

**SPECIAL MEETING
DESTIN CITY COUNCIL
APRIL 1, 2020
ANNEX COUNCIL CHAMBERS
3:00 PM**

*****Core Value of the Month - Transparency*****

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

1. PUBLIC COMMENTS

2. NEW BUSINESS

- A. Resolution 20-05 -Providing for Rules for the use of Communication Media Technology
- B. Resolution 20-06 - Ratifying the Declaration of State of Emergency and Extension Number 1 of the Declaration of State of Emergency
- C. Council Direction: Modifications to the Ordinance related to Declarations of Emergency.

3. CONSENT AGENDA

- A. STR Application Deadline Extension
- B. Government Services Group (GSG) Agreement
- C. Election Services Agreement between the City of Destin and Okaloosa County Supervisor of Elections

4. PUBLIC COMMENTS

ADJOURNMENT

****** Any invocation that is offered before the official start of the City Council meeting shall be the voluntary offering of a private person, to and for the benefit of the City Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council, or the City staff, and the City is not allowed by law to endorse the religious beliefs or views of this, or any other speaker. Persons in attendance at the City Council meeting are invited to stand during the opening invocation and Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered. A person may exit the City Council Chambers and return upon completion of the opening invocation if a person does not wish to participate in or witness the opening invocation.***

Persons with disabilities who require assistance to participate in City meetings are requested to notify the City Clerk's Office at (850) 837-4242 in advance. Hearing Impaired: TTY: 711. Assistance also available through Human Resources, Title VI Coordinator, at (850) 837-4242.

Personas con discapacidades que necesitan asistencia o personas que necesiten ayuda con un idioma para participar en las reuniones de la ciudad, deberán notificar la oficina de la Secretaria Municipal al (850) 837-4242 antes de la reunión. Discapacidad auditiva: TTY: 711 (Solicitar Espanol CA). La ayuda tambien está disponible por Recursos Humanos, Coordinador del Título VI, al (850) 837-4242.

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020

TYPE OF AGENDA ITEM: Resolution

TO: City Council

THRU:

FROM:

DATE:

SUBJECT: Resolution 20-05 -Providing for Rules for the use of Communication Media Technology

I. BACKGROUND: On March 20, 2020, Governor Ron DeSantis issued Executive Order 20-69, allowing for the conduct of meetings through virtual means.

II. DISCUSSION: To conduct meetings through virtual meetings, Executive Order 20-69 requires the City Council to adhere generally to section 120.54(5)(b)2., Florida Statutes. This statute requires the adoption of uniform rules governing the procedure and conduct of meetings held virtually. Resolution 2020-05 adheres to Florida Statutes and its adoption would allow the City Council and its advisory boards and committees to conduct meetings through virtual means.

A. Link to Strategic Goals / Objectives:

B. Effect on Budget (EOB):

C. Level of Service (LOS):

III. CONCLUSION:

IV. RECOMMENDED MOTION: I move to approve/modify Resolution 2020-05 and direct the Mayor to execute it on behalf of Council.

Attachments:

1. ExecOrder_20-69
2. Resolution 20-05 - Providing for Rules for the use of Communications

Media Technology at public meetings

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 20-69

(Emergency Management – COVID-19 – Local Government Public Meetings)

WHEREAS, on March 1, 2020, I issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency as a result of COVID-19; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures, such as working from home and avoiding gatherings of more than 10 people; and

WHEREAS, on March 17, 2020, I wrote a letter to Attorney General Ashley Moody seeking an advisory opinion regarding concerns raised by local government bodies about their ability to hold meetings through teleconferencing and other technological means in order to protect the public and follow the CDC guidance regarding social distancing; and

WHEREAS, on March 19, 2020, Attorney General Ashley Moody delivered an opinion to me indicating that certain provisions of Florida law require a physical quorum be present for local government bodies to conduct official business, and that local government bodies may only conduct meetings by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in person, or that the in person requirement for constituting a quorum is lawfully suspended during the state of emergency; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that residents and visitors in Florida remain safe and secure;

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. I hereby suspend any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place.

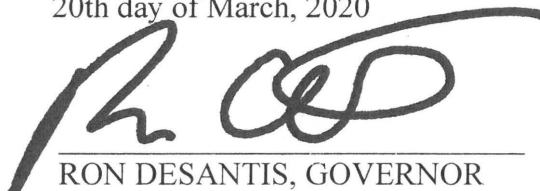
Section 2. Local government bodies may utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes.

Section 3. This Executive Order does not waive any other requirement under the Florida Constitution and "Florida's Government in the Sunshine Laws," including Chapter 286, Florida Statutes.

Section 4. This Executive Order shall expire at the expiration of Executive Order 20-52, including any extension.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 20th day of March, 2020


RON DESANTIS, GOVERNOR

ATTEST:


SECRETARY OF STATE

FILED
2020 MAR 20 AM 9:38
TALLAHASSEE, FLORIDA

RESOLUTION 20-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA, PERMITTING THE USE OF COMMUNICATIONS MEDIA TECHNOLOGY TO CONDUCT CITY MEETINGS; PROVIDING FOR UNIFORM RULES WHEN USING COMMUNICATIONS MEDIA TECHNOLOGY; PROVIDING FOR PUBLIC PARTICIPATION; PROVIDING FOR NOTICE TO THE PUBLIC; SUPERCEDING ALL EXISINT INCONSISTENT OR CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Okaloosa County and 26 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, President of the United States, Donald J. Trump, issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease Outbreak pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, The City of Destin, Florida (the “City” or “Destin”) is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of Destin; and

WHEREAS, the CDC has issued guidelines for “community mitigation strategies” to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19; and

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order Number 20-52 regarding COVID-19, declaring a state of emergency in the State of Florida and authorizing in accordance with Section 252.38, Florida Statutes, each political subdivision within the State to

“waive the procedures and formalities otherwise required of the political subdivision by law pertaining to ... [the] [p]erformance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;” and

WHEREAS, on March 17, 2020, the Okaloosa County Board of County Commissioners declared a local state of emergency; and

WHEREAS, on March 18, 2020, pursuant to Chapter 8, Articles II and III of the City’s Code of Ordinances, the City’s Mayor and City Manager jointly declared a State of Emergency exists in the City; and

WHEREAS, the Declaration of State of Emergency empowers the City with wide latitude allowing it to adopt any measure allowed by law that is in the best interest of the public’s health, safety, and welfare; and

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order Number 20-69, suspending any Florida Statute requiring a quorum to be present in person or requiring a local government body to meet at a specific public place, and allowing local government bodies to utilize communications media technology as provided in § 120.54(5)(b)2., Florida Statutes; and

WHEREAS, § 252.46, Florida Statutes, permits political subdivisions of the state to adopt rules deviating from existing statutes and rules when

WHEREAS, Section 3.11(b), of the City Charter permits the City Council to determine its own rules and order of business; and

WHEREAS, the measures implemented below are as narrowly tailored as possible to protect the public’s health, safety, and wellbeing; and

NOW, THEREFORE, the City Council of the City of Destin, Florida, does hereby declare and establish the following:

Section 1. Recitals.

1. The foregoing recitals are true and correct, and incorporated into this Resolution.

Section 2. Definitions.

2. As used herein, the following terms shall have the following meanings, unless the context clearly requires otherwise:

“Board” – Shall mean and the refer to the Destin City Council, and such other advisory boards and committees which are a component of or dependent upon the City and are authorized by the Destin City Council to conduct meetings utilizing CMT.

“Communications Media Technology” – Shall mean the electronic transmission of printed matters, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

“City” – Shall mean the City of Destin, Florida.

“CMT Operator” – the City staff person or other individual designated to oversee and administer the specific CMT to be utilized in connection with a public meeting, including but not limited to the administration and operation of the features of any particular equipment, software, or platform used in connection with a meeting conducted through CMT.

Section 3. Permitting the use of communications media technology to conduct City meetings.

3. The Board is hereby authorized to utilize CMT to conduct public meetings to the maximum extent allowed by law during the time this Resolution is in effect.

Section 4. Providing for uniform rules when using CMT.

4. Who may attend a Board meeting using CMT.

- a. Any elected or appointed Council, board, or committee members, including the Mayor, is permitted to utilize CMT to attend any scheduled City meeting.
- b. Any member of City staff and any City contractor is permitted to utilize CMT to attend any scheduled City meeting.
- c. City staff shall distribute written instructions to the above-described people describing how each person may access the meeting and participate in the meeting.

5. Form of Communications Media Technology. The City Manager or designee, shall designate one or more approved platforms (i.e., Teams, Zoom, WebEx, GoToMeeting, Skype, etc.) for the conduct of CMT. The City Manager shall also designate one or more CMT Operators, which persons shall be responsible for overseeing and administering the specific CMT to be utilized in connection with a public meeting, including but not limited to the administration and operation of the features of any particular equipment, software, or platform used in connection with a meeting conducted through CMT.

6. Quorum; Voting. The Board Chair or CMT Operator shall ensure that a quorum is present through CMT before taking action on any item. To ensure accuracy, authenticity, and the presence of a quorum, all votes shall be conducted verbally by roll call.

7. Minutes; Recording. Minutes of all meetings conducted by CMT shall be kept in the same manner as required for a non-CMT meeting. Where practicable, all meetings conducted by CMT shall be recorded or otherwise captured by digital means.

8. Quasi-Judicial Matters. Separate rules shall be adopted for Quasi-judicial matters which shall ensure that such matters are conducted in accordance with at least the minimum requirements governing due process.

Section 5. Public participation.

9. The public shall be allowed to participate by any of the following manners and means:

- a.** A physical access point will be provided, if possible. The access point shall be the City Hall Annex, 4100 Indian Trail Drive, Destin, Florida 32541. Any member of the public attending any meeting physically shall be permitted to make public comment during any public hearing or during any section of the agenda at which public comment is permitted. Public comment shall be limited to three minutes per person.
- b.** If it is impossible to provide a physical access point, then the City shall provide an access point through one of the approved platforms described in Section 4, paragraph 5. Even if a physical access point is provided, the City shall attempt to implement an access virtual access point as described herein.
- c.** The public shall be permitted to send written comments to the City Clerk. Any written comments must be submitted at least 24 hours before the scheduled Board meetings. These written comments shall be submitted by email to rbailey@cityofdestin.com or delivered to City Hall, 4200 Indian Bayou Trail, Destin, Florida 32541. Any written comments submitted shall be distributed to the appropriate elected or appointed boards prior to the scheduled meeting.

Section 6. Notice to the Public.

10. The City shall provide notice of a Board meeting by providing notice in the same manner as it would for a non-CMT meeting.

11. However, the notice shall

- a.** Plainly state that such meeting may be conducted utilizing CMT and identify the specific type of CMT to be used;
- b.** describe how interested persons may attend and to include:
 - i.** The address or addresses of all physical access points a person may go for the purpose of attending the meeting, and specifically designating those which are in locations normally open to the public;
 - ii.** Any CMT a person may use to participate;

- iii. An address, email address, and designated person to whom a person may submit written comment he or she intends to offer during the CMT proceeding.
- c. Include the email address and telephone number of a designated individual to whom an interested person may call or write for additional information or assistance regarding the meeting.

Section 7. Government in the Sunshine.

12. No meeting otherwise subject to § 286.011, Florida Statutes, shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested parties to attend. If during the course of a meeting conducted by CMT technical problems develop with the communications network that prevent interested persons from attending, the Board shall terminate the meeting until the problems have been corrected.

Section 8. Inconsistent and conflicting Ordinances and Resolutions superseded.

13. This Resolution shall supersede all inconsistent or conflicting Ordinances and Resolutions to the extent these Ordinances and Resolutions are inconsistent or conflicting for the time this Resolution is in effect.

Section 9. Severability.

14. If any portion of this Resolution is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Resolution.

Section 10. Providing for a termination date

15. This Resolution shall automatically terminate upon the expiration of Executive Order 20-69.

Section 11. Effective Date.

16. This Resolution shall be effective immediately upon adoption.

**PASSED AND DULY ADOPTED BY THE CITY COUNCIL OF THE CITY OF
DESTIN, FLORIDA THIS ___TH DAY OF _____, 2020.**

GARY JARVIS, MAYOR

ATTEST:

REY BAILEY, CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE CITY OF
DESTIN, ONLY:

KYLE S. BAUMAN, ESQ.
CITY ATTORNEY

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020

TYPE OF AGENDA ITEM: Resolution

TO: City Council

THRU:

FROM:

DATE:

SUBJECT: Resolution 20-06 - Ratifying the Declaration of State of Emergency and Extension Number 1 of the Declaration of State of Emergency

I. BACKGROUND:

II. DISCUSSION: the Declaration of State of Emergency and Extension 1 relating to COVID-19 were issued pursuant to Chapter 8, Article III, Section 8-52 of the City's Code of Ordinances. Resolution 20-06 ratifies the Declaration of State of Emergency and Extension 1 of said Declaration. Resolution 20-06 further provides that future extensions of the Declaration of State of Emergency are subject to Council approval. Finally, pursuant to section 252.46, Florida Statutes, Resolution 20-06, shifts some emergency management powers to the City Council for the duration of the emergency.

A. Link to Strategic Goals / Objectives:

B. Effect on Budget (EOB):

C. Level of Service (LOS):

III. CONCLUSION:

IV. RECOMMENDED MOTION: I move to approve Resolution 20-06 and authorize the Mayor to execute on behalf of the Council.

Attachments:

1. Resolution 20-06 - Ratifying the Declaration of State of Emergency

and Extension Number 1 of the
Declaration of State of Emergency

2. DOE_3_18_20
3. Ext1_DOE

RESOLUTION 20-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA, RATIFYING THE DECLARATION OF STATE OF EMERGENCY AND EXTENSION NUMBER 1 OF THE DECLARATION OF STATE OF EMERGENCY; PROVIDING A PROCEDURE FOR FUTURE EXTENSIONS OF THE DECLARATION OF STATE OF EMERGENCY; PROVIDING FOR PROCEDURES FOR THE EXERCISE OF EMERGENCY POWERS; SUPERSEDING INCONSISTENT AND CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza; and

WHEREAS, in December 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Okaloosa County and 26 other counties in the State of Florida; and

WHEREAS, on March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, President of the United States, Donald J. Trump, issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease Outbreak pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, The City of Destin, Florida (the “City” or “Destin”) is threatened by COVID-19 because of the apparent ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of Destin; and

WHEREAS, the CDC has issued guidelines for “community mitigation strategies” to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19; and

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order Number 20-52 regarding COVID-19, declaring a state of emergency in the State of Florida and authorizing in

accordance with Section 252.38, Florida Statutes, each political subdivision within the State to “waive the procedures and formalities otherwise required of the political subdivision by law pertaining to ... [the] [p]erformance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;” and

WHEREAS, on March 17, 2020, the Okaloosa County Board of County Commissioners declared a local state of emergency; and

WHEREAS, on March 18, 2020, pursuant to Chapter 8, Articles II and III of the City’s Code of Ordinances, the City declared a State of Emergency relating to COVID-19 exists in the City; and

WHEREAS, the Declaration of State of Emergency empowers the City with wide latitude allowing it to adopt any measure allowed by law that is in the best interest of the public’s health, safety, and welfare; and

WHEREAS, on March 20, 2020, Governor DeSantis issued Executive Order Number 20-69, suspending any Florida Statute requiring a quorum to be present in person or requiring a local government body to meet at a specific public place, and allowing local government bodies to utilize communications media technology as provided in § 120.54(5)(b)2., Florida Statutes; and

WHEREAS, on March 25, 2020, the City’s Declaration of State of Emergency was extended by Extension Number 1; and

WHEREAS, § 252.46, Florida Statutes, permits political subdivisions of the state to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement and carry out the provisions of §§ 252.31-252.90, Florida Statutes; and

WHEREAS, Section 3.11(b), of the City Charter permits the City Council to determine its own rules and order of business; and

WHEREAS, The City Charter generally empowers the City Council to adopt measures relating to the public’s health, safety, and welfare; and

WHEREAS, the measures implemented below are as narrowly tailored as possible to protect the public’s health, safety, and wellbeing; and

NOW, THEREFORE, the City Council of the City of Destin, Florida, does hereby declare and establish the following:

Section 1. Recitals.

