives applicable to the Tribal Transit Project and the Indian Tribe, except to the extent that FTA determines otherwise in writing.

(4) Completion Dates. The Indian Tribe agrees to complete the Tribal Transit Project in a timely manner. FTA and the Indian Tribe agree that milestone dates and other Project completion dates for the Tribal Transit Project are to be treated as good faith estimates rather than precise requirements, except as otherwise provided.

b. U.S. DOT Administrative Requirements. The Indian Tribe agrees to comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.

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

(1) Federal Laws, Regulations, and Directives. The Indian Tribe agrees that Federal laws and regulations control Project award and implementation. The Indian Tribe also agrees that Federal directives, as defined in this Tribal Transit Program Master Agreement, provide Federal guidance applicable to the Tribal Transit Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Indian Tribe understands and agrees that unless FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Indian Tribe may incur a violation of the terms of its Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Indian Tribe understands and agrees that Federal laws, regulations, and directives applicable to the Tribal Transit Project and to the Applicant on the date on which the FTA Authorized Official awards Federal assistance for the Tribal Transit Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Indian Tribe executes the Grant Agreement for the Tribal Transit Project, and might apply to that Grant Agreement. The Indian Tribe agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Tribal Transit Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement for the Tribal Transit Project, a change to an FTA directive, or a letter to the Indian Tribe signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master

Agreement. To accommodate changing Federal requirements, the Indian Tribe agrees to include in each agreement with each subrecipient, lessee, third party contractor, and other participant at any tier of the Project implementing the Tribal Transit Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Tribal Transit Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement for the Tribal Transit Project and in this Tribal Transit Program Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Should a Federal law pre-empt the Indian Tribe's laws, regulations, or ordinances, the Indian Tribe must comply with the Federal law and implementing Federal regulations. No provision of the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement, however, requires the Indian Tribe to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of its tribal laws, regulations or ordinances, or an applicable State, territorial, or local law, regulation, or ordinance. If compliance with any provision of Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement would require the Indian Tribe to violate its tribal laws, regulations or ordinances, or any applicable State, territorial, or local law, regulation, or ordinance, the Indian Tribe agrees to notify FTA immediately in writing. Should this occur, FTA and the Indian Tribe agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Tribal Transit Project expeditiously.

d. The Indian Tribe's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Tribal Transit Project, the Indian Tribe agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement and this Tribal Transit Program Master Agreement, except to the extent that FTA determines otherwise in writing.

e. The Indian Tribe's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to the Grant Agreement for the Tribal Transit Project are parties to that Grant Agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Tribal Transit Project, (such as a subrecipient, lessee, third party contractor, or other participant at any tier of the Project) will necessarily be affected. Accordingly, the Indian Tribe agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws and regulations, and follow Federal directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if another entity is expected to fulfill responsibilities typically performed by the Indian Tribe, the Indian Tribe agrees to assure that the entity carries out the Indian Tribe's responsibilities as set forth in the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor, or other participant at any tier of the Project) participating in the Tribal Transit Project. Accordingly, the Indian Tribe agrees to use a written document in each transaction to ensure that each entity participating in the Tribal Transit Project complies with applicable Federal laws and regulations, in accordance with Federal directives, except to the extent that FTA determines otherwise in writing.

(a) Required Clauses. The Indian Tribe agrees to use a written document (such as a subagreement, lease, third party contract, or other document including appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other participant) responsibilities under Federal laws, regulations, or directives, except to the extent that FTA determines otherwise in writing.

(b) Flowdown. The Indian Tribe agrees to include in each document (subagreement, lease, third party contract, or other document) any necessary provisions requiring the Tribal Transit Project participant (subrecipient, lessee, third party contractor, and other participant) to impose applicable Federal requirements and directives on its subcontractors, lessees, subrecipients, and other Project participants at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

(c) Performance of the Indian Tribe's Responsibilities. When the document (subagreement, lease, third party contract, or other document) requires the Tribal Transit Project participant (subrecipient, lessee, third party contractor, and other participant) to undertake responsibilities for the Tribal Transit Project usually performed by the Indian Tribe, the Indian Tribe agrees also to include in that document (subagreement, lease, third party contract, lease, or other document) appropriate provisions that would be applicable to the Indian Tribe as set forth in the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement, and extend those provisions to the other subrecipients, lessees, third party contractors, and other participants at any tier of the Project necessary, except to the extent as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. In connection with the Tribal Transit Project, the Indian Tribe agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier, or other person not a party to the Grant Agreement for the Tribal Transit Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or other arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Indian Tribe, including any subrecipient, lessee, third party contractor, or other participant at any tier.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Indian Tribe agrees to notify FTA immediately, in writing, of any change in its laws, regulations, ordinances, or other conditions (including its legal, financial, or technical

capacity), or any other event that may adversely affect the Indian Tribe's ability to perform the Tribal Transit Project in accordance with the terms of the Grant Agreement for the Tribal Transit Project and this Tribal Transit Program Master Agreement. The Indian Tribe also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Tribal Transit Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Indian Tribe agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the Indian Tribe operates its public transportation system or implements the Tribal Transit project.

### **Section 3. Ethics.**

a. Code of Conduct/Standards of Conduct. The Indian Tribe agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, third party contracts, or other arrangements supported with Federal assistance. The Indian Tribe agrees that its code of conduct or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project, or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties identified herein has a financial interest in the entity selected for award. The Indian Tribe may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Indian Tribe agrees that its code of conduct or standards of conduct shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Indian Tribe agrees that its code of conduct or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or the Indian Tribe's subrecipients, lessees, third party contractors, other participants, or their agents.

(1) Personal Conflicts of Interest. The Indian Tribe agrees that its code of conduct or standards of conduct shall prohibit the Indian Tribe's employees, officers, board members, or agents from participating in the selection, award, or administration of any subagreement, lease, third party contract, or other arrangement at any tier, supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the entity selected for award.

(2) Organizational Conflicts of Interest. The Indian Tribe agrees that its code of conduct or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed subagreement, lease, third party contract, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Indian Tribe agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) , “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Indian Tribe agrees to review the “Excluded Parties Listing System” at <http://epls.gov/> and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subrecipient, lessee, third party contractor, and other participant at a lower tier of the Project, will review the “Excluded Parties Listing System” at <http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions.

c. Bonus or Commission. The Indian Tribe affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for Tribal Transit Program assistance to support its Project.

d. Lobbying Restrictions. In accordance with U.S. OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225, and made applicable to the Tribal Transit Program by 49 C.F.R. § 18.22(b), the Indian Tribe agrees that it will not use Tribal Transit Program assistance to support “[c]osts incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter.”

e. Not Applicable.

f. False or Fraudulent Statements or Claims. The Indian Tribe acknowledges and agrees that:

(1) Civil Fraud. 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, are applicable to the Indian Tribe’s activities in connection with its Tribal Transit Project. By executing the Grant Agreement for the Tribal Transit Project, the Indian Tribe certifies or affirms the truthfulness and accuracy of each statement it has



made, it makes or is making, or it may make in connection with the Tribal Transit Project. In addition to other penalties that may apply to it, the Indian Tribe also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Indian Tribe the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Indian Tribe makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Indian Tribe the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

g. Trafficking in Persons. To the extent applicable, the Indian Tribe agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of this Master Agreement consistent with U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Indian Tribe agrees that:

(a) Employee means either:

1. An individual who is employed by the Indian Tribe or a subrecipient, and who is participating in the Grant Agreement for the Project; or

2. Another person who is participating in the Grant Agreement for the Tribal Transit Project and who is not compensated by the Indian Tribe including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement and this Tribal Transit Program Master Agreement.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) Private entity:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

2. Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to the Indian Tribe. The Indian Tribe agrees:

(a) To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Subsection 3.g(3)(a) of this Tribal Transit Program Master Agreement below.

(b) That FTA may unilaterally terminate its Federal assistance for the Grant Agreement for the Tribal Transit Project as provided in Subsection 3.g(3)(b) of this Tribal Transit Program Master Agreement. FTA's right to terminate unilaterally:

1. Implements subsection 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and

2. Is in addition to all other remedies for noncompliance that are available to the Federal Government under this Tribal Transit Program Master Agreement.

(c) To include the requirements of Subsection 3.g(3)(a) of this Tribal Transit Program Master Agreement in any subagreement it enters into with an entity, as defined in Subsection 3.g(1)(c) of this Tribal Transit Program Master Agreement.

(3) Provisions Applicable to a Subrecipient that is a Private Entity. A subrecipient that is a private entity as defined in Subsection 3.g(1)(c) of this Master Agreement agrees that:

(a) It, its employees, its subrecipients and its subrecipients' employees that participate in the Grant Agreement for the Tribal Transit Project, may not--

1. Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement for the Tribal Transit Project is in effect;

2. Procure a commercial sex act during the period of time that the Grant Agreement for the Tribal Transit Project is in effect; or

3. Use forced labor in the performance of the Grant Agreement or subagreements for the Project.

(b) FTA may unilaterally terminate the Grant Agreement for the Tribal Transit Project, without penalty to the Federal Government, if the subrecipient that is a private entity--

1. Is determined to have violated a prohibition in Subsection 3.g(3)(a) of this Tribal Transit Program Master Agreement, or

2. Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement for the Tribal Transit Project to have violated a prohibition in Subsection 3.g(3)(a) of this Tribal Transit Program Master Agreement through conduct that is either--

a. Associated with his or her participation in the Grant Agreement for the Tribal Transit Project; or

b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

#### **Section 4. Federal Assistance.**

FTA will provide Federal assistance for the Tribal Transit Project in an amount of one hundred percent of the eligible costs of the Tribal Transit Project as consistent with the latest approved Project scope and budget.

#### **Section 5. Not Applicable.**

#### **Section 6. Approved Project Budget.**

Except to the extent that FTA determines otherwise in writing, the Indian Tribe agrees as follows: The Indian Tribe will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Indian Tribe will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget. The latest Approved Project Budget will be incorporated by reference and made part the underlying Grant Agreement for the Tribal Transit Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Grant Agreement for the Tribal Transit Project, except that re-allocation of funds among budget

items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Tribal Transit Project may be made consistent with applicable Federal laws and regulations and in accordance with the most recent applicable Federal directives and FTA guidance, except to the extent FTA determines otherwise in writing. Prior FTA approval is required for transfers of funds not expressly authorized in applicable FTA circulars or other directives. The Indian Tribe agrees to obtain prior written approval for any budget revision that would result in the need for additional funds. An award of additional Federal assistance will require a new Approved Project Budget. If the Indian Tribe estimates that it will have unobligated funds remaining after the end of the performance period of the Tribal Transit Project, the Indian Tribe agrees to report this to FTA at the earliest possible time and ask for disposition instructions. For re-allocations of budget amounts, see the latest FTA Guidance.

## **Section 7. Accounting Records.**

In compliance with applicable Federal laws and regulations, in accordance with applicable Federal directives, and except to the extent that FTA determines otherwise in writing, the Indian Tribe agrees as follows:

- a. Project Accounts. The Indian Tribe agrees to establish and maintain for the Tribal Transit Project either a separate set of accounts, or separate accounts within the framework of an established accounting system, that can be identified with the Tribal Transit Project. The Indian Tribe also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Tribal Transit Project so that they may be clearly identified, readily accessible, and available to FTA upon its request and, to the extent feasible, kept separate from documents not related to the Tribal Transit Project.
- b. Funds Received or Made Available for the Tribal Transit Project. The Indian Tribe agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Tribal Transit Project Account all amounts provided by the Federal Government for the Tribal Transit Project and all other funds provided for, accruing to, or otherwise received on account of the Tribal Transit Project (Tribal Transit Project funds) in compliance with applicable Federal laws and regulations, in accordance with Federal directives, except to the extent that FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.
- c. Documentation of Project Costs and Program Income. The Indian Tribe agrees to support all costs charged to the Tribal Transit Project, including any approved services or property contributed by the Indian Tribe or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Indian Tribe also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from the general Federal program income requirements.

d. Checks, Orders, and Vouchers. The Indian Tribe agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Tribal Transit Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

## **Section 8. Reporting, Record Retention, and Access.**

a. Types of Reports. The Indian Tribe agrees to submit to FTA all reports required by Federal laws and regulations, in accordance with Federal directives, the Grant Agreement for the Tribal Transit Project, this Tribal Transit Program Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

b. U.S. Office of Management and Budget (U.S. OMB) Special Reporting Provisions. In compliance with the Federal Funding Accountability and Transparency Act of 2006, as amended by the section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law 110-252, June 30, 2008, and further amended by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, U.S. OMB has issued regulatory guidance in Title 2, Code of Federal Regulations, instructing Federal agencies to include special “award terms” in their Federal assistance awards as follows:

(1) Universal Identifier and Central Contractor Registration. In compliance with U.S. OMB guidance, “Universal Identifier and Central Contractor Registration,” 2 C.F.R. Part 25, [75 *Fed. Reg.* 55675, *September 14, 2010*], FTA is including the following award term in this Tribal Transit Program Master Agreement excerpted from “Appendix A” of that guidance:

(a) Requirement for Central Contractor Registration (CCR). Unless exempted from the Central Contractor Registration Requirement (CCR) as provided by 2 C.F.R. § 25.110, the Indian Tribe agrees to maintain the currency of its information in the CCR until it submits its final financial report required under the Grant Agreement for the Tribal Transit Project or receives the final payment under the Tribal Transit Project, whichever is later. The Indian Tribe understands and agrees that it must review and update its information in the CCR at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a Federal or federally assisted agreement, law, regulation, or regulatory guidance that U.S. OMB might issue.

(b) Requirement for Data Universal Numbering System (DUNS) Numbers. The Indian Tribe agrees that if it is authorized to make subawards under this award, the Indian Tribe:

1 Must notify potential subrecipients that no entity (see definition in Paragraph 8.c(3)(c)3 of this Tribal Transit Program Master Agreement) may receive a subaward under the Grant Agreement for the Tribal Transit Project unless the entity has provided its DUNS number to the Indian Tribe that is the recipient of that Grant Agreement for the Tribal Transit Project.

2 Make no subaward to an entity unless the entity has provided its DUNS number to the Indian Tribe of that Grant Agreement for the Tribal Transit Project.

(c) Definitions. For purposes of the provisions of Subsection 8.b(1) of this Tribal Transit Program Master Agreement, the Indian Tribe agrees that the following definitions apply:

1 Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2 Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently at 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3 Entity, as it is used in this Subsection 8.b(1) of this Tribal Transit Program Master Agreement, means all of the following, as defined at 2 C.F.R. Part 25, Subpart C:

a A Governmental organization that is a State, local government, or Indian Tribe;

b A foreign public entity;

c A domestic or foreign nonprofit organization;

d A domestic or foreign for-profit organization; and

e A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4 Subaward, as it is used in this Paragraph 8.b(1) of this Tribal Transit Program Master Agreement:

a Means a legal instrument to provide support for the performance of any portion of the substantive Tribal Transit Project for which the Indian Tribe received Federal assistance under the Grant Agreement for the Tribal Transit Project and that the Indian Tribe awards to an eligible subrecipient.

b Does not include the Indian Tribe's procurement of property and services the Indian Tribe has needed to carry out the Tribal Transit Project (for further explanation, see Subpart B, Sec. \_\_.210 of U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c May be provided through any legal agreement, including an agreement that the Indian Tribe considers a contract.

5 Subrecipient means an entity that:

a Receives a subaward from the Indian Tribe under the Grant Agreement for the Tribal Transit Project; and

b Is accountable to the Indian Tribe for the use of the Federal funds provided by the subaward.

(2) Reporting Subawards and Executive Compensation. In compliance with U.S. OMB guidance, "Reporting Subaward and Executive Compensation Information," 2 C.F.R. Part 170, [75 *Fed. Reg.* 55670 - 55671, *September 14, 2010*], FTA is including the following award term in this Tribal Transit Program Master Agreement excerpted from "Appendix A" of that guidance:

(a) Reporting of first-tier subawards.

1 Applicability. Unless it is exempt as provided in Subparagraph 8.b(2)(d) of this Tribal Transit Program Master Agreement, the Indian Tribe agrees to report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in Subparagraph 8.b(2)(e)1 of this Tribal Transit Program Master Agreement).

2 Where and when to report.

a The Indian Tribe agrees to report each obligating action described in Subparagraph 8.b(2)(a)1 of this Tribal Transit Program Master Agreement to <http://www.fsrs.gov>.

b For subaward information, the Indian Tribe agrees to report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3 What to report. The Indian Tribe agrees to report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

(b) Reporting Total Compensation of Indian Tribe Executives.