1. The foregoing recitals are true and correct, and incorporated into this Resolution.

Section 2. Ratification of the Declaration of State of Emergency and Extension Number 1 of the Declaration of State of Emergency.

2. The issuance of the Declaration of State of Emergency and Extension Number 1 of the Declaration of State of Emergency is hereby ratified and affirmed.

Section 3. Procedures for Future Extensions of the Declaration of State of Emergency.

3. Future Extensions of the Declaration of State of Emergency shall be subject to ratification and affirmation of the City Council.

Section 4. Procedures for Exercise of Emergency Powers.

4. To the extent feasible, prior to the exercise of any emergency powers afforded to the City Manager and Mayor through any legal authority, a meeting of the City Council shall be held.

5. At a meeting held pursuant to this Section, the City Manager shall present the proposed power to be exercised to the City Council and shall act only if the City Council approves by majority vote.

6. If, in the City Manager's judgment, there is an imminent threat to the public's health, safety, and welfare that requires immediate action, then the City Manager shall act in the best interest of the public's health, safety, and welfare and act as soon as practicable.

7. If the City Manager acts pursuant to paragraph 6, then the City Manager shall schedule a City Council meeting or special meeting as shortly thereafter as possible and present the action(s) to the City Council for approval and ratification.

Section 5. Inconsistent and Conflicting Ordinances and Resolutions Superseded.

8. This Resolution shall supersede all inconsistent or conflicting Ordinances and Resolutions to the extent these Ordinances and Resolutions are inconsistent or conflicting for the time this Resolution is in effect.

Section 6. Severability.

9. If any portion of this Resolution is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Resolution.

Section 7. Effective Date.

10. This Resolution shall be effective immediately upon adoption and shall continue to remain in effect until superseded by action of the City Council through vote, future resolution, or future ordinance.

**PASSED AND DULY ADOPTED BY THE CITY COUNCIL OF THE CITY OF
DESTIN, FLORIDA THIS 1st DAY OF APRIL, 2020.**

GARY JARVIS, MAYOR

ATTEST:

REY BAILEY, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
CITY OF DESTIN, ONLY:

KYLE S. BAUMAN, ESQ.
CITY ATTORNEY

DECLARATION OF STATE OF EMERGENCY
CITY OF DESTIN, FLORIDA

On this 18th day of March, at ~~4:30~~ p.m., the Mayor and City Manager of the City of Destin, Florida (the "City") hereby jointly declare a State of Emergency in response to the novel coronavirus, COVID-19.

WHEREAS, the Centers for Disease Control and Prevention ("CDC") expects widespread transmission of the novel coronavirus, COVID-19, and the pandemic has reached Florida and Okaloosa County; and

WHEREAS, the President of the United States of America, declared a state of national emergency and has issued guidelines which include limiting public gatherings to 10 people or fewer; and

WHEREAS, on March 1, 2020, Governor Ron Desantis, of the State of Florida (the "Governor"), issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 17, 2020, the Governor issued Executive Order No. 20-68, limiting the operation of bars, pubs, nightclubs, and restaurants, and further directing parties accessing public beaches in the State of Florida to follow CDC guidelines by limiting their gatherings to no more than 10 persons, and distancing themselves from other parties by 6 feet; and

WHEREAS, on March 17, 2020, the Okaloosa County Board of County Commissioners declared that a state of emergency exists in Okaloosa County; and

WHEREAS, in accordance with § 252.38, Florida Statutes, Executive Order 20-52 authorizes the City to waive the procedures and formalities otherwise required of the City by law pertaining to (1) performance of public works and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community; (2) entering into contracts; (3) incurring obligations; (4) employment of permanent and temporary workers; (5) utilization of volunteer workers; (6) rental of equipment, (7) acquisition and distribution, with or without compensation, of supplies, materials, and facilities, and (8) appropriation and expenditure of public funds; and

WHEREAS, § 252.38(3), Florida Statutes, authorizes the City to declare a state of emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, pursuant to the City's broad constitutional home rule powers, it has the authority to institute reasonably tailored measures designed to protect the public's health, safety, and welfare; and

WHEREAS, Chapter 8, Article II, of the City's Code of Ordinances (the "Code") sets forth the procedures for the City to follow in the event of a emergency; and

WHEREAS, Chapter 8, Article III, of the Code empowers the Mayor and/or City Manager to proclaim that a civil emergency exists and institute measures designed to protect the public's health, safety, and welfare; and

WHEREAS, the City is threatened by COVID-19 because the deadly virus spreads rapidly among humans and has the potential to overwhelm healthcare infrastructure; and

WHEREAS, COVID-19 constitutes a clear and present threat to the public's health, safety, and welfare.

NOW, THEREFORE, in consideration of the recitals above, all of which are incorporated herein below by reference, the Mayor and City Manager hereby jointly declare a State of Emergency, and further state:

Section 1. Boundaries of the areas affected by the emergency.

This State of Emergency encompasses the City's entire municipal bounds.

Section 2. Powers.

The City shall have the right to exercise the full complement of powers afforded to the City through its broad constitutional home rule powers, any executive order issued by the Governor, any powers described in Florida Statutes, including, but not limited to § 252.38, Florida Statutes, and any powers described in the City's Code, including, but not limited to, Chapter 8, Articles II and III.

Section 3. Direction to the Public.

The Public, including all businesses, is hereby directed to comply with any emergency orders, regulations, and measures issued by the City, Okaloosa County, the State of Florida, and to cooperate with safety personnel in executing these orders, regulations, and measures.

Section 4. Course of action.

This State of Emergency shall take effect immediately and shall remain in effect as long as law allows and until the Mayor and City Manager determine that a state of emergency no longer exists. However, this State of Emergency shall not to exceed any Executive Order from the Governor revoking or withdrawing Executive Order 20-51 and if Executive Order 20-51 is revoked or withdrawn, then this State of Emergency shall terminate automatically and without further action by the Mayor or City Manager.

Section 5. Direction to City Staff.

This State of Emergency shall be disseminated to the appropriate City agencies, the Okaloosa County Sheriff's Office, the Okaloosa County Board of County Commissioners, the local news media, and the general public, as soon as possible.

IT IS SO DECLARED AND ORDERED THIS 18TH DAY OF MARCH, 2020.


Lance Johnson, City Manager

Date: 3/18/2020


Gary Jarvis, Mayor

Date: 3/18/2020

Attest:


Rey Bailey, City Clerk

Date: 3/18/2020

Approved as to form and legal
sufficiency:


Kyle Bauman, City Attorney

Date: 3/18/2020

**EXTENSION NO. 1 – COVID-19
DECLARATION OF STATE OF EMERGENCY
CITY OF DESTIN, FLORIDA**

WHEREAS, on March 1, 2020, Governor Ron DeSantis issued Executive Order No. 20-51 directing the Florida Department of Health to issue a Public Health Emergency, which direction was followed by the appropriate agencies; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order No. 20-52 declaring a State of Emergency for every county in Florida for COVID-19; and

WHEREAS, on March 18, 2020, the Mayor and City Manager of the City of Destin, Florida (the "City") jointly issued a Declaration of a State of Emergency (the "COVID-19 Declaration") in response to COVID-19; and

WHEREAS, there is law potentially limiting the COVID-19 Declaration's effect to a period of only seven (7) days; and

WHEREAS, the conditions continue to exist requiring the extension of the COVID-19 Declaration; and

NOW THEREFORE, in consideration of the recitals above, all of which are incorporated herein below by reference, the Mayor and City Manager hereby jointly extend the covid-19 declaration, and further state:

Section 1. COVID-19 Declaration Extended.

1. The COVID-19 Declaration is hereby extended for the maximum amount of time allowed by law or until the Mayor and City Manager determine that a state of emergency no longer exists. However, this the state of emergency shall not exceed any Executive Order from the Governor revoking or withdrawing Executive Order 20-51 and if Executive Order 20-51 is revoked or withdrawn, then this State of Emergency shall terminate automatically and without further action by the Mayor or City Manager.

DULY EXECUTED this 25th day of March, 2020.


Lance Johnson, City Manager

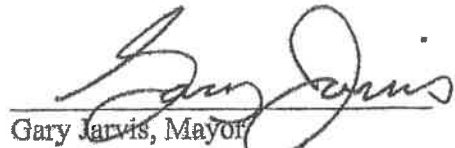
Date: 3/25/2020

Attest:



Rey Bailey, City Clerk

Date: 3/25/2020


Gary Jarvis, Mayor

Date: 3/25/2020

Approved as to form and legal
sufficiency:


Kyle Bauman, City Attorney

Date: 3/25/2020

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020

TYPE OF AGENDA ITEM: City Manager Report

TO: City Council

THRU:

FROM:

DATE:

SUBJECT: Council Direction: Modifications to the Ordinance related to Declarations of Emergency.

I. BACKGROUND: Staff is requesting direction from Council specifying desired modifications to the Destin City Ordinances pertaining to Emergency Management. The current Emergency Management procedures are codified in Chapter 8, Article II & III of the City's Code of Ordinances.

II. DISCUSSION:

- A. Link to Strategic Goals / Objectives:
- B. Effect on Budget (EOB):
- C. Level of Service (LOS):

III. CONCLUSION:

IV. RECOMMENDED MOTION:

Attachments:
None

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020

TYPE OF AGENDA ITEM: Consent Agenda

TO: City Council

THRU: Kimberly Kopp, Land Use Attorney
Louis Zunguze, Community Development Director

FROM: Lance Johnson, City Manager

DATE: 03/30/2020

SUBJECT: STR Application Deadline Extension

I. BACKGROUND: COVID-19 is heavily impacting the short-term-rental (STR) bookings. To help mitigate this impact on STRs we have extended the STR registration due date from March 31st, 2020 to May 31st, 2020. (ATC 1) The City Manager is asking Council to affirm these actions giving STRs additional time to register due to impacts of the COVID-19 virus.

II. DISCUSSION: COVID-19 and an existing Executive Order are heavily impacting the short-term-rental (STR) bookings. To help mitigate this impact on STRs staff extended the STR registration due date from March 31st, 2020 to May 31st, 2020. (ATC 1) The City Manager is asking Council to affirm these actions giving STRs additional time to register due to impacts of the COVID-19 virus.

On March 27, 2020, the Governor of the State of Florida issued Executive Order 20-87 (attached for your review), which suspended vacation rental operations for at least 14 days [or more if extended by subsequent executive order(s)]. At this time, vacation rentals are prohibited from making new reservations or accepting new guests for check-ins.

A. Link to Strategic Goals / Objectives:

B. Effect on Budget (EOB):

C. Level of Service (LOS):

III. CONCLUSION: Impacts from COVID-19 have negatively impacted the STRs within Destin.

IV. RECOMMENDED MOTION: I move to affirm extending the STR registration fee due date to May 31st, 2020 unless it is otherwise withdrawn, extended or modified in the future.

Attachments:

1. ATC 1. 03.26.20 Memo - Extension of STR Registration Fees
2. EO_20-87



**Office of the
City Manager**

Phone: 850-837-4242

MEMORANDUM

DATE: March 26, 2020

TO: Joey Forgione, Code Compliance Manager

FROM: Lance A. Johnson, City Manager *L.A.*

SUBJECT: Extension of Short-Term Rental registration fee due date

Due to the emergency measures implemented with the passing of Resolution No. 20-04, to address the on-going COVID-19 virus situation, I am, under my administrative authority, extending the Short-Term Rental registration fee due date until May 31, 2020. This extension will be presented to Council for their formal consideration ex post facto at the next appropriate City Council meeting.

L.A. Johnson

Lance A. Johnson

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 20-87

(Emergency Management - COVID-19 – Vacation Rental Closures)

WHEREAS, on March 1, 2020, I issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures; and

WHEREAS, the CDC has cautioned against non-essential travel within the United States; and

WHEREAS, Florida is experiencing an increase in individuals fleeing to Florida from out-of-state locations where “shelter-in-place” orders are being implemented and/or community spread exists; and

WHEREAS, many cases of COVID-19 in Florida have resulted from individuals coming into the State of Florida from international travel and other states, posing great risk to Florida residents; and

WHEREAS, vacation rentals and third-party platforms advertising vacation rentals in Florida present attractive lodging destinations for individuals coming into Florida; and

WHEREAS, as Governor, I am responsible for meeting the dangers presented to this state and its people by this emergency.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Vacation Rentals

I hereby order all parties engaged in rental of vacation rental properties, as defined in section 509.242(1)(c), Florida Statutes, to suspend vacation rental operations. Vacation rentals are prohibited from making new reservations or bookings and shall not accept new guests for check-in for the duration of this order. This directive shall include the:

A. Rental of any house, condominium, cooperative, or dwelling unit that is also a transient public lodging establishment, as defined under Section 509.013(4)(a), Florida Statutes; and

- i. Which is rented for periods of less than 30 days or 1 calendar month, whichever is less; or
- ii. Which is advertised or held out to the public as a place regularly rented to guests; or
- iii. Which is otherwise regulated by the Department of Business and Professional Regulation (“DBPR”) as a vacation rental pursuant to section 509.241, Florida Statutes.

B. This directive shall not include the following:

- i. Hotels, motels, inns, resorts, non-transient public lodging establishments,

- or time share projects; or
- ii. Long-term rentals; or
- iii. Rental stays where guests are currently staying in a vacation rental or have previously booked a stay and are schedule to check-in no later than March 28, 2020; or
- iv. Rentals to persons performing military, emergency, governmental, health or infrastructure response, or travelers engaged in non-vacation commercial activities.

Section 2. Violations of the Order

A. DBPR shall supplement this directive with guidance or directives as necessary to implement the order and shall take steps necessary to inspect licensed properties or third-party platforms whereby Florida vacation rentals may be advertised.

B. DBPR shall revoke the vacation rental license of any party that violates this order or otherwise advertises vacation rental opportunities during the duration of this order; and

C. DBPR shall alert the state authorities to evidence of violations or attempts to violate this order; and

D. Parties that violate this order or attempt to violate the order through advertising or other means of solicitation may be charged with a second-degree misdemeanor, punishable as provided in Sections 775.082 or 775.083, Fla. Stat.

Section 3. This Executive Order shall expire in 14 days unless extended by subsequent order.

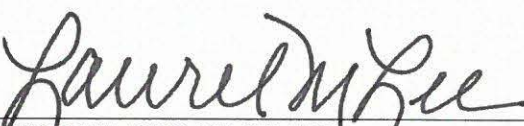


IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 27th day of March, 2020.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED

2020 MAR 27 PM 5:24

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020**TYPE OF AGENDA ITEM:** Consent Agenda

TO: City Council**THRU:** Kyle Bauman, City Attorney**FROM:** Lance Johnson, City Manager**DATE:** 3-12-2020**SUBJECT:** Government Services Group (GSG) Agreement

I. BACKGROUND: This item was originally scheduled for the canceled March 16th council meeting.

On March 10th the City entered into a short-term agreement (ATC 1) with Government Services Group, Inc. (GSG) of Tallahassee to provide critical operational assistance to the City. GSG has the professional staff and skill sets to help the City through the transitional period in our Finance Department. They are well versed in our municipal finance requirements, accounting software and how it should be setup to work with other programs such as E-Gov. They understand the systems and policies that need to be in place to run an efficient and effective operation and are making needed improvements to the existing systems and policies. GSG is also assisting in the search for a qualified Finance Director candidate. Staff is asking Council to approve the GSG Amendment (ATC 2) for services to assist the City during this transition.

II. DISCUSSION: GSG will provide the financial expertise required in the interim to meet all of the City's financial obligations, reporting and requirements. They will also assist the city in the recruitment of a permanent Finance Director.