1 Applicability and what to report. The Indian Tribe agrees to report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if—

a The total Federal funding authorized to date under this award is \$25,000 or more;

b In the preceding fiscal year, the Indian Tribe received—

i. 80 percent or more of the Indian Tribe's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

c The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m(a), 78o(d), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2 Where and when to report. The Indian Tribe agrees to report executive total compensation described in Subparagraph 8.b(2)(b) of this Tribal Transit Program Master Agreement:

a As part of the Indian Tribe's registration profile at <http://www.ccr.gov>.

b By the end of the month following the month in which this award is made, and annually thereafter.

(c) Reporting of Total Compensation of Subrecipient Executives.

1 Applicability and what to report. Unless it is exempt as provided in Subparagraph 8.b(2)(d) of this Tribal Transit Program Master Agreement, for each first-tier subrecipient under this award, the Indian Tribe agrees to report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—



a In the subrecipient's preceding fiscal year, the subrecipient received—

i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2 Where and when to report. The Indian Tribe agrees to report subrecipient executive total compensation described in Subparagraph 8.b(2)(c) of this Tribal Transit Program Master Agreement:

a To the Indian Tribe and elsewhere as may be determined by the Government.

b By the end of the month following the month during which the Indian Tribe makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Indian Tribe must report any required compensation information of the subrecipient by November 30 of that year.

(d) Exemptions. If, in the previous tax year, any Indian Tribe had gross income, from all sources, under \$300,000, that Indian Tribe is exempt from the requirements to report:

1 Subawards, and

2 The total compensation of the five most highly compensated executives of any subrecipient.

(e) Definitions. For purposes of this Paragraph 8(b)(2) of the Tribal Transit Program Master Agreement:

1 Entity means all of the following, as defined in 2 C.F.R. Part 25:

Indian tribe;

- a A Governmental organization, which is a State, local government, or

- b A foreign public entity;

- c A domestic or foreign nonprofit organization;

- d A domestic or foreign for-profit organization;

- e A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2 Executive means officers, managing partners, or any other employees in management positions.

3 Subaward:

- a This term means a legal instrument to provide support for the performance of any portion of the substantive Tribal Transit Project or Program for which the Indian Tribe received Federal funds under this Grant Agreement and that the Indian Tribe awards to an eligible subrecipient.

- b The term does not include procurement of property and services needed to carry out the Tribal Transit Project (for further explanation, see Subpart B, Sec. \_\_.210 of U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

- c A subaward may be provided through any legal agreement, including an agreement that the Indian Tribe or a subrecipient considers a contract.

4 Subrecipient means an entity that:

- a Receives a subaward from the Indian Tribe under this award; and

- b Is accountable to the Indian Tribe for the use of the Federal funds provided by the subaward.

5 Total compensation means the cash and noncash dollar value earned by the executive during the Indian Tribe’s or subrecipient’s preceding fiscal year and includes the following (for more information, see 17 C.F.R. § 229.402(c)(2)):

- a Salary and bonus.

- b Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e Above-market earnings on deferred compensation which is not tax-qualified.

f Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(3) Other Prospective U.S. OMB Reporting Guidance. U.S. OMB has issued proposed guidance, “Recipient Integrity and Performance Matters,” to be published at 2 C.F.R. Part 35, containing a mandatory “award term” that, if unchanged, would affect the Indian Tribe when U.S. OMB issues final guidance.

c. Report Formats. The Indian Tribe agrees that all reports and other documents or information intended for public availability developed in the course of the Tribal Transit Project and required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats, or both, as FTA may specify. Electronic submissions must comply with the electronic accessibility provisions of Subsections 12.g and 15.u of this Tribal Transit Program Master Agreement. FTA may specify that records be submitted in other formats.

d. Record Retention. During the course of the Tribal Transit Project and for three years thereafter from the date of transmission of the final expenditure report, the Indian Tribe agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Tribal Transit Project as the Federal Government may require.

e. Access to Records of the Indian Tribe and Its Subrecipients. The Indian Tribe agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Indian Tribe and its subrecipients pertaining to the Tribal Transit Project, as required by 49 U.S.C. § 5325(g) and 49 U.S.C. § 18.42(e).

f. Closeout of the Tribal Transit Project. The Indian Tribe agrees that closeout of the Tribal Transit Project does not alter the reporting and record retention requirements of

this Section 8 of this Tribal Transit Program Master Agreement.

## **Section 9. Payments.**

The Indian Tribe agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement for the Tribal Transit Project.

a. The Indian Tribe's Request for Payment. Except to the extent that FTA determines otherwise in writing, to obtain a payment for Project expenses, the Indian Tribe agrees to:

(1) Submit to FTA all financial and progress reports required to date by the Grant Agreement for the Tribal Transit Project and this Tribal Transit Program Master Agreement, and

(2) Identify the source(s) of Federal assistance provided for the Tribal Transit Project from which the payment is to be derived.

b. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Indian Tribe agrees that FTA will make all payments of Tribal Transit Program assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Indian Tribe has executed the Grant Agreement for the Tribal Transit Project, in accordance with the following provisions:

(1) Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Indian Tribe agrees to comply with: FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" for FTA Projects; and this Subsection 9.b(1). The Indian Tribe also agrees that if it fails to comply with the following provisions of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Tribal Transit Program assistance awarded for the Tribal Transit Project.

(a) The Indian Tribe agrees to withdraw cash only when actually needed for immediate disbursement required for Tribal Transit Project purposes. Except to the extent permitted otherwise by Federal law, regulation, directive, or agreement with the Federal Government, the Indian Tribe agrees to expend all Tribal Transit Program assistance obtained through the Grant Agreement for the Tribal Transit Project for Tribal Transit Project purposes no later than three (3) days after receiving that Tribal Transit Program assistance. If the Indian Tribe fails to expend that Tribal Transit Program assistance within three (3) days of receipt, fails to return withdrawn but unexpended Tribal Transit Program assistance to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Indian Tribe's ECHO

Control Number and the Indian Tribe's access to the ECHO System. In addition, the Indian Tribe agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

(b) The Indian Tribe agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws and regulations, in accordance with Federal directives.

(c) The Indian Tribe agrees to provide for control and accountability for all Tribal Transit Program assistance for the Tribal Transit Project consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Indian Tribe agrees that it will not withdraw Tribal Transit Program assistance for a Tribal Transit Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Tribal Transit Project.

(e) The Indian Tribe agrees to withdraw Tribal Transit Program assistance only for eligible Tribal Transit Project costs.

(f) The Indian Tribe agrees that it will not withdraw Tribal Transit Program assistance until needed for disbursement for Tribal Transit Project expenses.

(g) The Indian Tribe agrees to remit interest to the Federal Government on any Tribal Transit Program assistance prematurely withdrawn, irrespective of whether that assistance has been deposited in an interest-bearing account. The Indian Tribe agrees that a debt for any premature withdrawal of Tribal Transit Program assistance does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720. Because the Indian Tribe is not a State or State instrumentality, the Indian Tribe agrees to remit to the Federal Government the amount of prejudgment common law interest, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(2) Requisition. If the requisition method of payment is used, the Indian Tribe agrees as follows:

(a) The Indian Tribe's Responsibilities. The Indian Tribe agrees to complete and submit:

1. "Payment Information Form – Echo-ACH Payment System, Revised 10/92," to FTA's Accounting Division.

2. Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

(b) FTA Responsibilities. Upon receiving a request for payment and adequate

supporting information, FTA will approve payment by direct deposit, provided that the Indian Tribe has complied with the requirements of the Grant Agreement for the Tribal Transit Project and this Tribal Transit Program Master Agreement, has satisfied FTA that the Tribal Transit Program assistance requested is needed for Tribal Transit Project purposes in that requisition period, and is making adequate progress toward Tribal Transit Project completion. After the Indian Tribe has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Indian Tribe's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Tribal Transit Project, but not to exceed the maximum amount of Tribal Transit Program assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Indian Tribe agrees that Tribal Transit Project costs that are eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, to be eligible for reimbursement, Tribal Transit Project costs must be:

- (1) Consistent with the Tribal Transit Project Description, the Approved Project Budget, and other terms of the Grant Agreement for the Tribal Transit Project and this Tribal Transit Program Master Agreement,
- (2) Necessary in order to accomplish the Tribal Transit Project,
- (3) Reasonable for the goods or services purchased,
- (4) Actual net costs to the Indian Tribe (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Indian Tribe that have the effect of reducing the cost actually incurred, excluding program income),
- (5) Incurred for work performed after the Effective Date of the Grant Agreement for the Tribal Transit Project, except to the extent that the Federal Government determines otherwise in writing,
- (6) Satisfactorily documented,
- (7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Indian Tribe, and with accounting principles and procedures approved by the Indian Tribe for its subrecipients, lessees, third party contractors, or other participants in the Tribal Transit Project.
- (8) Eligible for Federal participation under Federal law, regulations, or directives, and
- (9) In compliance with the provisions of U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225.

d. Not Applicable.

e. Excluded Costs. The Indian Tribe understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Tribal Transit Program assistance FTA will provide, FTA will exclude:

(a) Any Project cost incurred by the Indian Tribe before the Effective Date of the Grant Agreement for the Tribal Transit Project or Amendment thereto, unless permitted by Federal law, regulation, or directive, and approved by FTA in writing;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for Tribal Transit Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h);

(e) Any profit or fee sought by the Indian Tribe for its services under the Grant Agreement for the Tribal Transit Project, except to the extent the FTA determines otherwise in writing;  
and

(f) Any cost ineligible for FTA participation as provided by applicable Federal laws or regulations, in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Indian Tribe understands and agrees that payment to the Indian Tribe for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment under the Tribal Transit Project, and does not constitute a waiver of any violation by the Indian Tribe of the terms of the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement. The Indian Tribe acknowledges that the Federal Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Tribal Transit Project has been completed. If the Federal Government determines that the Indian Tribe is not entitled to receive any portion of the Tribal Transit Program assistance requested or provided, the Federal Government will notify the Indian Tribe in writing, stating its reasons. The Indian Tribe agrees that closeout of the Tribal Transit Project will not alter the Indian Tribe's responsibility to return any funds due the Federal Government as a result of later refunds, corrections, or other transactions; nor will closeout of the Tribal Transit Project alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal law or

regulation, the Federal Government may recover any Tribal Transit Program assistance made available for the Tribal Transit Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Indian Tribe.

f. Program Income

(1) Indian Tribal Governments. In addition to uses of program income authorized under 49 C.F.R. § 18.25, FTA reserves the right, after having entered into the Grant Agreement for a Tribal Transit Project, to permit the Indian Tribe to add program income to the funds FTA and the Indian Tribe have committed to that Grant Agreement, and use that program income for the purposes of and under the conditions of that Grant Agreement for the Tribal Transit Project.

(2) Costs Associated With Program Income. Except to the extent FTA determines otherwise in writing, the costs incident to the earning program income may be deducted from the Indian Tribe's gross income to determine program income, provided these costs have not been charged to the Grant Agreement for the Tribal Transit Project.

g. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) The Indian Tribe's Responsibility to Pay. Upon notification to the Indian Tribe that specific amounts are owed to the Federal Government, whether for excess payments of Tribal Transit Program assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Indian Tribe agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Indian Tribe agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Indian Tribe agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims or Debts Within the Purview of the Debt Collection Act. For Federal claims against the Indian Tribe or debts of the Indian Tribe to the Federal Government (including excess payments or disallowed costs) within the purview of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Indian Tribe agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments. For excess payments made by the Federal Government to the Indian Tribe that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, because the Indian Tribe is not a State or State instrumentality, the Indian Tribe agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ



regulations, “Standards for the Administrative Collection of Claims,” at 31 C.F.R. § 901.9(i).

h. De-obligation of Tribal Transit Program Assistance. The Indian Tribe agrees that the Federal Government may de-obligate unexpended Tribal Transit Program assistance before closeout of the Tribal Transit Project.

## **Section 10. Project Completion, Audit, Settlement, and Closeout.**

a. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Indian Tribe agrees to submit a final Financial Status Report either electronically or on Federal Financial Report Standard Form 425 (SF-425), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit of the Indian Tribe. Except to the extent the Federal Government determines otherwise in writing, the Indian Tribe acknowledges and agrees as follows:

(1) Audit Requirements. The Indian Tribe agrees to have performed financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* These financial and compliance audits must be undertaken in accordance with the provisions of U.S. OMB Circular A-133, Revised, “Audits of States, Local Governments, and Non-profit Organizations,” the latest U.S. OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. (*The Indian Tribe understands and agrees that for purposes of U.S. OMB Circular A-133, the U.S. OMB definition of “State” includes an “Indian tribe.”*) The Indian Tribe also agrees to obtain any other audits required by the Federal Government. The Indian Tribe agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) “Government Auditing Standards.” The Indian Tribe agrees that closeout of the Tribal Transit Project will not alter the Indian Tribe’s audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by U.S. OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225.

c. Funds Owed to the Federal Government. The Indian Tribe agrees to remit to the Federal Government any excess payments made to the Indian Tribe, any costs disallowed by the Federal Government, and any amounts recovered by the Indian Tribe from third parties or from other sources, as well as any penalties and interest required by Subsection 9.g(2) of this Tribal Transit Program Master Agreement.

d. Closeout of the Tribal Transit Project. Closeout of the Tribal Transit Project occurs when FTA notifies the Indian Tribe that FTA has closed out the Tribal Transit Project,

and then either forwards the final Tribal Transit Program assistance payment or acknowledges that the Indian Tribe has remitted the proper refund, if a refund is due. The Indian Tribe agrees that closeout of the Tribal Transit Project by FTA does not invalidate any continuing requirements imposed on the Indian Tribe by the Grant Agreement for its Tribal Transit Project, this Tribal Transit Program Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

## **Section 11. Right of the Federal Government to Terminate.**

Upon written notice, the Indian Tribe agrees that the Federal Government may suspend or terminate all or any part of the Tribal Transit Program assistance to be provided for the Tribal Transit Project if the Indian Tribe has violated the terms of its Grant Agreement including this Tribal Transit Program Master Agreement, or if the Federal Government determines that the purposes of the law authorizing the Tribal Transit Project would not be adequately served by the continuation of Tribal Transit Program assistance for the Tribal Transit Project. The Indian Tribe understands and agrees that any failure to make reasonable progress on the Tribal Transit Project or other violation of the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement that endangers substantial performance of the Tribal Transit Project shall provide sufficient grounds for the Federal Government to terminate its Grant Agreement for the Tribal Transit Project. In general, termination of Tribal Transit Program assistance for the Tribal Transit Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Indian Tribe has willfully misused Tribal Transit Program assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Tribal Transit Project property, or failing to comply with the terms of the Grant Agreement for its Tribal Transit Project including this Tribal Transit Program Master Agreement, the Federal Government reserves the right to require the Indian Tribe to refund the entire amount of Tribal Transit Program assistance provided for its Tribal Transit Project or a lesser amount as the Federal Government may determine. Expiration of any Project time period for the Tribal Transit Project does not, by itself, constitute an expiration or termination of the Grant Agreement for the Tribal Transit Project.

## **Section 12. Civil Rights.**

The Indian Tribe agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination – Tribal Transit Program. The Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project, with the provisions of Title VI of the

Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*

b. Nondiscrimination – Title VI of the Civil Rights Act – U.S. DOT Regulations. In addition to compliance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, which prohibits discrimination on the basis of race, color, or national origin, the Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project, with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21.

c. Equal Employment Opportunity. Except to the extent that the terms of Title VII of the Civil Rights Act provides exceptions for or benefiting Indian tribes, the Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project at any tier of the Tribal Transit Project, with all applicable equal employment opportunity (EEO) provisions of with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any subsequent amendments thereto.

d. Contracting with Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms. In accordance with Executive Order No. 12432, as implemented by 49 C.F.R. § 18.36(e), the Indian Tribe agrees to take all necessary affirmative steps to assure that small and minority firms, women’s business enterprises, and labor surplus area firms are given the same opportunity to participate as majority firms.

e. Nondiscrimination on the Basis of Sex. The Indian Tribe agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with applicable 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, that prohibit discrimination on the basis of sex.

f. Not Applicable.

g. Access for Individuals with Disabilities. The Indian Tribe agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Indian Tribe also agrees to comply with applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, prohibiting discrimination on the basis of disability; to comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, requiring accessible facilities and services be made available to

individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, requiring buildings and public accommodations to be made accessible to individuals with disabilities, and to comply with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Indian Tribe agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/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;
- (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;
- (10) FTA regulations, “Transportation for Elderly and Handicapped Persons.” 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
- i. 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 Indian Tribe 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 follow the provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.
- j. Environmental Justice. The Indian Tribe agrees to facilitate compliance with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note; and DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. Apart from 49 U.S.C. § 5332, the Indian Tribe agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

### **Section 13. Planning and Private Enterprise.**

- a. General. The Indian Tribe agrees that its Tribal Transit Project will be consistent with documents, including a formal plan, if any, provided to FTA in support of the development and basis of the Tribal Transit Project. In addition, the Indian Tribe agrees that the Tribal Transit Project is or will be coordinated with transportation service assisted by other Federal sources to the maximum extent feasible.
- b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of this Tribal Transit Program Master Agreement, to the extent feasible the Indian Tribe agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

- c. Not Applicable.