The GSG Amendment (ATC 2) under consideration is based on a not-to-exceed (NTE) dollar amount of \$94,508 and contemplates their assistance through the end of June, 2020. The dollar amounts in the amendment are maximum projections, the City will only pay for actual services rendered. If the City hires a permanent replacement prior to the end of June then the City is under no obligation to continue receiving (and paying for) services from GSG.

Since the short term agreement has been in place, Government Services Group has provided many essential services such as

- 1.) Continuity of the City's financial operations
- 2.) Process and operational improvement in critical financial functions throughout the City.
- 3.) Working with IT, digitization of financial processes that will help the city operate remotely (if necessary)

A. **Link to Strategic Goals / Objectives:** Fiscal Responsibility

B. **Effect on Budget (EOB):** Funding, not to exceed \$94,508.25, to be taken from the fund balance and charged to account number 0151320-531000 (Finance-Professional Services.)

C. **Level of Service (LOS):**

III. CONCLUSION: Working with GSG, Inc. will provide the City with the means to maintain continuity of fiscal operations while making efficiency and effectiveness improvements to related processes, systems and procedures until such time that a permanent Finance Director can be hired. During this period, Mr. Julio Lacayo will serve in the capacity of the City's Interim Finance Director (ATC 4) with over site from GSG's Ms. Krystal Strickland (ATC 5).

IV. RECOMMENDED MOTION:

I move:

to approve the GSG, Inc. agreement amendment for professional services not to exceed payments of \$94,508.25, from the Fund Balance, effective from March 23, 2020 to June 30, 2020.

to exempt this agreement from regular procurement policies as allowed by the Purchasing Policy because the finance department requires oversight in the absence of an employed finance director in order to ensure the public's health, safety, and welfare, (pp.4 section IV.C.A.1&2)(ATC 3),

to authorize the Mayor to execute the agreement amendment on behalf of the City and

to authorize staff to make the necessary budget amendment.

Attachments:

1. ATC 1 - GSG Agreement 3.6.20
2. ATC 2 - GSG Amendment One 3.11.20
3. ATC 3 - ADM-30 Purchasing Manual See Page 4
4. ATC 4 - JLaayo_Resume
5. ATC 5 - Kstrickland_Resume

6. ATC 6 - Authority To Execute GSG

March 6, 2020

Lance Johnson, City Manager
City of Destin
4200 Indian Bayou Trail
Destin, FL 32541

RE: Government Accounting and Controllershship

Dear Mr. Johnson,

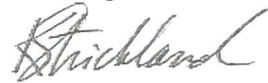
Thank you for reaching out to Government Services Group, Inc. (GSG). GSG understands the work to be performed and is pleased to submit our scope of work and fee proposal. Under our proposal, two qualified staff members will be assigned to support you to provide ongoing accounting and controllership for the areas of municipal financial reporting, accounting and record maintenance. This is an hourly contract. The initial scope is not-to-exceed of \$14,900 for services to be provided March 10 – 20, 2020. The City may extend the contract with an amendment at the standard hourly rates as show in the Compensation section of the Appendix A.

GSG prides itself on being able to provide quality professional services in both an efficient and cost-effective manner. GSG ensures that our clients are satisfied and that the services we deliver are on time and within prescribed budgets. We have the requisite knowledge and expertise to deliver the requested services successfully.

Please review the attached scope of services; and upon review and satisfactory determination, please sign where indicated on Appendix A to acknowledge acceptance of the scope of services and to serve as proper notice to proceed. Upon execution, please provide us with a signed copy for our files.

We look forward to working with the City of Destin. Should you have any questions or concerns, please do not hesitate to contact me at 407-362-8817 or via e-mail at kstrickland@govserv.com.

Sincerely,



Krystal Strickland, CPA, CGFO
Senior Project Manager

**Corporate
Headquarters**

1500 Mahan Drive, Suite 250
Tallahassee, Florida 32308
T 850-681-3717 | F 850-224-7206
Toll-Free 866-896-4747

**Longwood
Office**

280 Wekiva Springs Road
Protegrity Plaza, Suite 2070
Longwood, Florida 32779
T 407-629-6900 | F 407-629-6963

Appendix A

CITY OF DESTIN
GOVERNMENT ACCOUNTING AND CONTROLLERSHIP SERVICES
MARCH 2020

Scope of Work and Fee Proposal

Government Services Group, Inc. (GSG) is prepared to provide the City of Destin, Florida (City) with an Interim Finance Director and an intermediate government finance and accounting clerk.

The GSG Financial Services team will be responsible for providing intermediate professional level work involving a variety of accounting tasks, maintaining records and preparing complex financial reports, and performing related work as required. Work will be performed under the supervision of the City Manager.

Staff and Hours

- Finance Director on site up to eight days a month to oversee all financial operations, financial administration and fiscal oversight of the city, including budget, purchasing, investments, management and financial reporting, software and process integration, to attend City Council meetings, and to guide training of accounting staff, to assist with any other finance related administrative function deemed mutually agreeable by the parties, and to ensure a smooth transition to the incoming Finance Director.
- Intermediate Account on site up to four days a week to ensure critical processes are accomplished and to train the City's accounting staff.

Functions and Related Tasks

- Gain an understanding of current ordinance, policies, procedures, and processes and make recommendations to streamline, improve accuracy, timeliness and ensure internal controls to safeguard assets.
- Ensure the following areas continue to function timely and accurately: payroll processing, general ledger maintenance, A/P, A/R, and monthly trial balance reconciliations (including bank reconciliations).
- Review and process purchase orders and requisitions, and ensure bid selection committees follow and adhere to all procurement policies and requirements.
- Verify availability of funds in the budget.
- Verify account coding and proper classifications.
- Ensure external auditors receive data on a timely basis and coordinate preparation of the CAFR.
- If the engagement continues into the TRIM and budget adoption seasons, coordinate budget drafts, guide the City Council at budget workshop(s), and ensure budgets are maintained, TRIM requirements are met, and ensure all other critical deadlines relating to these processes are met.
- Ensure MUNIS modules are maintained for the closing fiscal year and for the current fiscal year (Operating and Capital Budgets, General Ledger, A/P, A/R).
- Ensure expense reports and purchasing-cards are properly reviewed, coded, and entered.
- Conduct analysis as requested by the City Manager's office.
- Should the engagement continue through June, GSG staff will assist with the budget workshops and form submittals to maintain TRIM compliance.

PERIOD OF PERFORMANCE

Initial Scope of Services: March 10 – March 20, 2020 Finance and Accounting Consulting Services.

COMPENSATION

For the initial scope of this contract, GSG estimate's 56 hours of a Finance Director and 64 hours of an Intermediate Government Accountant shall be provided between March 10 – March 20, 2020 at a discounted not-to-exceed amount of \$14,900. Actual hours worked shall be billable to the ¼ hour and invoices shall be submitted to the City and payable upon the City Manager or his designee's approval.

March 10, 2020 - March 20, 2020

	Qty (Max)		Rate	Total
Finance Director (up to 7 days)	56	hours	\$ 185.00	\$ 10,360.00
Intermediate Accountant (up to 8 days)	64	hours	\$ 110.00	\$ 7,040.00
	Weekly Invoice Estimate:			\$ 17,400.00
	Startup discount:			\$ 2,500.00
	Not-to-Exceed:			<u>\$ 14,900.00</u>

Additional Services

For additional time required beyond the Initial Scope of Services from March 10 - March 20, 2020, the GSG Standard Hourly Rates will apply. In addition, travel hours will be billed at half the regular hourly rate. Travel expenses shall be reimbursed based upon actuals in accordance with Florida Statute. The Florida 2020 mileage reimbursement rate is \$0.575/mile.

Additional Services GSG 2020 Standard Hourly Rates:

Managing Director	\$285
Finance Director	\$185
Intermediate Accounting Staff	\$110
Accounting Clerk (at GSG Office)	\$75

Termination

Either party may terminate this contract at any time for any reason and at no penalty. Upon termination, GSG shall be paid an amount equal to the time actually incurred by GSG at the hourly rates specified in this contract up to the time of termination and no later unless mutually agreed to by the parties.

No Employee Relationship

The parties specifically recognize and agree that GSG and any employee or agent of GSG is not an employee of the City and that the services GSG provides to the City are strictly on a contract basis.

PUBLIC RECORDS

IF GSG HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GSG'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, GSG MUST CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 837-4242, CITY OF DESTIN, CITY CLERK'S OFFICE, 4200 INDIAN BAYOU TRAIL, DESTIN, FL 32541.

GSG must comply with the public records laws, Chapter 119, Florida Statutes. Specifically, GSG must:

- a. Keep and maintain public records required by the City to perform the service.
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if GSG does not transfer the records to the City.
- d. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of GSG or keep and maintain public records required by the City to perform the service. If GSG transfers all public records to the City upon completion of the contract, GSG shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If GSG keeps and maintains public records upon completion of the contract, GSG shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the City, upon the request from the City's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

JURY TRIAL WAIVER

THE PARTIES AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD INVOLVE COMPLICATED AND DIFFICULT FACTUAL AND LEGAL ISSUES. THEREFORE, ANY ACTION BROUGHT BY ONE PARTY, ALONE OR IN COMBINATION WITH OTHERS AGAINST THE OTHER PARTY, WHETHER ARISING OUT OF THIS AGREEMENT OR OTHERWISE, SHALL BE DETERMINED BY A JUDGE SITTING WITHOUT A JURY AND THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY THAT THEY MAY HAVE IN REGARD TO THIS AGREEMENT AND ANY COURSE OF DEALING BETWEEN THEM.

MISCELLANEOUS

- a. If any provision, or any portion thereof, contained in this contract is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of the contract, or portion thereof, shall not be affected and shall remain in full force and effect.
- b. The waiver by either party of a breach of any provision of this contract by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- c. This contract contains the entire agreement between the parties. It shall not be changed verbally, but only by agreement in writing signed by the parties, and shall not be changed or amended verbally by the parties course of conduct.
- d. Florida law shall govern this contract and any litigation which may arise from this contract.

- e. The exclusive jurisdiction and venue for any litigation or arbitration or any and all claims, controversies, or disputes arising out of or relating to any party of this contract, or any breach hereof, shall be exclusively in Okaloosa County, Florida, and nowhere else.
- f. Nothing in this contract is intended to nor shall be construed to waive the City's rights and immunities under the Florida Constitution, common law, or Florida Statutes § 768.28, as amended from time to time.
- g. Both parties shared equally in the drafting and preparation of this contract and, accordingly, no Court or Arbitrator construing this contract shall construe it more strictly against one party than the other and every covenant, term, and provision of this contract shall be construed simply according to its fair meaning.
- h. This contract may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition, or covenant of this contract shall be binding on either party until both parties have signed it.

GOVERNMENT FINANCE ACCOUNTING AND CONTROLLERSHIP

CITY OF DESTIN

BY:


Lance Johnson, ICMA-CM

03/09/2020
DATE

Its: City Manager

GOVERNMENT SERVICES GROUP

BY:



March 6, 2020

DATE

Its: Managing Director

March 11, 2020

Lance Johnson, City Manager
City of Destin
4200 Indian Bayou Trail
Destin, FL 32541

RE: Finance and Accounting Consulting Services – AMENDMENT #1

Dear Mr. Johnson,

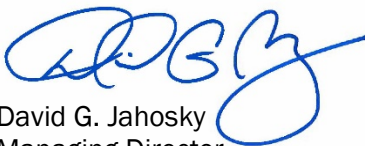
Thank you for reaching out to Government Services Group, Inc. (GSG). GSG understands the work to be performed and is pleased to submit an amendment to extend finance and accounting consulting services to the end of June 2020.

GSG prides itself on being able to provide quality professional services in both an efficient and cost-effective manner. GSG ensures that our clients are satisfied and that the services we deliver are on time and within prescribed budgets. We have the requisite knowledge and expertise to deliver the requested services successfully.

Please review the attached Amendment #1 to the scope of services; and upon review and satisfactory determination, please sign where indicated on Appendix A to acknowledge acceptance of the scope of services and to serve as proper notice to proceed. Upon execution, please provide us with a signed copy for our files.

We look forward to continuing to work with the City of Destin. Should you have any questions or concerns, please do not hesitate to contact me at 407-383-9642 or via e-mail at djahosky@govserv.com.

Sincerely,



David G. Jahosky
Managing Director

Appendix A

CITY OF DESTIN
AMENDMENT #1
FINANCE AND ACCOUNTING CONSULTING SERVICES
MARCH - JUNE 2020

Scope of Work and Fee Proposal

The terms and conditions from the Scope of Work and Fee Proposal outlined in the March 6, 2020 agreement remains the same for this Addendum. The onsite protocol is amended as follows:

For March 23 – June 30, 2020

- Finance Director on site two days a week to oversee all financial operations, financial administration and fiscal oversight of the city, including budget, purchasing, investments, management and financial reporting, software and process integration, to attend City Council meetings, and to guide training of accounting staff and to ensure a smooth transition to the incoming Finance Director
- Intermediate Account on site five days a week to ensure critical processes are accomplished and to train accountant

PERIOD OF PERFORMANCE

Original: March 10 – March 20, 2020

Amendment #1: March 23 – June 30, 2020

COMPENSATION

Actual hours worked shall be billable to the ¼ hour. Travel hours shall be billed at half the regular hourly rate. Travel expenses shall be reimbursed based upon actuals in accordance with Florida Statute. The Florida 2020 mileage reimbursement rate is \$0.575/mile.

March 23, 2020 – June 5, 2020	Qty (Max)		Rate	Total
Finance Director (2 days/week onsite, 5% discount) ¹	16	hours	\$175.00	\$2,800.00
Intermediate Accountant (5 days/week; 10% discount)	40	hours	\$99.00	\$3,960.00
Travel hours	14.5	hours	\$49.50	\$717.75
Lodging **	7	nights	\$-	\$-
Mileage***	928	miles	\$0.575	\$533.60
Weekly Invoice Estimate:				\$8,011.35
10-Week Total				\$80,113.50
June 8, 2020 - June 30, 2020				
Intermediate Accountant (5 days/week; 10% discount)	40	hours	\$99.00	\$3,960.00
Travel hours	9.5	hours	\$49.50	\$470.25
Lodging ²	5	nights	\$-	\$-
Mileage ³	640	miles	\$0.575	\$368.00
Weekly Invoice Estimate:				\$4,798.25
3-Week Total				\$14,394.75
Grand Total Amendment #1				\$94,508.25

Notes:

1. Finance Director not available after June 5th.
2. Lodging will be paid directly by the City. (5 nights per week x 1 person + 2 nights per week for 1 person)
3. RT from GSG Jacksonville office to Destin and GSG Tallahassee office to Destin at Florida 2020 mileage rate of \$0.575/mile

Additional Service: Hourly Rates	Standard	Discounted
Managing Director	\$285	\$250
Finance Director	\$185	\$175
Intermediate Accounting Staff	\$210	\$99
Accounting Clerk (at GSG Office)	\$75	\$70

GOVERNMENT FINANCE AND ACCOUNTING ASSISTANCE

BY: _____
CITY OF DESTIN

DATE

P U R C H A S I N G M A N U A L

This Operating Instruction (OI) establishes and defines the purchasing manual for the City of Destin, Florida.

I. REFERENCES: The governing references for this OI are City Resolution #18-30 and General Accepted Accounting Procedures as adopted by the National Accounting Standards Board and the Governmental Accounting Board and other Federal, State and local laws, statutes, ordinances, directives and policies as they apply to local government purchasing and/or the City of Destin.

II. GENERAL: This OI's purpose is to establish the administrative procedures by which the City of Destin will purchase materials, supplies, equipment, and secure various contractual services and, provide greater cost effectiveness and public accountability in the procurement process.

This OI is not intended to address every issue, exception, or contingency that may arise in the course of purchasing activities. The basic standard that should always prevail is to exercise good judgment in the use and stewardship of City resources.

III. DEFINITIONS:

- A. City Manager: is the City Manager of the City of Destin, Florida, and shall, where appropriate, include his/her duly authorized designee.
- B. Continuing Services Contract: A contract for services or material entered into in accordance with the City's bid procedures whereby the contractor, firm or individual provides goods or services for work of a specified nature as outlined in the bid and contract.
- C. Continuing Service Contract Renewal: Contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.
- D. Consultant: Is one who provides professional advice or services, which include, but are not limited to attorneys, architects, engineers, surveyors and accountants.
- E. Cooperative purchases: are the advance combining of two or more political entities to obtain the advantages of volume purchases, improved specifications, reduced administrative costs, and increased intergovernmental cooperation.
- F. Emergency Purchase: A purchase made without following the normal purchasing procedures in order to obtain goods or services quickly to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk. Or, critical City operations will be severely affected in an adverse situation.
- G. Life Cycle Cost: A procurement technique that takes into account demonstrable and documented operating maintenance, the cost of property, other cost of ownership and usage and resale or residual value in addition to acquisition price in making an award on low total cost.

- H. Price Quotes: Competitive quotations are to be obtained as detailed in Section G. Competitive Threshold/Approvals and shall include a statement of price, terms of sale, and description of goods or services.
- I. Property: Fixtures and other tangible personal property of a non-consumable nature, with a value of one thousand dollars (\$1,000.00) or more and normal expected life of one (1) year or more. The City Manager shall identify other items as "property" at her/his discretion and require formal accounting records be maintained for such items.
- J. Proprietary: refers to goods and services owned by a private individual or corporation under a trademark or patent.
- K. Purchase Order: The City's official legal record of contract between the City and vendor, issued separately or in conjunction with other documents, which delineates the responsibilities of both parties in the provision of and payment for goods and services required by the City. The purchase order also is the mechanism by which budgetary and cash balances are encumbered in the City's accounting system.
- L. Purchase Requisition: The internal process required for the request to purchase materials and services that is not of an emergency nature and not covered under Petty Cash or P-Card procedures.
- M. Request for Bids: Written documents inviting potential vendors to submit sealed, written pricing for specific goods and/or services in conformance with specifications, terms, conditions and other requirements described in the formal bid documents.
- N. Request for Proposal: The solicitation document used for competitive proposals, the customary method used for the purchase of professional services, and other goods or services when there is an uncertainty of the exact product or service that is required. The Request for Proposal allows for negotiations after they have been opened to allow clarification and changes in the proposal in the best interest of the City.
- O. Sole Source (Non-Competitive) Purchase: An award for goods or services to the only known capable supplier, such as unique, patented, proprietary, or franchised supplies, or by the unique nature of the requirement, the vendor, the impracticality of obtaining competition or market conditions.
- P. Supplies: Includes all supplies and equipment other than tangible property. Tangible property is property capable of being appraised at an actual or approximate value.
- Q. Using Agency: Any department, agency or other unit of the City using supplies, property or contractual services.

IV. POLICY AND PROCEDURES:

These policies are hereby established for purchasing supplies, material and any other matter or commodity necessary for the operation of the affairs of the City and are consistent with the requirements of City Resolution #13-10.

A. GOALS AND OBJECTIVES

The goal of the purchasing activity is to obtain needed goods and services at the lowest ultimate cost consistent with prevailing economic conditions, appropriate standards of quality and continuity of service while establishing and maintaining a competitive procurement system of openness, fairness and integrity.

1. There are three (3) major objectives of the public purchasing process:
 - a. Effectiveness: The quality of the goods and/or services procured, the units and quantities procured, and the method of procurement are appropriate to the needs of the city.
 - b. Efficiency: The time and effort expended, from definition of need through final delivery, and the cost associated with acquiring the needed goods and/or services are reasonable in order to achieve value.
 - c. Economy: The prices paid for goods and/or services shall reflect responsible use of taxpayer dollars and be in the best interest of the City, consistent with the requirements of the procurement.
2. All employees involved in the procurement process shall subscribe to and be guided by the following principles:
 - a. Consider the best interests of the City in all transactions and to carry out the City's policies and procedures.
 - b. Purchase without prejudice, seeking to obtain the maximum value for each dollar expended in accordance with established quality standards.
 - c. Foster honesty and truth in buying and to avoid conflicts of interest, unethical practices and the appearance of same.

B. SCOPE OF POLICY

This policy shall apply uniformly to all employees and departments for the expenditure of any and all funds provided or authorized through or by the City Council, City Manager or the City's Annual Budget.

This policy shall apply to the purchase of goods and/or services, unless the Purchasing Procedures, the City Council, or any applicable Federal, State or local law specifically makes that purchase exempt.

C. RESPONSIBILITIES:

A. Authority

1. The City Charter does not designate sole procurement authority in any specific official positions or offices. Per Section 4.01 of the City Charter, the City

Manager serves at the pleasure of the City Council. Recognizing this authority. The City Council reserves the right, upon majority vote of the City Council, to exempt specific procurements (RFPs, RFQs, ITBs, or other bidding mechanisms), or specific contracts from either (1) some or all of the provisions of this Resolution, or (2) any other procurement policies or manuals governing procurements by the City of Destin.

2. Procurements and contracts are, by default, subject to this Resolution, unless specifically exempted by a vote of the City Council. However, if the City Council identifies an item it wishes to exempt from the Resolution, then any motion shall identify that the procurement shall be exempted because it is necessary to protect the health, safety, and welfare of the Citizens of Destin. Additionally, if a bidding document is required for the procurement, such as an RFP or ITB, then the document shall contain detailed instructions of how it will be administered. If the bidding document lacks directions as to any parts of its administration, then the applicable portions of this document shall act as default rules and procedures.

3. Any bid challenges to an exempted procurement shall follow the City's default challenge procedures.

4. Any procurements that are issued as part of any state or local grant programs, will require furnishing of the City's procurements policies as part of the application process or qualification process, shall not be eligible to be exempted from the standard procedures set forth below.

5. If the City Council exempts a procurement from this Resolution, then pursuant to Sections 4.01 and 4.05(d) of the City Charter, the City Council expects the full cooperation of the City Manager to ensure sufficient City staff members, and City resources are dedicated to administering all aspects of the exempted procurement.

6. Additionally, since the City Manager will not be directing the issuance of bidding documents for any said procurement, then any bidding documents requiring a signature of a Destin official, shall be signed by the Mayor, or Mayor Pro Tem if the Mayor is unavailable.

7. The City Manager or City Manager's designee shall be the purchasing agent for the City. All procurements made under this Resolution must only adhere to binding Florida Law, City Law, or Federal Law, and are not to be limited by any rules of any voluntary trade associations or voluntary professional associations (if a certain profession legally mandates membership in a trade or professional association, then the trade or professional association is not voluntary).

8. The City Manager shall be responsible for:

A. The purchase of supplies, materials and equipment, and contractual services required by any office, department or agency of the City.

B. The storage and distribution of all supplies, materials and equipment required by any office, department or agency of the City.

C. Establishing written specifications, whenever practicable, for supplies, materials and equipment and contractual services required by any office, department or agency of the City. Such specifications to the extent practicable should be definite and certain. Such specifications should be designed to permit full and open competition.

D. Maintaining, whenever practicable, a perpetual inventory record of all materials, supplies or equipment stored in storerooms or warehouses of the City.

E. Soliciting and maintaining an up-to-date list of qualified vendors who have requested their names to be added to the bidder's invitation list. The purchasing agent shall have authority to remove temporarily the names of vendors who have defaulted on their quotations, attempted to defraud the City or who have failed to meet established specifications or delivery dates.

F. Obtaining purchases and contractual services in an environment of full and open competition as is practicable.

- a. The City Manager is responsible for ensuring that the purchasing policy is applied uniformly and consistently in all City offices and departments. The City Manager is responsible for establishing administrative guidelines for the purchase of all commodities, materials, equipment and services for City agencies, departments and offices.
- b. Department Directors are responsible for ensuring that employees in their department or office are fully familiar with federal, state, and local laws, including City policies, regulations and procedures regarding the purchase of commodities, materials, equipment and services. All employees comply fully with the provisions of said laws, policies, regulations and procedures.
- c. The Finance Director shall provide assistance and advice, as necessary, in the administration of, and compliance with, the purchasing policies and procedures. The Finance Director, designated by the City Manager, is responsible for the direction and management of the City's procurement processes and operations.
- d. The Finance Department is also responsible for providing training to familiarize City employees with purchasing law, concepts, City policies and procedures.

D. UNAUTHORIZED PURCHASES

Except for emergencies or other authorized exemptions stated in these guidelines, no purchase

of supplies, services, or equipment shall be made without authorization as described within this OI or Resolution #13-10.

E. Subdividing Procurements

Purchases, orders, or contracts that are subdivided to circumvent the requirements of this Manual or threshold authority as set forth in this Policy shall be considered unauthorized purchases and are prohibited.

F. PURCHASE REQUISITIONS

All requisitions shall give a clear item description, quantity, unit of measure, and estimated cost. Requisitions shall only be submitted when there are sufficient funds to cover the cost.

1. **ITEM DESCRIPTIONS**

Item purchase descriptions set forth the essential physical and functional characteristics of the supplies or services required. The minimum requirements of the City should be expressed in the description. However, do not confuse minimum requirements with minimum descriptive data. Include as much information as possible to describe exactly what you need.

2. **BRAND NAME**

Descriptions or specifications should be written to preclude limiting purchases to a specific brand name which can restrict competition and often results in higher prices. If a specific brand name and/or model are being recommended, the department head must attach a written memo justifying why 'an equal' is not acceptable.

In certain circumstances, the City Council may determine that it is in the best interest of the City to standardize the brand of certain equipment purchased, even though the bid submitted for the equipment is not the lowest. Standardizing can be advantageous to the City in that parts may be interchangeable with other units, the cost of training for the operation, repair and maintenance of the equipment can be reduced, and savings on the inventory of parts for the equipment can be achieved.

G. COMPETITIVE PROCUREMENTS

1. Invitations to Bid require public notice (legal publication), public bid opening at a time and place designated in the bid document, and a minimum of ten (10) working days between publication of the bid invitation and bid opening.
2. Invitation to bid shall be required for procurements of goods and contractual services with an estimated aggregate or project cost of more than \$15,000.00.
3. Request for Proposal (RFP) may be used for competitive purchases, the purchase of professional services and other goods or services when there is an uncertainty

about the exact product(s) or service(s) required with an estimated aggregate cost of more than \$15,000.00.

4. RFPs require public notice (legal publication), public proposal opening at a time and place designated in the proposal document, and a minimum of ten (10) working days between publication and proposal opening. Exceptions may be made in cases of emergency.
5. Registration or certification under Florida Statute Chapter 489 is required before any contract is awarded for construction work on buildings or other improvements to real property, except for roads or utilities as specified in Florida Statutes section 489.113, or otherwise exempt under Florida Statutes section 489.103.
6. The City Council may waive the competitive procurement requirements when deemed to be in the best interest of the City.

H. COMPETITIVE THRESHOLD/APPROVALS

1. Competitive requirements for commodities, services, construction and equipment:
 - a. Purchase of supplies, materials and equipment not exceeding \$1,000.00 may be made by any authorized employee and shall be evidenced by a receipt and approval by the Department Head or his/her designee and delivered to the Finance Department.
 - b. Purchase of supplies, materials and equipment between \$1,001 and \$5,000 shall be approved by the Department Head, Finance Director and City Manager. The Department shall solicit a minimum of three (3) electronic or written quotes. If only one price quote is received, the price may be deemed fair and reasonable. Quotes must be memorialized in a memo attached to the invoice.
 - c. Purchase of supplies, materials, equipment or services between \$5,001 and \$15,000 must be requested by requisition and shall be approved by the Department Head, Finance Director and City Manager. The Department shall solicit a minimum of three (3) written quotes. If only one price quote is received, the price may be deemed fair and reasonable. Final approval shall be made by the City Manager. Written quotes are required on vendor stationery and attached to the requisition.
 - d. Request for purchases in amounts greater than \$15,000.00, require public advertisement and/or sealed procedures in accordance with City resolution. Award/Rejection of bid or proposal shall be made by the City Council. The Agenda, Action Agenda, Contract and scope of work shall be attached to the requisition.
 - e. No contract or purchase shall be subdivided to avoid the purchasing requirements as stated here in.
2. The following shall be used to determine a fair and reasonable price:

- a. Previous Purchase
 - b. Purchase of similar or like item
 - c. Established price list
 - d. Catalogs
 - e. Similar items purchased by other public entity
3. All purchasing of IT hardware and software must be approved by the IT director prior to purchasing to ensure uniformity throughout the City.
4. The purchase of services for temporary employees shall have the approval of the Human Resources Manager, Finance Director and City Manager before a purchase order/contract is issued.
5. Personnel authorized to purchase commodities/services shall document procurement transactions to provide a basis for audit and compliance reviews and to establish a written record of the purchasing discussions to ensure continuity of the purchasing activity.
6. Required documentation includes the approved requisition, request for quotations, quotations, analysis of the quotations, memos on negotiations, amendments to purchase orders, revisions in specifications, quantities, or delivery and all other pertinent correspondence.

I. WOMEN, MINORITY AND SMALL BUSINESS REQUIREMENTS (W/MBE)

1. The purpose of the minority, women, and small business enterprise program and Disadvantaged Business Enterprise is to provide guidance in the outreach of W/MBEs to ensure awareness and opportunities of doing business with the City of Destin. The minority, women, and small business enterprise program shall only apply to those projects, services, or commodities funded by a federal or state grant/contract/agreement having W/MBE requirements and, not otherwise covered by a W/MBE or disadvantaged business enterprise program.
2. The Finance Department will ensure compliance with this purpose by ensuring its requirements are included in competitive procurements as it applies to both primary and subcontractors.
3. The City will accept certification of W/MBE status from the City of Tallahassee, Leon County and State of Florida, Office of Supplier and Diversity as well as the Florida Department of Transportation (FDOT), DBE program in lieu of creating its own certification program. The City may also consider and accept certification from other State of Florida, county or city programs on a case by case basis.

26.02 - W/MBE Requirements

1. The City will utilize the State of Florida and/or when deemed appropriate FDOT directories to notify certified W/MBE firms of procurement opportunities in the

City of Destin. The efforts of such outreach shall be maintained in the original procurement solicitation file.

2. When deemed appropriate by the City, primary contractor that intends to use subcontractors shall also use the State of Florida, and/or when deemed appropriate FDOT directories of W/MBE to solicit W/MBEs for subcontracting opportunities under a primary contract.
3. When deemed appropriate by the City, primary contractor that intends to use subcontractors shall be responsible for documenting outreach activities in accordance with the competitive procurement document.

J. BIDDING PROCEDURES

Competitive bids are required for all purchases, supplies and services, when the estimated cost thereof shall exceed \$15,000, except as specifically exempted in this policy.

1. Invitation for Bid/Proposal Procedure: All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$15,000, shall be purchased by invitation for bid/proposal from the lowest responsive, responsible bidder unless otherwise stated in this policy, after due public notice inviting bid/proposals.
2. Nature, Type and Frequency of Advertisements: Notice shall be advertised for two consecutive weeks at least 10 days prior to the opening in a newspaper of general circulation in the City or any other newspaper that the bidding department determines will bring the most bid activity to the City. The advertisement will call for sealed bids or proposals for goods, supplies and services, when the estimated proposed cost is expected to be more than \$15,000. The City will also place a notice of such bid on its web page for Internet access.
3. If state or federal law or a state or federal agency provides other required methods of newspaper notice which differentiate from the City's requirements, in those circumstances, the requirements of state or federal law or state or federal agency shall be followed when advertising in a newspaper.
4. Florida Statutes section 255.0525, states that any construction project that is projected to cost more than \$200,000.00 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 21 calendar days prior to the bid received date and at least five calendar days prior to any scheduled pre-bid conference. If the construction project is expected to cost more than \$500,000.00, it must be advertised at least 30 calendar days prior to the bid received date and at least five calendar days prior to any pre-bid conference.
4. Bidders List: Bids shall be solicited from all responsible prospective suppliers who are on the City's Bid List, which the City Clerk's Office shall maintain. Departments may utilize Internet email for notifying vendors when such vendors

have provided the Department with an email address. Invitations will be sent to those vendors on the bidder's list who supply commodities that are similar in character to the item(s) being purchased.