#### **Section 14. Preference for United States Products and Services.**

To the extent applicable, the Indian Tribe agrees to comply with the following U.S. domestic preference requirements:

- a. Not Applicable.
- b. Cargo Preference--Use of United States-Flag Vessels. The Indian Tribe agrees to comply with 46 U.S.C. App. § 1241(b)(1) and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Tribal Transit Project.
- c. Fly America. The Indian Tribe understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Tribal Transit 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, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

#### **Section 15. Procurement.**

To the extent applicable, the Indian Tribe agrees to comply with the following provisions:

- a. Federal Standards. The Indian Tribe agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted, and with applicable U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36. The Indian Tribe also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing. The Indian Tribe agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Indian Tribe understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and examples, and may omit certain Federal requirements applicable to the third party contract work.
- b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a) and 49 C.F.R. § 18.36(c)(1), the Indian Tribe agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

- c. Exclusionary or Discriminatory Specifications. Except to the extent that other applicable Federal laws or regulations permit otherwise, the Indian Tribe agrees to comply with the requirements of 49 U.S.C. § 5325(h) and 49 C.F.R. § 18.36(c) and will not use any Tribal Transit Program funds to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. In accordance with 49 C.F.R. § 18.36(c)(2), the Indian Tribe agrees that it will not use any Tribal geographic preference, except Tribal geographic preferences expressly permitted by Title VII of the Civil Rights Act or as otherwise permitted by FTA. For example, in procuring architectural, engineering, or related services, the third party contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.
- e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Indian Tribe agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles acquired with funding authorized under 49 U.S.C. chapter 53.
- f. Neutrality in Labor Relations. Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 74 Fed. Reg. 6985 *et seq.*, has rescinded Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note. As a result, the Indian Tribe is no longer prohibited from requiring an affiliation with a labor organization, such as a project labor agreement, as a condition for award of any third party contract or subcontract at any tier for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.
- g. Federal Supply Schedules. Indian Tribes may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, FTA, or other Federal laws or regulations, in accordance with applicable Federal directives or determinations.
- h. Force Account. The Indian Tribe agrees that FTA may determine the extent to which Tribal Transit Program assistance may be used to participate in the Indian Tribe's force account costs.
- i. FTA Technical Review. The Indian Tribe agrees to permit FTA to review and approve the Indian Tribe's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.
- j. Project Approval/Third Party Contract Approval. Except to the extent FTA determines otherwise in writing, the Indian Tribe agrees that FTA's award of Tribal

Transit Program assistance for the Tribal Transit Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Tribal Transit Project.

k. Preference for Recycled Products. To the extent applicable, the Indian Tribe agrees to comply with U.S. Environmental Protection Agency (U.S. EPA) regulations, “Comprehensive Procurement Guidelines for Products Containing Recovered Materials,” 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal regulations that may be promulgated. Accordingly, the Indian Tribe agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

l. Clean Air and Clean Water. The Indian Tribe agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Tribal Transit Project participant will agree to:

(1) Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities,”

(2) Refrain from using any violating facilities,

(3) Report violations to FTA and the Regional U.S. EPA Office, and

(4) Comply with the inspection and other applicable requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

(b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

m. National Intelligent Transportation Systems Architecture and Standards. The Indian Tribe agrees to use its best efforts to ensure that any Intelligent Transportation System solutions used in its Project do not preclude interface with other Intelligent Transportation Systems in the Region. (See, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and other FTA directives that may be issued.)

n. Rolling Stock. In acquiring rolling stock, the Indian Tribe agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Indian Tribe agrees that any third party contract award it makes for rolling stock will be based



on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), an Indian Tribe procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.

(3) Not Applicable.

(4) Bus Testing. To the extent applicable, the Indian Tribe agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, “Bus Testing,” 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

o. Bonding. Except to the extent that FTA determines otherwise in writing, the Indian Tribe agrees to comply with the following bonding requirements, as applicable:

(1) Construction Activities. The Indian Tribe agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

(2) Activities Not Involving Construction. The Indian Tribe agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.

(2) Other Activities. The Indian Tribe agrees to comply with any other bonding requirements or restrictions as FTA may determine.

p. Architectural Engineering or Related Services. In compliance with 49 U.S.C. § 5325(b), the Indian Tribe agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural engineering or related services, the Indian Tribe agrees that it and its subcontractors at any tier will:

(a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering or related services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering or related services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for architectural engineering or related services, the Indian Tribe agrees that it and its subcontractors at any tier will:

(a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

(b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(c) Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection 15.p(2)(b) of this Tribal Transit Program Master Agreement.

(d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the Indian Tribe agrees and assures that it and the members of any group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Tribal Transit Program Master Agreement shall:

1. Notify any affected firm before requesting or using that data,
2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Indian Tribe may use design-build procurements to implement its Tribal Transit Projects after it has complied with all applicable requirements established by the Federal Government, whether through Federal laws or regulations, in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

r. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (for example, improved long-term operating efficiency and lower long-term costs) that is consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

s. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Indian Tribe agrees to award third party contracts only to those contractors possessing the ability perform to successfully under the terms of the proposed procurement, and before awarding a third party contract, the Indian Tribe agrees to consider:

- (1) The third party contractor's integrity,
  - (2) The third party contractor's compliance with public policy,
  - (3) The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
  - (4) The third party contractor's financial and technical resources.
- t. Access to Third Party Contract Records. The Indian Tribe agrees to require its third party contractors and third party subcontractors, at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g). The Indian Tribe also agrees to require its third party contractors and third party subcontractors at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper management of the Tribal Transit Project as determined by FTA.
- u. Electronic and Information Technology. When using Tribal Transit Program assistance to procure reports or information for distribution to FTA, among others, the Indian Tribe agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that, when provided to FTA, the reports or information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

## **Section 16. Leases.**

- a. Capital Leases. To the extent applicable, the Indian Tribe agrees to comply with FTA regulations, "Capital Leases" 49 C.F.R. Part 639, and any revision thereto.
- b. Not Applicable.

## **Section 17. Patent Rights.**

- a. General. If any invention, improvement, or discovery of the Indian Tribe or any subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project is conceived or first actually reduced to practice in the course of or under the Tribal Transit Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Indian Tribe agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Indian Tribe agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Indian Tribe agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, lease, third party contract, or other arrangement at any tier of the Tribal Transit Project, as specified in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of the Indian Tribe, subrecipient, lessee, third party contractor, or other participant in the Tribal Transit Project.

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Part 18, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

## **Section 18. Rights in Data and Copyrights.**

a. Definition. The term “subject data,” as used in this Section 18 of this Tribal Transit Program Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement for the Tribal Transit Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” does not include financial reports, cost analyses, or similar information used for Project administration.

b. General. Except for its own internal use, the Indian Tribe may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Indian Tribe authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

c. Federal Rights in Data and Copyrights. The Indian Tribe agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Tribal Transit Program Master Agreement. As used herein, “for Federal Government purposes,” means use only

for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement for the Tribal Transit Project, or under a subagreement, lease, third party contract, or other arrangement at any tier, supported with Tribal Transit Program assistance derived from the Grant Agreement for the Tribal Transit Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which an Indian Tribe, a subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project purchases ownership with Tribal Transit Program assistance.

d. Not Applicable.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Part 18, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Indian Tribe agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Indian Tribe of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Tribal Transit Project. The Indian Tribe shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Tribal Transit Program Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Tribal Transit Project, the Indian Tribe may find it necessary to provide data to FTA that has been developed without any Federal funding or support by the Federal Government. The terms of Subsections 18.b, 18.c, and 18.d of this Tribal Transit Program Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Tribal Transit Project. Nevertheless, the Indian Tribe understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

- i. Not Applicable.