5. Bid Opening Procedure: Bids shall be submitted in sealed envelopes to the City Clerk and shall be identified as bids on the envelope. Unsealed bids will not be opened or accepted.
 - a. Opening: Sealed Bids shall be opened in public at the time and place stated in the public notice. The City Clerk, or any person designated by the City Clerk or the City Manager, shall witness openings.
 - b. Purpose: The purpose of the opening is to record the responses received and to ensure that the responses are in compliance with the basic requirements of the competitive procurement. Responses are not analyzed for quality or substance at the opening.
 - c. Late Receipt: Bids shall not be accepted or opened if received after the date and time called for in the bid notice.
 - d. Signature: Failure to properly sign the bid shall invalidate the bid and the bid will not be considered.
6. Rejection of Bids: The City Manager shall have the authority to recommend to the City Council the rejection of all bids, parts of all bids, or all bids for one or more supplies or contractual services included on the proposed bid when the public interest will be served thereby. The City Manager shall not recommend acceptance of a bid from a contractor who is known by him to be in default on the payment of taxes, licenses or other monies due the City.
7. Criteria for Determining Lowest, Best Responsive, and Responsible Bidder: Contracts shall generally be awarded to the lowest, best responsive, responsible bidder. In determining the 'lowest, most responsive, responsible bidder' in addition to price, the Bid Committee may consider:
 - a. The ability, capacity and skill of the bidder to perform the contract or provide the service required.
 - b. Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay.
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 - d. The quality and timeliness of the performance of previous contracts or services with the City and with other entities.
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.

- f. The sufficiency of the bidder's financial resources and ability of the bidder to perform the contract or provide the service.
 - g. The quality, availability and adaptability of the commodity or contractual service to the particular use required.
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract and the associated maintenance cost.
 - i. The number and scope of conditions or exceptions attached to the bid.
 - j. The best interest of the City in relation to standardizing the brand of certain equipment purchased, where standardizing can achieve certain operational efficiencies and cost savings.
 - k. Life cycle costs.
8. Bid Award: The City Manager shall recommend award of bids to the City Council when the amount exceeds \$15,000.00.
- a. Departments shall select vendors based on total cost, which considers delivery, freight costs, prices, quality, life cycle costs, warranty, services, terms and conditions, and shall recommend award to the vendors who best meet these requirements.
 - b. Award to other than apparent low bidder shall be documented to show the rationale for rejection (i.e.: does not meet specifications, delivery requirements and past performance problems).
 - c. Purchase orders shall not be issued when an account has insufficient funds to cover the cost unless approved by the Finance Director.
 - d. The City reserves the right to waive informalities in any bid; to make award(s) by individual item, group of items, all or none or a combination thereof; to reject any and all bids or waive any minor irregularity or technicality on bids received that in its judgment will be in the best interest of the City.
9. Award to Other Than Low Bidder: When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the using department and filed with the other documents relating to the transaction.

K. EXEMPTIONS TO BID REQUIREMENT

The following situations are exempted from formal competitive bid requirements:

- 1. Professional Services: Contracts for professional services involving particular skill, ability, experience or expertise, which are in their nature unique and not subject to competitive bidding, are exempt from the competitive bidding requirements; however, a

formal written contract, approved by the Council, shall be required for all such contracts in excess of \$15,000.00, and any applicable state law, such as the Consultant's Competitive Negotiation Act F.S. 287.055 or local resolutions, such as Resolution 01-13, shall be followed.

2. Sole Source (Non-Competitive) Supplies: Non-competitive (sole source) supplies, available from only one source, such as unique, patented, or franchised supplies, are exempt, provided however, that such purchases in excess of \$15,000.00 require a formal, written approval by the Council.
 - a. Department Directors may request a sole source purchase by forwarding a memo, with justification for sole source, to the Finance Department. Justification shall contain the following information as a minimum:
 1. How was a determination made that the goods/services being purchased are only available from one source?
 2. What contacts (if any) were made in an attempt to identify alternate sources?
 3. What is the rationale that the goods/services being purchased cannot be substituted with similar goods/services from other sources?
 - b. The Finance Department shall review the sole source request and recommend approval or denial to the City Manager. Recommendation for approval shall contain justification as to the validity of the sole source.
 - c. The City Manager is authorized to approve the request if the cost is less than or equal to \$15,000.00. City Council shall approve request for more than \$15,000.00, unless an emergency exists as defined in this policy.
3. Bids and contracts from other entities: The Council may find that it is in the best interest of the City to use formal written contracts or competitive bids of other governmental entities. If such purchases are in excess of \$15,000.00 the bid will require Council approval.
4. Cooperative Purchasing: The City Manager may procure, without following formal contract procedure, all supplies, materials and equipment that are cooperative purchases. The City Manager shall have the authority to join with other units of government in cooperative purchasing plans or to purchase pursuant to formal written contracts or competitive bids of other governmental units, when the best interests of the City would be served thereby. This is subject to the requirement that any purchase in excess of \$15,000 requires Council approval, unless the purchase has been approved in the annual budget and the items purchased have a unit price of \$15,000.00 or less. Any cooperative purchase from another government entities must be procured in compliance with 2 CFR 200.
5. State Contract: The City Manager may procure, without following formal contract procedure, all supplies, materials and equipment which are the subject of contracts

with the State of Florida, as set forth in Section 287 of the Florida Statutes, as amended from time to time, or with the United States Government, provided that any purchase in excess of \$15,000.00 shall require Council approval. Any state contract that the City is making a cooperative purchase must be procured in compliance with 2 CFR 200.

6. Computer Equipment and Peripherals: Bidding is not required for personal computers, printers, associated parts, and software and communications services, (i.e. telephone and wireless services, which services are not considered a sole source supplier) when the collective value of multiple items is greater than \$15,000.00, provided written quotes on vendor stationery are obtained from a minimum of three (3) vendors and requires Council approval.
7. Unique Circumstances: There can be unique circumstances that will not allow a department to follow the competitive bidding process. If this situation occurs and it is determined by the City Manager to be in the best interest of the City, then the City Manager may negotiate and enter into a contract less than \$15,000. If the contract is greater than \$15,000 and the City Manager concurs with awarding the contract, it will be submitted to the City Council for their approval at the next available Council meeting.

L. EXEMPTIONS TO PURCHASING RESOLUTION

1. Emergency Purchases: As defined in Section K, Emergency Purchases
2. Seminar registrations and professional membership dues, fees, and publications.
3. Purchase of local utility service, excluding communications, (i.e. telephone and wireless services), which services are considered a sole source supplier.
4. Purchase of library books and circulated material.
5. Postage expense, when billed by a vendor at the currently prevailing postage rates established by the U.S. Postal Service.
6. No Bid received: Where no bid has been received after publication of a bid/proposal, the City Manager is authorized to seek other alternatives for purchasing, such as cooperative purchasing agreements.

M. EMERGENCY PURCHASES

1. An emergency situation is defined as a circumstance in which one of the following conditions exists:
 - a. Critical City operations will be severely affected in an adverse situation.
 - b. An emergency creates a threat to public health, welfare or safety.
 - c. A delay in the procurement of goods/services is against the public interest.

2. Emergency purchases: In cases of an emergency which require the immediate purchase of supplies or contractual services, the City Manager or his/her designee is empowered to secure by open market procedures as herein set forth, at the lowest obtainable price, any supplies or services not exceeding fifteen thousand dollars (\$15,000.00). If costs exceed \$15,000.00 a full report of the circumstances of the emergency purchase shall be placed on the next regular Council agenda for approval.
3. Emergency purchases that are required after normal working hours.
4. The Department that makes an emergency purchase must provide Finance with a memo outline the situation and the reason for the emergency purchase. A copy of this memo must be attached to the check request or invoice or purchase requisition.
The Department may secure the goods or services needed, after satisfying the conditions in Section K. The paperwork shall be processed the next business day. It is the Department Director's responsibility to justify any emergency purchases.

NOTE: EMERGENCY PURCHASES COSTING OVER \$15,000 REQUIRE APPROVAL BY THE CITY COUNCIL, PRIOR TO PAYMENT.

N. CONSOLIDATION OF REQUIREMENTS

1. Annual contracts are predominately secured through the competitive sealed bidding process and are for the provisions of goods and services commonly required by one or more City departments. These contracts, featuring pre-determined vendors, terms and conditions, and favorable, consolidated pricing, allow departments to utilize their personnel to accomplish other departmental duties by reducing the necessity for those personnel to perform separate, redundant and conflicting procurement activities. Annual contracts will be utilized whenever the contract goods and services are appropriate to the needs of the user departments.
2. Blanket purchase orders may be established for departments to facilitate order placement and reduce the administrative overhead inherent in repetitive price comparison and order placement. Blanket purchase orders (BPO's) should be used when departments purchase repetitive specified goods or services from the same vendor that requires numerous orders/shipments over specified periods of time.

O. BLANKET PURCHASE ORDERS

Blanket purchase orders (BPO's) shall be established for departments to facilitate order consolidation and reduce the administrative overhead inherent in repetitive price comparison and other placement.

1. Blanket Purchase Order is used:
 - a. For repetitive purchases (such as copier paper)
 - b. To consolidate similar orders by various departments (such as office supplies).
 - c. To allow periodic payments for an on-going service (such as

- extermination services or maintenance contracts).
- d. To allow for various small equipment repairs (such as typewriters, lawn mowers, etc.).
- 2. A request for departmental Purchase Orders will be prepared by applicable departments at the beginning of each fiscal year, requesting the amount and account for encumbering funds on the Blanket Purchase Order.
- 3. Ordering against Blanket Purchase Orders:
 - a. When a department wants to order against a Blanket Purchase Order, the designated employee will contact the vendor by telephone and place the order.
 - b. When the material or service is received, the department signs the packing slip and attaches it to the invoice, referencing the Blanket Purchase Order number and forwards it to Finance.

P. VENDOR RELATIONSHIPS

- A. It is essential to develop and maintain goodwill between the City and its suppliers. The reputation of the City can be enhanced and promoted by:
 - 1. Affording all salespersons, a full, fair, prompt and courteous hearing.
 - 2. Keeping competition open and fair.
 - 3. Keeping specifications fair, accurate and clear.
 - 4. Maintaining consistent buying policies and principles.
 - 5. Observing strict truthfulness in all transactions and correspondence.
 - 6. Keeping free from any obligation to any vendor.
- B. The City shall not purchase any goods or services from any Council Member or City employee, or any business in which a City employee or Council Member has or may have a financial or beneficial interest except during an emergency situation as defined in Section K, Emergency Purchases.

Q. CONTRACTS

- 1. A copy of all signed contracts or continuing service contracts that has a financial implication on the City must be attached to the purchase requisition, along with a copy of the Action Agenda, Agenda Item, Scope of work and any other related documentation.

R. CHANGE ORDER

- 1. Change order means a modification to an executed contract, due to unanticipated conditions or developments relating to that contract. A Change Order may not substantially alter the character of the work contracted for and may not vary so substantially from the original specifications as to constitute a new undertaking. Such changes must be reasonably and conscientiously viewed as being in fulfillment of the original scope of the contract. Further, such changes when viewed against the background of the work described in the contract and the

language used in the specifications, must clearly be directed either to the achievement of a more satisfactory result or the elimination of work not necessary to the satisfactory completion of the contract.

2. The City Manager is hereby authorized to approve and initiate work on the following types of change orders determined in her judgment to be in the public interest, as follows:
 - a. All change orders decreasing the cost of the contract to the City; providing, however such decrease does not materially alter the scope of the work defined by the Contract.
 - b. Change orders increasing the cost \$15,000.00 or less per occurrence, with an aggregate maximum of 10% of the total cost of the contract provided sufficient documentation is provided. The increase shall not materially alter the scope of work defined by the contract.
 - c. Time for Performance: All change orders decreasing or increasing the time for performance of the contract, providing, however, the change does not delay the overall time for completion by greater than 90 days, cumulative.
2. All other change orders, unless specifically authorized by the City Council, must be formally approved by the City Council before work may be authorized to begin, and no claim against the City for extra work in furtherance of such change order shall be allowed unless said prior approval has been obtained, notwithstanding any other position, contractual or otherwise.
4. Change orders shall not be artificially distributed or divided so as to bring the amount within the approval level of the City Manager and any such proposed change order shall include within it all logically connected work required to be done at the time of proposal.

S. SERVICES PERFORMED ON CITY PROPERTY

Vendors performing work on City Property are required to:

1. Be properly licensed under existing Federal, State and City laws.
2. Provide "Proof of Insurance" with the City named on the Insurance Certificate as additional insured.
3. Provide proof of Workmen's Compensation insurance. This includes insurance for any sub-contractor being utilized.
4. **Obtain all permits required**, for the nature of the work prior to the commencement of work. **(Fees may be waived if City funds are being used to procure the services.)**

T. RECEIVING

1. It is the responsibility of each user department to inspect all goods/services received to determine their conformance with the specifications set forth in the contract.

2. If goods/services are not acceptable, the user department shall contact the Finance Department that the goods or services are not acceptable, and the user department will then proceed to resolve the problem.

U. PROTEST BY VENDORS

1. Bidders or respondents who do not agree with the City's recommendation for award during the formal bidding process shall be afforded the opportunity to protest the recommendation by submitting written notice to the City Manager.
 - a. Such notice should be given within five (5) working days after notice of award or of the date the petitioner could reasonably be expected to have known of the City's recommendation.
 - b. Protest shall state the grounds for the protest and the action requested.
 - c. Bids or proposals not meeting the minimum published requirements (including sealed bids received within the specified time and specifications and/or scope of service) are not subject to protest.
2. The City Manager shall prepare and submit written determination either approving or disapproving the petition. The petitioner shall be furnished a copy of the written determination and recommendation.
3. The City Manager may employ any reasonable means to reach the decision on the petition.
4. Decisions of the City Manager may be appealed to City Council by submission to the City Clerk a written request for hearing within five (5) working days from the date of the City Manager's written decision. The written request shall state the grounds for the appeal and the action requested of the City Council.
5. A final decision under section R, by the City Council shall be conclusive and shall represent the position of the City.
6. In the event of a timely protest and/or appeal, the City shall not proceed further with the solicitation or with the award unless the City Manager justifies award in order to protect the public health, welfare or safety of the City.

V. BONDS

1. There are three (3) major types of bonds used by the City in the competitive procurement process. Those bonds, along with their utilization, are summarized below.
 - a. Bid Bonds are used when bid security is required to ensure that the firm or individual awarded a contract will subsequently enter into contract with the City.
 - b. Performance Bonds are used when a guarantee is required to ensure that a firm or individual that has entered into contract with the City will complete the project within the terms of the agreement.
 - c. Payment Bonds for Labor and Material are used to ensure the payment of all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in connection with, or in or about, the

construction, improvements or repairs.

2. Cashier's Checks, Certified Checks or other security deposits, (i.e. irrevocable letter of credit) may be considered as acceptable to the Finance Director and the City Manager.
3. Bid bonds, when required, are generally written in an amount equal to five (5%) percent of the total amount bid while performance and labor and material payment bonds are normally written in an amount equal to one hundred percent (100%) of the award amount.
4. Bond Requirements:
 - a. Performance and Payment Bonds are required for construction/services when estimated costs are \$25,000.00 or higher.
 - b. Bid, Performance and Payment Bonds are required for construction/services when estimated costs are \$100,000.00 or higher.
 - c. The City Manager or his or her designee shall make a determination of bond requirements, in writing, on all projects for construction/services when the estimated costs are less than \$25,000.00.

W. INSURANCE

1. Certificates of insurance shall be provided by the successful bidder to assure that the City's insurance program will not be called upon to respond to losses from, and that the contractor is financially capable of responding to, claims resulting from the contractor's operations, activities or services for the City. Further, the Contractor agrees to hold harmless and indemnify the City for any claims which may arise as a result of the Contractor's actions.
2. Construction and service contractors shall provide evidence of commercial general liability, property damage, worker's compensation and automobile liability coverage. Limits of coverage may vary based on the scope of work.
3. Professional services and environmental contractors should provide evidence of professional liability, commercial general liability, worker's compensation and automobile liability coverage.
4. The certificate of insurance shall be issued to:

City of Destin
c/o City Clerk's Office
4200 Indian Bayou Trail
Destin, FL 32541
5. The certificate shall evidence thirty (30) day cancellation clause and the inclusion of the City of Destin, Florida, as additional insured.
6. Depending on the services requested, additional, specialty coverages, specific limits of coverage may be required at the discretion of the City Manager. The amounts and types of insurance required will be detailed in the bidding document.

FEDERALLY FUNDED PROCUREMENTS

General, Federal Funding Procurements

A. Purchases utilizing Federal Transit Administration (FTA), Federal Emergency Management Agency (FEMA) or other Federal funds must conform to applicable Federal law, including: 2 CFR Part 1201 incorporating 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and comply with all requirements of FTA Circular C 4220.1F, as amended from time to time. Contracts utilizing Federal funds shall include all required Federal contract clauses (see Appendix 3, Exhibit L).

Solicitation Prohibitions.

Solicitation requirements may not contain features that unduly restrict competition including, but not limited to:

1. Imposing unreasonable business requirements/qualifications for bidders or offerors.
2. Imposing unnecessary experience requirements for bidders and offerors.
3. Using prequalification procedures (except in the case of qualifications-based procurement for Architect/Engineer services).
4. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if the award is not for the property or services specified for delivery under the retainer contract.
5. Excessive Bonding shall not be permitted. Bid bonds and payment performance bonds shall be required for construction projects in excess of the federal small purchase threshold only.
6. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
7. Specifying in-State or local geographical preferences or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325 (i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers.
8. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies including acceptance of submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

9. Taking any arbitrary action in the procurement process.

Pre-procurement

A. The Procurement Decision Matrix (Appendix 3, Exhibit A) shall be used to determine the most efficient and economical method of purchase.

B. An Independent Cost Estimate (Appendix 3, Exhibit B) is required prior to bidding for all purchases over the micro-purchase threshold and can be obtained by:

1. Design/engineering firm or in-house technical staff for construction work;
2. Published price lists or past pricing with inflation factors;
3. Independent third-party staff member not impacted by the final procurement.

C. Statement of Work Template (Appendix 3, Exhibit C) shall be completed for all piggyback purchases.

D. The Piggybacking Checklist (Appendix 3, Exhibit D) shall be completed for all piggyback purchases. Vendor shall be checked for Conflict of Interest to piggyback purchase.

E. A Sole Source Justification Form (Appendix 3, Exhibit E) and Cost Analysis (Appendix 3, Exhibit F) is required for all sole source purchases. Sole sourcing shall be allowed if:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity;
4. After solicitation of a number of sources, competition is determined inadequate.

F. A review of proposed procurements shall be conducted to avoid purchase of unnecessary or duplicative items and to ensure an economic purchase. This may include breaking out or combining purchases or using annual contracts and performing a lease versus buy analyses to ensure the most economical approach.

G. Qualification based procurements shall be acquired in accordance with The Brooks Act, 40 U.S.C. 11, et seq.

Procurement

A. The City shall ensure that adequate competition exists by confirming that two or more responsible bidders are willing and able to compete effectively for the business.

B. A Cost Analysis (Appendix 3, Exhibit F), Price Analysis (Appendix 3, Exhibit G) and/or Fair and Reasonable Price Determination (Appendix 3, Exhibit H) shall be completed prior to purchase as well as a Procurement Summary (Appendix 3, Exhibit I). The City shall rely on FAR Part 31, Contract Cost Principles and Procedures for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

C. Advertisement shall be once in a newspaper of general circulation in the County not later than the fourteenth day before the day set for receipt of bids.

Post-Bidding

A. Buy America pre and post-delivery audits are required for purchase of rolling stock greater than \$100,000.

B. A Responsibility Determination Form (Appendix 3, Exhibit J) and reference check form shall be completed prior to the recommendation for award in order to consider whether the bidder meets the standards of qualification. Factors to be considered shall include whether the bidder has the following:

1. The appropriate financial, material, equipment, facility, and personnel resources and expertise available or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. A satisfactory record of performance;
3. A satisfactory record of integrity;
4. Ability to get bonding and insurance;
5. The legal ability to contract with the City;
6. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to licenses, permits, or organization papers required.
7. Satisfactory status with the City and County.
8. No conflict of interest. An organizational conflict of interest exists, when any of the following occur:
 - i. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
 - ii. A contractor's objectivity in performing the contract work is or might be otherwise impaired; or
 - iii. The contractor has an unfair competitive advantage.

Contracts

1. Contract Administration. All contracts shall include provisions adequate to form a sound and complete agreement which shall comply with Federal laws and regulations and include all required Federal contract provisions to ensure compliance with those laws and regulations. The Contract Administration procedures in (Appendix 3, Exhibit P) shall be followed for all federally funded contracts.
2. The Procurement History File Checklist (Appendix 3, Exhibit N) shall be used to ensure proper contract administration including, but not limited to:

- a. The executed contract and notice of award;
- b. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- c. Contract-required insurance documentation;
- d. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
- e. Notice to proceed;
- f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- g. Modifications/changes to the contracts including the rationale for the change, change orders or amendments issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- i. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract closeout.

A. The Contract Clause Matrix (Appendix 3, Exhibit K) shall be used to determine Federally Required Contract Clauses (Appendix 3, Exhibit L) to be included with each contract.

B. Time and Materials contracts shall only be allowed, in the following instances:

1. After determination that no other contract type is suitable,
2. The contract specifies a ceiling price that the contractor may not exceed except at its own risk.

C. Davis-Bacon prevailing wage and hour restrictions shall apply to all construction contracts exceeding \$2,000.

D. Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be allowed.

E. A change order/amendment review checklist (Appendix 3, Exhibit M) shall be completed for all Contract Change Orders/Amendments. All out-of-scope Contract Change Orders/Amendments shall include the following:

1. An independent estimate and cost analysis prepared by the Architect/Engineer or Project Manager,
2. The contractor's proposal,
3. Meeting minutes discussing the change order and written evidence of negotiations,
4. Evidence of Board approval prior to initiation of work (if applicable),
5. Change order form signed by all parties.

Cardinal Changes (tag-ons) defined as a change which cannot be redressed within the contract (base and option) as it was not bargained for when originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition shall not be allowed.

F. Revenue Contracts. A revenue contract is a contract in which the County or sub-recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. The County or sub-recipient shall provide opportunities as follows:

1. Limited Contract. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
2. Open Contract. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

The requirements for competitive selection procedures apply to all business opportunities including all revenue generating contracts. The competitive process may consist of a formal bid or proposal process and the City shall document how competitive requirements were met.

G. Options. Contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its purposes. An option to unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Protest Procedures

A. The procedure outlined in Section 31 shall be followed. The granting agency (for example: the FTA) shall be notified in writing within seventy-two (72) hours or receipt of a protest in instances when all or part of the funding for the contract is by the granting agency. The granting agency shall be copied on all subsequent responses to the protest and appeals filed in accordance with this Section.

APPENDIX 3 – FEDERAL PROCUREMENT FORMS AND MATERIALS

ATTACHMENT 3, EXHIBIT A: Procurement Decision Matrix

ATTACHMENT 3, EXHIBIT B: Independent Cost Estimate

ATTACHMENT 3, EXHIBIT C: Statement of Work (SOW) Template

ATTACHMENT 3, EXHIBIT D: Piggybacking Checklist

ATTACHMENT 3, EXHIBIT E: Sole Source Justification Form

ATTACHMENT 3, EXHIBIT F: Cost Analysis Form

ATTACHMENT 3, EXHIBIT G: Price Analysis

ATTACHMENT 3, EXHIBIT H: Fair and Reasonable Price Determination

ATTACHMENT 3, EXHIBIT I: Procurement Summary

ATTACHMENT 3, EXHIBIT J: Responsibility Determination Form

ATTACHMENT 3, EXHIBIT K: Contract Clause Matrix

ATTACHMENT 3, EXHIBIT L: Federally Required Contract Clauses

ATTACHMENT 3, EXHIBIT M: Change Order Review Checklist

ATTACHMENT 3, EXHIBIT N: Procurement History File Checklist

ATTACHMENT 3, EXHIBIT O: Procurement File Checklist

ATTACHMENT 3, EXHIBIT P: Contract Administration

ATTACHMENT 3, EXHIBIT Q: 2 CFR §200.236 & 2 CFR Part 200 Appendix II

ATTACHMENT 3, EXHIBIT R: FEMA Checklist for Reviewing Procurements

EXHIBIT A: PROCUREMENT DECISION MATRIX

Micro-purchase

Amt. < \$10,000

Multiple Sources

Competitive Procurement

Amount > \$3,500

Not an Emergency

Sole Source

Approved by FTA

OEM, Custom Item **OR**

Only One Source **OR**

Lease vs Buy Analysis (attach if applicable)

--

Competition Inadequate after Solicitation **OR**

Emergency/Public Exigency

Small Purchase

Amount < \$150,000

Complete and Adequate Specification or Description

Two or more quotes available

Sealed Bid (IFBs)

Complete and Adequate Specification or Description

Two or more responsible bidders willing to compete

Selection can be made on the basis of price alone

Firm Fixed Price Contract

No discussion with bidders required after receipt of bids

Construction – design-bid-build (design-build shall not be permitted)

Type of Contract

Fixed price

Firm fixed unit prices

Cost plus fixed fee

Time and materials

Blanket purchase order

Indefinite Delivery Indefinite

Quantity (IDIQ)

Competitive Proposals (RFPs)

Complete Specifications Not Feasible

Bidder Input Needed

Two or more responsible bidders willing to compete

Discussion needed with bidders after proposals

Fixed price can be set after discussions

EXHIBIT B: INDEPENDENT COST ESTIMATE

Contract Type:

Date of Estimate:

Description of Goods / Service:

Method of Obtaining the Estimate:

I have obtained the following estimate from....

- ☐ Published Price List / Past pricing (date) _____
- ☐ Engineering or technical estimate
- ☐ Independent Third-Party estimate
- ☐ Other (specify) _____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be:

\$ _____. Details are shown below.

Cost of Standard Items

Product	Cost (\$/ea)	Cost (\$/ea)	Notes / Data Source
	Delivered	No Freight	

A

Cost of Services, Repairs, or Non-Standard Items

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

B

Signature of Preparer:

The preceding cost estimate was obtained or prepared by: _____

[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]

EXHIBIT C: STATEMENT OF WORK TEMPLATE

Statement of Work Title: [Type text]
1.0 Project Background
▪ Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought. ▪ Short statement of the problem to be resolved ▪ Expected project duration ▪ Transit Agency organizational units and/or key individuals involved in managing the project ▪ Alternative solutions or implementation strategies evaluated
a) Transit Agency requires these products and/or services due to: b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the: c) The completion of this work will help Transit Agency:
Statement of Work Title: [Type text]
1.0 Project Background
Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought. Short statement of the problem to be resolved Expected project duration Transit Agency organizational units and/or key individuals involved in managing the project Alternative solutions or implementation strategies evaluated a) Transit Agency requires these products and/or services due to: b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the: c) The completion of this work will help Transit Agency:
2.1 Results
Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.
2.2 Anticipated Benefits

Describe what the organization will gain through completion of this project.
2.3 Business Processes Impacted
Review major changes in the way work will be conducted once the project is complete (if any).
2.4 Customers / End Users Impacted
Identify the specific individuals or groups whose work will be most affected during and after the project's execution.
3.0 Applicable Documents
List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.
List any publications, manuals, and regulations that the supplier / contractor must abide by: a) [Type text] b) [Type text] c) [Type text] Definitions and Acronyms:
4.0 Summary of Requirements
These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work. List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.

Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use “work” words, such as:

- 1) Review...
- 2) Analyze...
- 3) Repair...
- 4) Install...
- 5) Construct...

All tasks should have quantifiable or observable results.

5.0 Schedule and Deliverables

List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point (s). Include the acceptance criteria for each.

Milestone or Major Project Deliverable	Planned Completion Date

6.0 Quality Assurance Plan

Explain what the Transit Agency’s quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the outputs / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

- a) All milestones or services will be achieved, and all reports will be submitted on time in accordance with Section 5.0 of this SOW.
 - a) All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this document.
- c) Supplier / Contractor work will be monitored by Transit Agency project and Contract Management Staff.
- d) Specific quality requirements for this contract are as follows:
 - 1) On time delivery= [Type text]
 - 2) Acceptable quality = [Type text]
 - 3) Responsiveness = [Type text]
 - 4) Service Level = [Type text]

EXHIBIT D: PIGGYBACKING CHECKLIST

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.* ("FTA Dear Colleague" letter, October 1, 1998).

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		
13. Were geographical preferences included in the original solicitation/contract?		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and "Piggybacking,"*

EXHIBIT E
SOLE SOURCE PURCHASE FORM

A sole source is when the commodity or service can be legally purchased from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase, if, there is more than one potential supplier for that item. Use of Brand Names and Model numbers does not constitute a sole source.

Date: _____ **PR No.:** _____ **Requestor:** _____ **Phone No.:** _____

Department/Division: _____

Item Description: _____

Vendor: _____

Vendor's Address: _____

Vendor's Telephone No.: _____ **Point of Contact:** _____

Sole Source Justification: (Please attach justification) _____

Check One:

_____ The item is available only from one vendor (sole source justification is attached).

_____ Federal Awarding Agency or Pass-Through Agency authorizes noncompetitive negotiations (letter of authorization is attached).

Requesting Department Director Signature
(Or Designee)

Date

REVIEW BY FINANCE DEPARTMENT

Finance Department Comments: _____

Finance Director Signature

Date

Approved: _____

Denied: _____

EXHIBIT E (1)
SINGLE SOURCE PURCHASE FORM

A single source means that a commodity or service can be purchased from multiple sources, but in order to meet certain functional or performance requirements (e.g. parts matching existing equipment or materials) there is only one economically feasible source for the purchase.