## **Section 19. Use of Real Property, Equipment, and Supplies.**

The Indian Tribe understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Tribal Transit Program assistance under 49 U.S.C. § 5311(c)(1) (Tribal Transit Project property) except to the extent that, the Federal Government relinquishes its Federal interest in that Tribal Transit Project property. With respect to any Tribal Transit Project property financed with Tribal Transit Program assistance, the Indian Tribe agrees to comply with the following provisions of this Tribal Transit Program Master Agreement, except to the extent FTA determines otherwise in writing:

- a. Use of Tribal Transit Project Property. The Indian Tribe agrees to maintain continuing control of the use of its Tribal Transit Project property to the extent satisfactory to FTA. The Indian Tribe agrees to use Tribal Transit Project property for appropriate Tribal Transit Project purposes for the duration of the useful life of that Tribal Transit Project property, as required by FTA. Should the Indian Tribe unreasonably delay or fail to use Tribal Transit Project property during the useful life of that property, the Indian Tribe agrees that it may be required to return the entire amount of the Tribal Transit Program assistance expended on that property. The Indian Tribe further agrees to notify FTA immediately when any Tribal Transit Project property is withdrawn from Tribal Transit Project use or when any Tribal Transit Project property is used in a manner substantially different from the representations the Indian Tribe has made in its Application or in the Project Description for the Grant Agreement for the Tribal Transit Project.
- b. General. As an Indian tribal government, the Indian Tribe agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34 requires the express approval of the Federal Government in writing.
- c. Maintenance. The Indian Tribe agrees to maintain Tribal Transit Project property in good operating order, in compliance with any applicable Federal laws and regulations, in accordance with applicable Federal directives that may be issued.
- d. Records. The Indian Tribe agrees to keep satisfactory records pertaining to the use of Tribal Transit Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Tribal Transit Program Master Agreement.
- e. Incidental Use. The Indian Tribe agrees that:

(1) General. Any incidental use of Tribal Transit Project property will not exceed that permitted under applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent FTA determines otherwise in writing.

(2) Alternative Fueling Facilities. As authorized by 49 U.S.C. § 5323(p), any incidental use of the Indian Tribe's federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(1) The incidental use does not interfere with the Indian Tribe's Project or public transportation operations;

(2) The Indian Tribe fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(3) The Indian Tribe uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(4) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Tribal Transit Project Property. Unless FTA approves otherwise in writing, the Indian Tribe agrees to maintain satisfactory continuing control of its Tribal Transit Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government in writing, the Indian Tribe agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation that in any way would adversely affect the continuing Federal interest in its Tribal Transit Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government in writing, the Indian Tribe agrees that it will not obligate itself to any third party with respect to its Tribal Transit Project property in any manner that would adversely affect the continuing Federal interest in its Tribal Transit Project property.

(3) Other Actions. The Indian Tribe agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Indian Tribe's continuing control of the use of any Tribal Transit Project property.

g. Transfer of Tribal Transit Project Property. The Indian Tribe understands and agrees as follows:

(1) Indian Tribe's Request. The Indian Tribe may transfer any Tribal Transit Project property financed under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal Government,

provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

(2) Federal Government Direction. The Indian Tribe agrees that the Federal Government may direct the disposition of, and even require the Indian Tribe to transfer title to, any Tribal Transit Project property financed with Tribal Transit Program assistance made available for the Grant Agreement for the Tribal Transit Project.

(3) Leasing Tribal Transit Project Property to Another Party. Unless FTA determines otherwise in writing, if the Indian Tribe leases any Tribal Transit Project property to another party, the Indian Tribe agrees to retain ownership of the leased property, and assures that the lessee will use Tribal Transit Project property appropriately, either through a written lease between the Indian Tribe and the lessee, or another similar document. Upon request by FTA, the Indian Tribe agrees to provide a copy of any relevant documents.

h. Disposition of Tribal Transit Project Property. With prior FTA approval, the Indian Tribe may sell, transfer, or lease Tribal Transit Project property and use the proceeds to reduce the gross project cost of other eligible public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Indian Tribe also agrees that FTA may establish the useful life of Tribal Transit Project property, and that the Indian Tribe will use Tribal Transit Project property continuously and appropriately throughout the useful life of that property.

(1) Tribal Transit Project Property Whose Useful Life Has Expired. When the useful life of Tribal Transit Project property has expired, the Indian Tribe agrees to comply with FTA's disposition requirements.

(2) Tribal Transit Project Property Prematurely Withdrawn from Use. For Tribal Transit Project property withdrawn from appropriate use before its useful life has expired, the Indian Tribe agrees as follows:

(a) Notification Requirement. The Indian Tribe agrees to notify FTA immediately when any Tribal Transit Project property is prematurely withdrawn from appropriate use, whether that Project property is withdrawn by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Tribal Transit Project Property. The Indian Tribe agrees that the Federal Government retains a Federal interest in the fair market value of Tribal Transit Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in Tribal Transit Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property, typically the Federal interest shall be 100% of the value of Tribal Transit Project property. The Indian Tribe agrees that the fair market value of Tribal Transit Project property prematurely withdrawn from use will be calculated as follows:



1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Indian Tribe agrees that the fair market value of Tribal Transit Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of the Tribal Transit Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of Tribal Transit Project equipment or supplies from appropriate use. In the case of Tribal Transit Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value of that property shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

2. Real Property. The Indian Tribe agrees that the fair market value of real property financed under the Tribal Transit Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or by other Federal law or regulations that may be applicable.

3. Exceptional Circumstances. The Indian Tribe agrees that the Federal Government may require the use of another method to determine the fair market value of Tribal Transit Project property withdrawn from service. In unusual circumstances, the Indian Tribe may request that another reasonable method including, but not limited to, accelerated depreciation, comparable sales, or established market values, be used. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Indian Tribe pertaining to the preservation of Tribal Transit Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Indian Tribe agrees to remit to the Federal Government the Federal interest in the fair market value of any Tribal Transit Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Indian Tribe may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Tribal Transit Program assistance for the property that has been prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Tribal Transit Project property.

i. Insurance Proceeds. If the Indian Tribe receives insurance proceeds as a result of damage or destruction to Tribal Transit Project property, the Indian Tribe agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Tribal Transit Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Tribal Transit Project property.

j. Transportation - Hazardous Materials. The Indian Tribe agrees to comply with the applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, “Shippers - General Requirements for Shipments and Packagings,” 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Tribal Transit Project Property. If any damage to Tribal Transit Project property results from abuse or misuse occurring with the Indian Tribe’s knowledge and consent, the Indian Tribe agrees to restore Tribal Transit Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Closeout of the Tribal Transit Project. The Indian Tribe agrees that closeout of the Tribal Transit Project by FTA will not change the Indian Tribe’s Project property management responsibilities as stated in Section 19 of this Tribal Transit Program Master Agreement, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

## **Section 20. Insurance.**

In addition to other applicable insurance requirements, the Indian Tribe agrees as follows:

a. Minimum Requirements. To the extent that the Indian Tribe engages in transit operations outside the limits of its reservation or territory, the Indian Tribe agrees to comply with the insurance requirements normally imposed by the State and local laws, regulations, and ordinances in which it operates, except to the extent that the Federal Government determines otherwise in writing.

b. Flood Hazards. To the extent applicable, the Indian Tribe agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Tribal Transit Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

## **Section 21. Relocation.**

When relocation of individuals or businesses is required, the Indian Tribe agrees as follows:

- a. Relocation Protections. The Indian Tribe agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of a Federal or federally assisted program. These requirements apply to relocation in connection with all interests in real property acquired for the Tribal Transit Project regardless of Federal participation in the costs of that real property.
- b. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the Indian Tribe agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*, in accordance with Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note.
- c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Tribal Transit Project, the Indian Tribe agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b) and the provisions of U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

## **Section 22. Real Property.**

For real property acquired with Tribal Transit Program assistance, the Indian Tribe agrees as follows:

- a. Land Acquisition. The Indian Tribe agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for the purposes of the Tribal Transit Project regardless of Federal participation in the cost of that real property.
- b. Covenant Assuring Nondiscrimination. The Indian Tribe agrees to include a covenant in the title of the real property acquired for the Tribal Transit Project to assure

nondiscrimination during the useful life of its Tribal Transit Project.

c. Not Applicable.

d. FTA Approval of Changes in Real Property Ownership. The Indian Tribe agrees that it will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities used in its Tribal Transit Project without permission and instructions from FTA.