Date: _____ **PR No.:** _____ **Requestor:** _____ **Phone No.:** _____

Department/Division: _____

Item Description: _____

Vendor: _____

Vendor's Address: _____

Vendor's Telephone No.: _____ **Point of Contact:** _____

Single Source Justification: (Please attach justification) _____

Check One:

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ Federal Awarding Agency or Pass-Through Agency authorizes noncompetitive negotiations (letter of authorization is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

_____ Other. Additional justification required.

Requesting Department Director Signature
(Or Designee)

Date

REVIEW BY FINANCE DEPARTMENT

Finance Department Comments: _____

Finance Director Signature

Date

Approved: _____

Denied: _____

EXHIBIT F: COST ANALYSIS FORM

PAGE OF

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts)

(See Instructions below)

SOLICITATION #

SUPPLIES AND/OR SERVICES TO BE
FURNISHED

PREPARER'S NAME, DEPARTMENT, TITLE, PHONE

DIVISION(S) AND LOCATION(S) WHERE WORK IS
TO BE PERFORMED

APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT MATERIAL

A. PURCHASED PARTS

B. SUBCONTRACTED

C. OTHER - (1) RAW

(2) STANDARD COMMERCIAL ITEMS

TOTAL DIRECT MATERIAL

2. MATERIAL

OVERHEAD (RATE

Vendor
A
Proposal

Vendor
B
Proposal

Independent
Estimate

Analysis

3. DIRECT LABOR

ESTIMATE
D HOURS

RATE/
HOUR

Vendor
A (\$)

Vendor
B (\$)

Independent
Estimate

Variance

TOTAL DIRECT
LABOR

4. LABOR OVERHEAD

OH Rate

X BASE (labor total above)

TOTAL LABOR OVERHEAD

Vendor
A (\$)

Vendor
B (\$)

Independent
Estimate

Variance

5. OTHER DIRECT COSTS

A. SPECIAL

TOTAL SPECIAL

Vendor
A (\$)

Vendor
B (\$)

Independent
Estimate

Variance

B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
<i>TOTAL TRAVEL</i>				
DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
<i>E. SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. <i>SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST OF				
10. <i>SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

FEDERAL COST PRINCIPALS

Costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the CITY. Chapter IV, Section 4 C4220.1F states FTA assistance may support contract costs or prices based on estimated costs only if the costs incurred or cost estimates included in negotiated prices comply with applicable Federal cost principles, and the property or services are eligible for Federal assistance under the terms of the underlying grant or cooperative agreement.

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General & Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip.

Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

EXHIBIT G: PRICE ANALYSIS

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

____ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

DATE: _____ PREPARED BY _____

Attachments:

EXHIBIT H: FAIR AND REASONABLE PRICE DETERMINATION

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

_____ Found reasonable on recent purchase.

_____ Obtained from current price list.

_____ Obtained from current catalog.

_____ Commercial market sales price from advertisements.

_____ Similar in related industry.

_____ Personal knowledge of item procured.

_____ Regulated rate (utility).

_____ Other.

Comments:

_____ Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date

EXHIBIT I: PROCUREMENT SUMMARY
PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____
PO / Contract No. _____
Source of _____ Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
Small Purchase: _____ A&E Services: _____ Sole Source: _____

Adequate # of Sources Yes/No and #
Justification if Non-Competitive:

Reason for the Procurement

Contract Type: _____
Rationale for contract type: _____

Reason for Contractor selection or rejection: Lowest responsive, responsible bidder: _____
Evaluation results _____

Basis for Contract Price:

Accepted contractor's proposed pricing: _____
Negotiated Price (attached memorandum) _____
Other: _____

Cost / Price Analysis:

The price offered by the supplier was within _____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$ _____
Pricing discrepancies between the offers was attributed to _____
Other sources/data used to affirm price reasonableness were _____

EXPLAIN:

Evaluation of Options, if any: _____
Exercise of Options, if any: _____

Summary of Responsibility and Responsiveness Checks

Award Date of contract award: _____
Board Approval (Attach Meeting Minutes): _____

Change Orders

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

EXHIBIT J: RESPONSIBILITY DETERMINATION FORM

Bid/RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	☐ Yes ☐ No	_____ _____ _____ _____
2. Ability to meet the delivery schedule	☐ Yes ☐ No	_____ _____ _____ _____
3. Satisfactory period of performance	☐ Yes ☐ No	_____ _____ _____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	☐ Yes ☐ No	_____ _____ _____ _____
5. Receipt of all necessary data from supplier	☐ Yes ☐ No	_____ _____ _____ _____
6. System for Award Management (SAM) check	☐ Yes ☐ No	_____ _____ _____ _____
7. Conflict of Interest	☐ Yes ☐ No	_____ _____ _____ _____

EXHIBIT K: CONTRACT CLAUSE MATRIX

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination *	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA) *	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	

Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights**	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
DHS Seal, Logo, Flags	All FEMA	All FEMA	All FEMA	All FEMA	All FEMA
Compliance with Federal Law, Regulation & Executive Orders	All FEMA	All FEMA	All FEMA	All FEMA	All FEMA

*APPLIES TO ALL FEMA CONTRACTS NO MATTER THE AMOUNT

** DOES NOT APPLY TO FEMA PUBLIC ASSISTANCE WORK CONTRACTS

EXHIBIT L: FEDERALLY REQUIRED CONTRACT CLAUSES

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing
32. Veteran's Preference/Employment
33. Occupational Safety and Health Act Compliance
34. Fair Labor Standards Act
35. Texting When Driving
36. E-Verify

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

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

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA- funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part

381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

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

7. CLEAN WATER REQUIREMENTS **33 U.S.C. 1251**

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING **49 U.S.C. 5323(c)** **49 CFR Part 665**

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third-party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS **49 U.S.C. 5323** **49 CFR Part 663**

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third-party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation, "Buy America

Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER
ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49

C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995,
P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of

\$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

EXHIBIT A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>	None	Those	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless ¹ non-competitive award	imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru ² 5307/5309 /5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects						
<u>II Non-State Grantees</u>	Yes ³	Those imposed on non-state Grantee pass thru to	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES **49 CFR Part 18**

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

13. BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first-tier contractors.

Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR
42 U.S.C. 7401 et
seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

Clause Language

1. Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29

CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [*insert name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, and Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side

of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit

Administration or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards

provisions of this contract shall not be subject to the general dispute's clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (and any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

Clause Language

2. Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the

contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801

et seq.

49 CFR Part 31

18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

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

performed in accordance with the manner of performance set forth in the contract.

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

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

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

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

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

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

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

g. Termination for Default (Transportation Services) if the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions

of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall

terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) the (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

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

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

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

22. GOVERNMENT-WIDE DEBARMENT AND

SUSPENSION (NONPROCUREMENT) Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third-party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

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

24. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. §
2000**

**42 U.S.C. § 6102, 42 U.S.C.
§ 12112**

**42 U.S.C. § 12132, 49
U.S.C. § 5332**

**29 CFR Part 1630, 41 CFR
Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29

U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C.

§ 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in

whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part

18 FTA

Circular

4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any

such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release

of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty- free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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 extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, 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 Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the

requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described 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.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described 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.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, §

5311, and § 5333

29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49

U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the

U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is %. A separate contract goal [of % DBE participation has] [has not] been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in

the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:**

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

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

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at

least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1E**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. 85331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

**Drug and
Alcohol
Testing
Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and
Alcohol
Testing
Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

**32. VETERAN'S
PREFERENCE Chapter IV, 2.c.
(1)(c) C4220.1F of FTA C 4220.1F**

Contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

33. OCCUPATIONAL SAFETY AND HEALTH ACT COMPLIANCE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

34. FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [contractor | consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [contractor | consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

35. TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

36. E-VERIFY

Enrollment and verification requirements.

- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-
 - a. Enroll. Enroll as a Federal Contractor in the E-Verify Program within thirty (30) calendar days of contract award;
 - b. Verify all new employees. Within ninety (90) calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of

employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); and,

- c. Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within ninety (90) calendar days after date of enrollment or within thirty (30) calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of

- a. All new employees.
 - i. Enrolled ninety (90) calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or
 - ii. Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within ninety (90) calendar days after date of contract award or within thirty (30) days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
- b. Enrolled less than ninety (90) calendar days. Within ninety (90) calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State of local government or the government of a Federally recognized Indian tribe, or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements of (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 2006 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each

existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within one hundred eighty (180) calendar days of-

- i. Enrollment in the E-Verify program; or
- ii. Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contract information provided in the E-Verify program Memorandum of Understanding (MOU)

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

- i. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor, will be referred to a suspension or debarment official.
- ii. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- iii. Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

- (a) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (b) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top-secret information in accordance with the National Industrial Security Program Operating Manual; or?
- (c) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12. Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph E (appropriately modified for identification of the parties in each subcontract that-

- (1) Is for-(i) Commercial and noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

- (2) Has a value of more than \$3,500; and
- (3) Includes work performed in the United States.

EXHIBIT M: CHANGE ORDER REVIEW CHECKLIST

Date				
Contract Number				
Contractor				
Contract Title				
Reviewer				
New Contract Total				
Change Order Number				
Dollar Value Increase				
Length of Time Extension Granted				
New Performance Period End Date				

Change Order Checklist	Category			Comment
	ND	D	N/A	
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. AWO Scope Meeting Held	INCLUDED			
3a. Scope of Change Adequate for Bidding				
4. Contractor Proposal Includes Impact Costs, Price				
5. Cost Analysis Conducted				
5a. If Price > 10% of ICE, Evidence of MTA President Approval				
6. Negotiation Memorandum				
7. Written Record of Change				
7a. Signed Change Order in File				
8. Evidence of Board Approval Prior Initiation of Changed Work				
9. Notice to Proceed in file				
10. Work Authorized within Contract Scope				
11. No Evidence of Arbitrary Action				
Other Comment				

EXHIBIT N: PROCUREMENT HISTORY FILE CHECKLIST

CONTRACT NUMBER _____
CONTRACTOR NAME _____
CONTRACT AWARD DATE _____
CONTRACT AMOUNT _____
CONTRACT START DATE _____

		Responsible	In File	N/A
1	Procurement Request	Transit		
	Funding/Accounting Code	Transit		
2	Independent Cost Estimate	Transit		
3	Statement of Work (spec)	Transit		
4	Procurement Plan & Timeline	Transit		
5	Single Source Justification	Transit		
6	Market Research Documents	Transit		
7	Bidders List	Purchasing		
8	Source Selection Plan & Docs	Purchasing		
9	Solicitation & Amendments	Purchasing		
10	Pre-solicitation approvals	Transit		
11	Advertising	Purchasing		
12	Pre-bid or proposal conference notes/Q&A	Purchasing		
13	Bid/proposal & solicitation amendment ack	Purchasing		
14	"no bid" letters or offeror disqualification	Purchasing		
15	Cost or price analysis	Transit		
16	Negotiation memo	Transit		
17	Source selection report & related docs	Purchasing		
18	Contractor responsibility determination	Transit		
19	Required award approvals	Transit		
20	Notice of Intent to Award	Purchasing		
21	Protests	Purchasing		
22	Signed (conformed) contract	Purchasing		
23	Contract modifications	Purchasing		
24	Option exercises & related documents	Purchasing		
25	Contract data and reports	Transit		
26	Complaint & performance reports	Transit		
27	Documentation concerning pre or post award mistakes in bid	Purchasing		
28	Invoices/Vouchers	Transit		
29	Other Correspondence	All		
30	General Contract Correspondence	All		
31	Contract Close Out	Transit		

EXHIBIT O: PROCUREMENT FILE CHECKLIST
CITY OF DESTIN
PROCUREMENT FILE CHECKLIST

	Completed By	Date
Decision Matrix		
ICE		
Federal Clauses		
Terms and Conditions		
Advertised		
Bid Abstract		
Cost/Price Analysis		
Responsibility Determination		
Fair & Reasonable Determination		
SAM Excluded Parties		
Conflict of Interest*		
Buy America		
Pre-Award		
Post Delivery		
Construction		
Bid Bond		
Performance & Payment Bond		

*no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

EXHIBIT P CONTRACT ADMINISTRATION

Procedures for FTA AND OTHER FEDERAL-

Specific Procurements Cost/Price Analysis:

<i>Responsible Staff: Procurement staff (or project manager for construction contracts)</i> <i>Applicable to: ALL FTA AND OTHER FEDERAL-funded Procurements</i>
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A cost or price analysis must be performed for every procurement. The City may use the following resources as guidance in performing cost or price analysis:

- FTA's "Best Practices Procurement Manual"
- The National Transit Institute Course, "Cost or Price Analysis and Risk Assessment"
- Pricing Guide for FTA Grantee, FTA Website:
http://www.fta.dot.gov/documents/Helpline_Price_Guide.doc
- FAR Part 31, Contract Cost Principles and Procedures 3.3.16
- 2 CFR PART 200

Cost Analysis: A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements including contract modifications or change orders.

A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost such as professional consulting and architectural and engineering services contracts). A cost analysis includes verifying the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit.

Cost Analysis for Professional, Consulting, and Architectural and Engineering Services: This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition). An evaluation of the reasonableness of the price is also required under Florida's Consultants Competitive Negotiations Act (CCNA).

To determine the reasonableness of proposed costs, the City shall obtain cost breakdowns from the offerors showing all the elements of their proposed total costs. The overall objective should be to negotiate total prices that are fair and reasonable.

Cost Analysis for Construction and Construction Management Contracts: This includes all contracts and contract modifications negotiated based on cost for construction management or construction, alteration or repair of buildings, transit facilities, or other kinds of real property.

Construction contracts awarded using sealed bidding do not require cost analysis, but construction contracts awarded using any method other than sealed bidding, and all modifications to construction contracts require cost analysis.

Price Analysis: A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. The City shall annotate a finding of fair and reasonable pricing and state the most common reasons why this was so, such as catalog or market price offered to the general public, regulated price, or a comparison with recent prices for similar goods and services.

Price Analysis for Micro-Purchases: for purchases of \$10,000 or less, the City will simply annotate how the City made its price fairness and reasonableness determination (e.g. professional market experience, market trend, previous purchase, and catalog price). FTA does not require the rationale for the procurement method used, selection of contract type, required of the purchase exceeding the Micro-Purchase threshold.

Price Analysis for Sealed Bidding or Competitive Quotes: As the preferred method for contracting for supplies, equipment and construction, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the City should always compare the independent cost estimate to the low competitive bid received. In the event they are significantly different, the City will need to verify that either the estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

Audits and Indirect Costs: As required by 49 U.S.C. Section 5325(b)(3), all FTA AND OTHER FEDERAL assisted contracts and subcontracts including program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services must be performed (i.e. a contractor cannot incur and invoice the City any unallowable, unallocable, or unreasonable costs prohibited by the FAR and/or the contract terms and conditions) and audited in accordance with FAR Part 31 cost principles.

The recipient and the third party contractor, its subcontractors and sub-recipients must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute, and these established rates will apply for purposes of contract estimation, negotiation, administration, reporting, change order, options, and payments, not limited by administrative or de facto ceilings.

Buy America: Buy America regulations apply to FTA AND OTHER FEDERAL assisted procurements exceeding \$100,000 for iron, steel, manufactured goods, or rolling stock, Buy America regulations require the contractor to provide goods produced or manufactured in the US, unless FTA has granted a waiver authorized by those regulations.

Goods that the contractor acquires to perform its construction activities for the City, such as tools, machinery, and other equipment or facilities, is not covered by Buy America Act.

INDEPENDENT COST ESTIMATE (ICE)

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: Construction Bids funded by the FTA AND OTHER FEDERAL

Purpose

Before the City receives a bid, or a proposal that includes price, or a cost proposal either as a submittal or for negotiating a contract, contract amendment, or sole source contract, the City shall prepare an Independent Cost Estimate (ICE). The ICE is an estimate of the cost of performing the work. An Independent Cost Estimate (ICE) is required for every procurement that requires a price or cost analysis. A Micro Purchase is exempt from the ICE requirement.

Procedure

The independent cost estimate does not have to be complicated, but it should be reasonably accurate. The ICE should be broken down for each bidding schedule item. Sources of information for putting together the ICE are: prior bids or contracts for similar scopes of services; published price lists; hourly rates from similar service providers; prior bids or rates received from other agencies; and industry standards such as design as a percentage of construction. Whatever sources the City used to put its budget in place to begin with may also be used when appropriate.

The City shall develop an ICE for all purchases BEFORE the procurement process begins. The City should develop source information and cross-check that information with independent sources outside and inside the organization to evaluate its currency, accuracy, completeness, and relevancy. Disciplined cost estimating ensures that the ICE is credible, dependable, and complete, as it is used as input to the budget planning process, future procurement, and cost saving measurement.

MICRO PURCHASE PROCEDURES

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: All FTA AND OTHER FEDERAL-funded Purchases of \$3,500 or less

Purpose

To define and establish purchasing requirements for Goods or Services costing less than \$3,500 where FTA AND OTHER FEDERAL funds are involved.