### **Section 23. Construction.**

Except to the extent the Federal Government determines otherwise in writing, the Indian Tribe agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. The Indian Tribe agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

b. Supervision of Construction. The Indian Tribe agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. The Indian Tribe agrees to provide progress reports and other data and information as may be required by FTA.

d. Not Applicable.

e. Seismic Safety. The Indian Tribe agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, and comply with U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

### **Section 24. Employee Protections.**

a. Construction Activities. The Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Tribal Transit Project, with the following laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to

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

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and the implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926; and

(3) Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Tribal Transit Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Indian Tribe agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements for the Tribal Transit Program. In accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any revisions thereto, FTA and the Recipient agree that the U.S. DOL’s revised Special Warranty for FTA’s Nonurbanized Area Formula Program authorized under 49 U.S.C. § 5311 is appropriate for use in Tribal Transit Program grants awarded after October 1, 2008. The Indian Tribe agrees that the revised special warranty for labor protective arrangements under the FTA Nonurbanized Area Formula Program will apply to each of its Tribal Transit Program annual grants and any Recovery Act grants awarded after October 1, 2008, and is incorporated by reference and made part of the Grant Agreement for the underlying Tribal Transit Project.

## **Section 25. Environmental Protections.**

The Indian Tribe recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to its Tribal Transit Project. Some, but not all, of the major Federal laws that may affect the Tribal Transit Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Indian Tribe also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and are expected to issue, Federal regulations and directives that may also affect the Tribal Transit Project. Therefore, the Indian Tribe agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and participant at any tier of the Tribal Transit Project with any applicable Federal laws and regulations, in accordance with applicable Federal directives that are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Indian Tribe. The Indian Tribe understands and agrees that those Federal laws and regulations, and associated Federal directives, may not constitute the Indian Tribe's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Indian Tribe's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Indian Tribe agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and, as applicable, 23 U.S.C. § 326 pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-9)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Indian Tribe agrees to comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and its applicable implementing regulations, and follow

applicable Federal directives, except to the extent FTA determines otherwise in writing. Specifically:

(1) The Indian Tribe agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, “Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities,” dated September 2, 2005, and in accordance with any applicable Federal directives that may be issued at a later date; to comply with U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,” 40 C.F.R. Part 51, Subpart T; and “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Tribal Transit Project, the Indian Tribe agrees to implement each air quality mitigation or control measure incorporated in its Tribal Transit Project. The Indian Tribe further agrees that any Tribal Transit Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Tribal Transit Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Indian Tribe agrees to comply with the following U.S. EPA regulations to the extent they apply to its Tribal Transit Project operations: “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85; “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 C.F.R. Part 86; and “Fuel Economy of Motor Vehicles,” 40 C.F.R. Part 600.

(3) The Indian Tribe agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Indian Tribe agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Indian Tribe agrees to protect underground sources of drinking water as provided by the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Indian Tribe agrees to comply with the notice of violating facility provisions

of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Indian Tribe agrees that in implementing its Tribal Transit Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The Indian Tribe also agrees to comply with joint FHWA/FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Indian Tribe agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

f. Not Applicable.

g. Wetlands. The Indian Tribe agrees to facilitate compliance with the protections for wetlands in accordance with Executive Order No. 11990, as amended, “Protection of Wetlands,” at 42 U.S.C. § 4321 note.

h. Floodplains. The Indian Tribe agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The Indian Tribe agrees to comply with protections for endangered species set forth in the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*

j. Historic Preservation. The Indian Tribe agrees as follows:

(1) The Indian Tribe agrees that in implementing its Tribal Transit Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.

(2) The Indian Tribe agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, “Protection



and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

(a) In accordance with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 C.F.R. Part 800, the Indian Tribe agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.

(b) The Indian Tribe agrees to comply with all applicable Federal regulations and follow applicable Federal directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

k. Indian Sacred Sites. The Indian Tribe agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians requirements, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

l. Mitigation of Adverse Environmental Effects. Should the proposed Tribal Transit Project cause or result in adverse environmental effects, the Indian Tribe agrees to take all reasonable measures to minimize those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622, among other Federal requirements. The Indian Tribe agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303). The Indian Tribe also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Indian Tribe agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement for the Tribal Transit Project. The Indian Tribe also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement for the Tribal Transit Project as soon as the agreement with the Federal Government is reached. The Indian Tribe agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

**Sections 26. – 27. Not Applicable.**

## **Section 28. Charter Service Operations.**

The Indian Tribe agrees that neither it nor any public transportation operator performing work in connection with a Tribal Transit Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Indian Tribe has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement for the Tribal Transit Project. If the Indian Tribe has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA’s Charter Service regulations, the Indian Tribe understands and agrees that: (1) the requirements of FTA’s Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA’s Charter Service regulations will apply to the Indian Tribe’s charter operations, and (3) a pattern of violations of FTA’s Charter Service regulations may require corrective measures and imposition of remedies, including barring the Indian Tribe, subrecipient, lessee, third party contractor, or other participant in the Tribal Transit Project operating public transportation under the Tribal Transit Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to those regulations.

## **Section 29. School Transportation Operations.**

The Indian Tribe agrees that neither it nor any public transportation operator performing work in connection with a Tribal Transit Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Indian Tribe has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement for the Tribal Transit Project. If the Indian Tribe has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA’s School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Indian Tribe understands and agrees that: (1) the requirements of FTA’s School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the

Tribal Transit Project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Indian Tribe's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Indian Tribe, subrecipient, lessee, third party contractor, or other participant in the Tribal Transit Project operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

### **Section 30. Metric System.**

To the extent U.S. DOT or FTA directs, the Indian Tribe agrees to use the metric system of measurement in its Tribal Transit Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs" 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. To the extent practicable and feasible, the Indian Tribe agrees to accept products and services financed with Tribal Transit Program assistance that have dimensions expressed in the metric system of measurement.

### **Section 31. Not Applicable.**

### **Section 32. Substance Abuse.**

To the extent applicable, the Indian Tribe agrees to comply with the following Federal substance abuse regulations:

a. Drug-Free Workplace. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, implementing the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.* including any amendments thereto when they are promulgated. *[OMB published final guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.]*

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

### **Section 33. Motor Carrier Safety.**

To the extent applicable, the Indian Tribe agrees to comply with, and assures the compliance of its subrecipients, lessees, third party contractors, and other participants at

any tier with, applicable provisions of the following regulations promulgated by the U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA):

a. Financial Responsibility. The Indian Tribe agrees as follows:

(1) To the extent that the Indian Tribe is engaged in interstate commerce and not within a defined commercial zone, the Indian Tribe agrees to comply with U.S. FMCSA regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 U.S.C. Part 387, as modified by 49 U.S.C. § 31138(e)(4), which reduces the amount of insurance required to the highest amount required by any State in which the transit provider operates.

(2) To the extent that the Indian Tribe is engaged in interstate commerce and not within a defined commercial zone, the Indian Tribe agrees to comply with U.S. FMCSA regulations, Subpart B, “Federal Motor Carrier Safety Regulations,” at 49 C.F.R. Parts 390 through 396.

b. Driver Qualifications. The Indian Tribe agrees to comply with U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383.

c. Substance Abuse Rules for Motor Carriers. The Indian Tribe agrees to comply with U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

**Section 34. Not Applicable.**

**Section 35. Federal “\$1 Coin” Requirements.**

To the extent required by the Federal Government, the Indian Tribe agrees to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the Indian Tribe’s equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with that use. The Indian Tribe also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

**Section 36. Safe Operation of Motor Vehicles.**

The Indian Tribe agrees as follows:

a. Seat Belt Use. In accordance with the provisions of Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, the Indian Tribe is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Tribal Transit Project.

b. Distracted Driving, Including Text Messaging While Driving.

In accordance with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, the Indian Tribe is encouraged to comply with the terms of the following Special Provision.

(1) Definitions. As used in this Special Provision:

(a) “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. “Driving” does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(b) “Text Messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(2) Safety. The Indian Tribe is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(b) Indian Tribe-owned or Indian Tribe-rented vehicles or Government-owned, leased or rented vehicles;

(c) Privately-owned vehicles when on official Tribal Transit Project related business or when performing any work for or on behalf of the Tribal Transit Project; or

(d) Any vehicle, on or off duty, and using an employer supplied electronic device.

(3) Conduct workplace safety initiatives in a manner commensurate with the Indian Tribe’s size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(4) Include this Special Provision in its subagreements with its subrecipients, leases, and third party contracts, and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

### **Section 37. Protection of Sensitive Security Information.**

To the extent applicable, the Indian Tribe agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and with 49 U.S.C. § 114(r) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

### **Sections 38. – 52. Not Applicable.**

### **Section 53. Special Provisions for Recovery Act Projects.**

The Indian Tribe agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”), and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

a. Identification of Recovery Act Funding. The citations to the statutes authorizing the funding are 49 U.S.C. § 5311(c) and one of the provisions of the Recovery Act as explained below:

(1) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery,” the Project is financed with Recovery Act appropriations for Transit Capital Assistance for the Nonurbanized Area Formula Program authorized by 49 U.S.C. § 5311.

(2) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the Nonurbanized Area Formula Grant Program authorized by 49 U.S.C. § 5311.

(3) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement or Cooperative Agreement displays “PL 111-5 – Transp. Invest/Greenhouse Gas & Energy Red. – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for Federal Transit Administration capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems.

b. Identification of Project(s). The Project or Projects financed with Recovery Act funds are set forth in the Indian Tribe’s Project application and reflected in the Approved Project Budget.

c. Prompt Implementation. The Indian Tribe agrees to begin work on its Recovery Act Project promptly after FTA has awarded Recovery Act funds for that Project, and also agrees to continue to expend those Recovery Act funds expeditiously for Project purposes.

d. Federal Requirements. In addition to applicable Recovery Act statutory and regulatory requirements, the Indian Tribe agrees that applicable requirements of 49 U.S.C. chapter 53 apply to each federally assisted public transportation Project financed with Recovery Act funds, except that the Federal share of the costs for which any Recovery Act award is made under this heading shall be, at the option of the Indian Tribe, up to 100 percent of the cost of the Project.

e. U.S. OMB Provisions. The Recipient agrees to comply with applicable provisions of U.S. Office of Management and Budget, “Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards,” 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449 *et seq.*, April 23, 2009. Specifically the Recipient acknowledges and agrees to comply with the following provisions

(1) Reporting and Registration Requirements under Section 1512 of the Recovery Act.

(a) This award requires the Indian Tribe to complete projects or activities that are funded under the Recovery Act and to report on the use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The Indian Tribe agrees to submit the requisite reports no later than ten calendar days after each calendar quarter in which it receives the Federal assistance award funded in whole or in part by the Recovery Act.

(c) The Indian Tribe agrees to have, and require its subrecipients to have, a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>).

(d) The Indian Tribe agrees to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active Federal award funded with Recovery Act funds. If the Recipient has delegated any of its reporting requirements under Section 1512 of the Recovery Act to any subrecipient, the Indian Tribe agrees to require that subrecipient to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is participating in a Project financed through an active Federal award funded with Recovery Act funds.

(e) The Indian Tribe agrees to report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(3) Wage Rate Requirements under Section 1606 of the Recovery Act. Statutory provisions of 49 U.S.C. Chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

(4) Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Indian Tribe Responsibilities for Informing Subrecipients.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 49 C.F.R. § 18.20 or 49 C.F.R. § 19.21, as applicable, the Indian Tribe agrees to maintain records that identify adequately the source and application of Recovery Act funds.

(b) An Indian Tribe covered by the Single Audit Act Amendments of 1996, and U.S. 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 U.S. OMB Circular A-133. The Indian Tribe 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.

(c) The Indian Tribe agrees to separately identify to each subrecipient, and document at the time of subaward and also at the time of disbursement of funds, the Federal award number, the CFDA number, and the amount of Recovery Act funds. When the Indian Tribe awards Recovery Act funds for an existing program, the Indian Tribe agrees to furnish sufficient information to each subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program.



(d) The Indian Tribe agrees to require each subrecipient to include on its SEFA information to specifically identify Recovery Act funding similar to the requirements for the Indian Tribe's SEFA described above. This information is needed to allow the Indian Tribe to properly monitor subrecipient expenditure of Recovery Act funds as well as oversight by FTA, DOT, Offices of Inspector General and the Government Accountability Office.

f. One-Time Funding. The Indian Tribe acknowledges that receipt of Recovery Act funds is a "one-time" disbursement that does not create any future obligation by the FTA to advance similar funding amounts. The Indian Tribe agrees that the total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Grant Agreement for the Project, as may be later amended. The Government's liability to make payments to the Indian Tribe is limited to eligible Project costs that can be financed with those Recovery Act funds as displayed on the underlying Grant Agreement for the Project and any later amendment thereto.

g. Integrity. The Indian Tribe agrees that all data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

h. Violations of Law. The Indian Tribe agrees that it and each of its subrecipients shall report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

i. Maintenance of Effort. Not Applicable.

j. Emblems. The Indian Tribe is encouraged to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project(s).

k. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, the Recipient agrees to award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible. The Recipient agrees to post a summary of the contract on the Recovery Act web site maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

l. Further Requirements. The Indian Tribe agrees to comply with applicable future Federal requirements that may be imposed on the use of Recovery Act funds, and to

follow applicable Federal directives that may be issued, except to the extent the Federal Government determines otherwise in writing.

#### **Section 54. Not Applicable.**

#### **Section 55. Freedom of Information Act.**

The Recipient understands and agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information and documents, both paper and electronic, submitted to FTA and U.S. DOT. The Recipient should therefore be aware that all applications and materials submitted to FTA that are related to its FTA assisted Project will become agency records and are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies. President Obama's January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act directs Federal agencies to adopt a presumption of disclosure. Therefore, FTA does not consent to honor any "routine" confidentiality statements that may appear on documents, correspondence, letters, or similar correspondence (paper or electronic) that accompany submission of Project information, absent a requirement under Federal law or regulation that the information must be kept confidential. Genuinely confidential or privileged information, should be marked clearly and specifically, and justified as confidential or privileged. FTA, however, will review documents and information that are the subject of each FOIA request to determine, as permitted by Federal law and regulations, the extent to which FTA must or should exercise its discretion and withhold those documents.

#### **Section 56. Disputes, Breaches, Defaults, or Other Litigation.**

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

- a. Notification to FTA. The Indian Tribe agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Tribal Transit Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Indian Tribe seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Indian Tribe agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Indian Tribe operates its public transportation system or implements its Tribal Transit Project.
- b. Federal Interest in Recovery. The Federal Government retains the right to recover the amount of Tribal Transit Program assistance awarded for the Tribal Transit Project, based on any proceeds the Indian Tribe derives from any third party recovery, except that the

Indian Tribe may return any liquidated damages recovered to its Tribal Transit Project Account in lieu of returning that Tribal Transit Program assistance to the Federal Government.

- c. Enforcement. The Indian Tribe agrees to pursue all legal rights provided within any third party contract or available under law or regulations.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Tribal Transit Project and the Indian Tribe.
- e. Alternative Dispute Resolution. FTA encourages the Indian Tribe to use alternative dispute resolution procedures, as may be appropriate.

#### **Section 57. Amendments to the Tribal Transit Project.**

The Indian Tribe agrees that a change in circumstances of its Tribal Transit Project causing an inconsistency with the terms of the Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement will require an amendment to that Grant Agreement for the Tribal Transit Project signed by the original signatories or their authorized designees or successors. The Indian Tribe agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement for the Tribal Transit Project.

#### **Section 58. FTA's Electronic Management System.**

- a. Use by the Indian Tribe. Unless FTA permits otherwise in writing, the Indian Tribe agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Indian Tribe may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.
- b. TEAM System Terminology. The Indian Tribe and FTA agree that the terms used by FTA in its current Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what such matters as Project, its scope, activities, and so forth, include, except to the extent FTA so states in writing. FTA reserves the right to treat information other than that reflected in its current TEAM system as determinative of what constitutes the "Project," "Scope of the Project," and "Project Activities."

#### **Section 59. Information Obtained Through Internet Links.**

This Tribal Transit Program Master Agreement may include electronic links to Federal laws, regulations, and directives. FTA does not guarantee the accuracy of information

accessed through such links. Accordingly, the Indian Tribe agrees that information obtained through any electronic link within this Tribal Transit Program Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Tribal Transit Program Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

#### **Section 60. Severability.**

If any provision of the Grant Agreement for the Tribal Transit Project, or this Tribal Transit Program Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.