Procedure

Identify Potential Vendor(s): The City is generally responsible for identification of vendors. Typical resources are catalogues, yellow books and other publications. Even for this micro dollar amount, the City departments must seek Small Businesses or DBEs. Purchasers should avoid splitting larger dollar amount purchases into micro purchases to avoid competition. Purchasers should equitably distribute repeated micro purchases among as many qualified local suppliers as is reasonable.

Method of Procurement: All Micro Purchases can be made by Purchase Order.

Documentation: Minimum documentation required is statement that the price is fair and reasonable. Purchasers must obtain a receipt or other documentation of the purchase.

Exception: The Micro purchases under \$10,000 are exempt from FTA's Required Third Party Clauses including Buy America requirements. However, Davis-Bacon Act that requires contractors to pay wages at a rate not less than the minimum wages specified in a wage determination made by the U.S. Secretary of Labor will apply to all FTA-funded construction contracts exceeding \$2,000.

SMALL PURCHASE PROCEDURES

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: All FTA AND OTHER FEDERAL-Funded Procurements between \$10,000 and \$150,000

Purpose

Small Purchase procedures are used to purchase equipment, materials, supplies, and services.

Procedure

All purchasing procedures, rules, and regulations must be followed and the City will review all quotes prior to issuance of a Purchase Order (PO) number. For purchases up to \$35,000, verbal quotes are acceptable. Small Purchases valued over \$35,000 require formal bid.

The City shall make good-faith efforts to locate DBE's and Small Businesses. The City may review a procurement request to determine if it can be fulfilled by using either an existing State contract or "piggybacking" onto another public agency contract before soliciting quotes. The City will attach the appropriate state and federal terms, conditions, forms, and certifications to the PO. Refer to Exhibit D, Piggybacking Checklist.

After quotes or proposals are received but prior to award, the City will identify the firm that provided the lowest priced responsive offer. The City will concurrently determine if the offeror is responsible and eligible for contract award.

A responsible offer for a small purchase is an offer that meets the following standards:

- Able to meet the proposed delivery or performance schedule
- Not deficient in current or recent contract performance with the City
- Has the requisite organization, experience, quality controls, technical skills or the ability to obtain them?
- Has the requisite human resources, equipment and facilities or is able to obtain them for construction or public works
- Able to meet the required bonding requirements for construction or public works.
- Is qualified to receive an award under applicable state and federal laws and regulations (i.e. current business and professional licenses and permits)
- Not listed on any State and Federal lists of debarred, suspended, or ineligible firms or individual

For A&E purchases under the Small Purchase threshold, the City shall comply with the Brooks Act and the Florida CCNA by ensuring that price is NOT an evaluation factor and that only qualifications are evaluated.

The City will contact the successful firm and request applicable insurance certificates and other mandatory documents. Upon receipt of such documents, the City may issue a PO. The PO must state all applicable commercial, technical, and legal terms and conditions, including delivery and contract end dates.

Upon receipt of the products or services, the requestor inspects and accepts the deliverables, approves the invoice for payment and submits it to Accounts Payable for payment. The requestor shall notify the City if items are not received in the time and manner indicated on the PO, if the wrong items are received or any other concerns.

COMPETITIVE BIDS

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: FTA AND OTHER FEDERAL-Funded Purchases in excess of the County's small purchase threshold or Construction Contracts of Any Size

Purpose

This method will be used to procure goods, services, equipment, materials, non-professional services, and construction contracts when the value of the contract is over the City's small purchase threshold. Award will be made to lowest priced bidder that submits a responsive offer and the bidder has demonstrated capacity to perform the work to be generally considered a responsible bidder. This procurement method does not permit consideration of qualitative factors in a competitive environment or negotiations with bidders. An Invitation for Bids (IFB), also called "Sealed Bids" is the solicitation method. The typical resultant contract type is a firm fixed price, fixed price variation, lump sum, or unit price.

Procedure

Preparing the IFB. The IFB must describe the requirements of the City clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for bidding.

The City submits an approved requisition, Statement of Work or Scope, and ICE to Purchasing. Depending on the complexity of the requirement, the City should collaborate with all necessary Departments and Outside Agencies at the earliest stages of requisition and scope development.

The City must develop procurement requirements such as procurement schedule; risk; insurance; subcontracting opportunities; scope and delivery schedule; bid pricing schedule; FTA-specific funding source requirements; whether a pre-bid conference is needed and other items of critical nature. A DBE goal may be established at this time.

The City drafts an IFB, including the clauses required by law or by regulation and any additional clauses expected to apply to any resulting contract including FTA clauses, prevailing wage, etc.

Advertising the IFB: The City shall prepare advertisement synopsis for The Vero Beach Press Journal and full IFB packages to publish on the DemandStar e-bid system. The City should ensure the advertisement attracts competition. The City must ensure the advertisement meets any statutory or regulatory requirements, provides adequate time for bidders to submit an offer, and provides clear instruction on how to obtain the full solicitation packet and the due date for submission of offers.

Amending the IFB: All requests for information / questions must be routed directly to the City; written clarification and addendum will be issued by the City when necessary. The City shall review and approve all clarifications and addenda prior to issuance.

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous item of the solicitation, such changes shall be accomplished by amendment of the invitation for bids via addenda. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an addendum. Addendums shall be sent, before the time for bid opening, to everyone to whom the IFBs have been furnished. Before amending an IFB, the time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telephone. Such extension must be confirmed in the addenda.

Any information given to a prospective bidder concerning an IFB shall be furnished promptly to all other prospective bidders as an addendum to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held.

Pre-bid Conference: A pre-bid conference may be conducted, generally in a complex procurement, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It should not be used as a substitute for amending a defective or ambiguous IFB.

Submission of Bids: Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids. Bids shall be submitted so that they will be received at the location designated in the IFB and not later than the exact time set for opening of bids.

Bid Opening: Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids in accordance with the IFB instructions to be considered "responsive". Bids shall be submitted so that they will be received as designated in the IFB not later than the exact time set for opening of bids.

All bids (including modifications) received before the time set for the opening of bids shall be kept sealed and secure. Except as otherwise provided herein, bids shall not be opened or viewed, and shall remain in a safe and secured area. If an invitation for bids is cancelled, bids shall be returned unopened to the bidders. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure before bid opening.

The City shall announce when the time set for opening bids has arrived. The City shall then (1) personally and publicly open all bids received before that time, (2) read the bids and the ICE aloud to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required has been made and its accuracy verified.

A bid opening may be postponed when:

The City has reason to believe that the bids of an important segment of bidders have been delayed in the mail, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes); or Emergency or unanticipated events interrupt normal the City processes so that the conduct of bid opening as scheduled is impractical.

At the time of a determination to postpone a bid opening, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the IFB, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

Evaluation of Bids To be considered for award, a bid must comply with all requirements stipulated in IFB. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation.

If a single bid is received or if competition is inadequate, the City shall examine the situation to determine the reasons for the inadequate number of responses. Award may be made notwithstanding the limited number of bids. However, the City shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items. If only one bid has been received, the City has an option follow the sole source procurement procedure discussed in this Manual.

The County shall determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. A price analysis shall be performed in all cases. The price analysis should reveal whether there is a significant difference in the price of the bids. In evaluating the bids for responsiveness, the City shall create an abstract of bids, verifying pricing and summarizing the Bidder's compliance with responsiveness issues and the bid prices. The project manager will check the SAM database to ensure that no bidders are listed excluded parties and a copy shall be printed for the file. Should an excluded party be identified, the project manager shall notify the chief executive officer and/or legal office and will remove said bid by an excluded party from consideration. For construction bids, the City shall verify that the Contractor was licensed by the State prior to submitting its bid.

If applicable, the City shall issue the standard bid evaluation letter to the apparent low bidder requesting material to be submitted prior to Bid Evaluation Conference.

Contract Award the City shall make a contract award by written or electronic notice within the time for acceptance specified in the bid or an extension to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the City, considering only price and the price-related factors included in the IFB.

Single Bid or Proposal. Upon receiving a single bid or proposal in response to a solicitation, the City should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. The City acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the City's control. Many unrelated factors beyond the City's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, the City's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source.

If an item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced, the City must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers. FTA does not permit proprietary procurements unless it meets the sole source justification criteria stipulated in FTA Circular 4220.1.F.

If spare parts, replacement parts and maintenance contracts for existing equipment and systems where only proprietary items/ services are compatible with existing equipment and systems and where such items and services can be acquired only from the manufacturer or from a single distributor or licensee and all other alternatives are exhausted, they may be acquired, ordered or paid in the best interests of the City.

The Common Grant Rules provide Federal agencies authority to permit a recipient to use noncompetitive proposals. Under this authority, FTA has made the following determinations: With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement

constitutes approval of those arrangements. In such cases, FTA expects the City to use competition, as feasible, to select other participants in the project.

To ensure that the City has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Common Grant Rules, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances: To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

Transit Service Bids the City shall use a competitive process to solicit and award a contract for the provision of transit service. Said process will include the issuance of a Request for Proposals (RFP) in coordination with the City's Purchasing Department. Contracts for transit service provision shall cover a five-year period with provisions to allow extensions for up to an additional five years. Whenever feasible, such contracts will be timed to coincide with the five-year Community Transportation Coordinator (CTC) contract. The current CTC contract is effective until June 30, 2018.

PIGGYBACKING

Responsible Staff: Procurement staff, Transportation Manager

Applicable To: All FTA AND OTHER FEDERAL-Funded Procurements of equipment, materials, supplies, and services

Purpose

Establish agreements and contracts by taking advantage of existing contracts awarded by other governmental entities for goods and services that the City currently needs.

Piggybacking is defined by the FTA Circular 4220.1F as: "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Procedure

For FTA AND OTHER FEDERAL assisted projects, the City shall obtain a copy of the entire contract of the outside governmental entity and review it carefully to determine if it contains the provisions required by FTA Circular 4220.1F. This is an important first step, because the requirements of the Circular apply to procurements made through inter-governmental contracts and assignments. If a required Federal clause is not included in the contract, the City may add them to the City's contract.

Confirm that the original contract contains an express assignability clause that provides for the assignment of all or part of the specified deliverables. FTA's policy is that the original solicitation must contain an express notification to all bidders that an assignment would be possible under the terms of the contract. Such a notification would put the bidders on notice that they would likely be called upon to deliver all of the deliverable items, both the base as well as the option quantities. The assignment clause would thus be an important factor in the original competitive bidding. If the contract does not contain an express assignability clause, piggybacking is not permitted.

Determine that the contract is still in effect.

Determine that the specifications in the existing contract will meet the City's needs.

Review the contract terms and conditions carefully to determine that they are acceptable to the City; e.g., warranty provisions, insurance requirements, etc.

Determine that the requirements of the City will not be beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract, which will have to be justified in accordance with sole source procedures.

Verify that piggybacking quantities were included in the original solicitation.

For federally funded procurements and if the contract is an indefinite quantity contract, verify that the original solicitation and resultant contract contain both a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation. If the piggybacking action represents the exercise of an option provision in the contract, verify that the option is still valid. Options that have expired may not be exercised.

Determine that the contract was awarded competitively, either through sealed bids or through competitive proposals. If the contract was a sole-source award, the City will have to justify a sole-source award in accordance with sole-source procedures.

Verify that a cost or price analysis was performed by the original procuring agency documenting the reasonableness of the contract price and include a copy in our files. The City is not required to do a second price analysis if one was originally performed. However, the City must determine that the contract prices originally established are still fair and reasonable. Circumstances should dictate the steps to be taken. For example, if the original award was made some time ago, the City should conduct a market survey and/or perform price analysis to ensure that the prices are still fair and reasonable (even if the original award was competitive and a price analysis was performed initially). Similarly, if deliveries are to be made to a local or centralized delivery point and the original contract calls for statewide deliveries, the City should seek a price reduction.

If the contract is for federally funded rolling stock, verify that the contract term complies with the five-year term limit established by FTA Circular 4220.1F.

Determine the types of changes the City will require to be made to the deliverables. For an assignment, only "within scope" (non-cardinal) changes are allowed (e.g., seating fabrics, colors, paint schemes, signage, floor coloring, etc.).

SOLE SOURCE

Responsible Staff: Procurement staff, Transportation Manager
Applicable To: All procurements in excess of \$3,500

Less than full and open competition is not justified based on the City's lack of advance planning, or limited availability of Federal Assistance. When less than full and open competition is available to the City, the City shall solicit offers from as many potential sources as is practicable under the circumstances. If the City decides to solicit an offer from only one source, the City must justify its decision adequately.

Contracts for sole source procurements shall be approved by the Destin City Council. The resolution approving the contract shall also indicate the reasons for the sole source procurement.

The City shall prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

CONTRACT ADMINISTRATION

The City of Destin is subject to review and audit by FTA and State Governments or its agents during and after contract performance and is required to comply with the standards mandated by the FTA when using Federal assistance to finance its procurements. The City is also subject to Florida Administrative code (FAC) provisions governing the City's authorizing legislation, procurement of public works and architectural and engineering services, Disadvantaged Business Enterprise and Small Business requirements, identification of subcontractors, and tax statutes regarding sales and use taxes, business and occupation taxes, and real property taxes.

This policy implements the requirements of FTA Circular 4220.1F and state laws in the interpretation of a contract. The contract administration principles, concepts and approaches discussed in the Manual shall be utilized for all contracts at The City if such procedures will achieve savings in cost, or accelerate schedule, or meet the City goals, or meet public needs, consistent with applicable FL State laws and regulations and the FTA Master Agreement.

Contract Administration System

The following documents and resources form the basis of the City's Procurement and Contract Administration System.

1. The Common Grant Rules
2. FTA Master Agreement
3. FTA Circular 4220.1F
4. Applicable Florida Statutes
5. City Purchasing Policy

Contract Administration Qualification

City employees or consultants performing any aspect of procurement or contract administration duties must demonstrate requisite skills, knowledge, and ability of having satisfactorily performed procurement and contract administration duties.

Contract Administration Tasks

Each contract will likely require different contract administration actions, collaboration and documentation activities. Simple to moderate goods and services contracts will have different specific administrative actions than construction contracts do just as lump sum contracts are managed differently than incentive or time and material or cost-reimbursement contracts.

Project Commencement

Services rendered by the Contractor shall be commenced upon written notice from the City. The Contractor shall not commence work until it has obtained all insurance and such insurance has been approved by the City's representative.

Project Duration

Project will be undertaken for a stated duration. Contract duration will be for an appropriate time length to complete the project. The duration of FTA-funded projects will not exceed five years.

Standards of Conduct

The Common Grant Rules require the City to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

As provided in the Common Grant Rules and the Federal Transit Administration Master Agreement, no County officers, employees, agents, or board members, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed have a financial or other interest in the firm selected for award.

The Destin City Council established a code of ethics for city council members, officers, and employees; Destin's officers, employees, agents or board members shall neither solicit nor accept gifts, entertainments, gratuities, favors, or anything of monetary value from contractors, consultants, potential contractors or consultants, or parties to sub-agreements.

To the extent permitted by the State of Florida regulations, this standard of conduct will consider appropriate penalties, sanctions, or other disciplinary action for violation of such standards by City of Destin officers, employees, agents, board members, or by contractors, consultants, or sub-recipients or their agents.

Change Orders

The City may execute bilateral or unilateral change orders to its contracts. Change Order administration requires that the City make an in-scope determination for the desired change work. Later a cost or price analysis must be performed to ensure that the price for the changed work is equitable, fair and reasonable.

Change Order Requirements:

1. Change order work must not be outside the original work scope; this requirement is met through sole source justification that results in a new contract.
2. A cost analysis must be performed with detailed or sufficient cost elements.
3. Profit or fee should be analyzed commensurate with work complexity, performance/contractual risk, contractor's investment, amount of subcontracting, past performance data, or marketplace rates.
4. Negotiations with contractors must be documented.

In addition, the following procedures will be applicable to administering and managing change management and activities related to change orders, change notice, progress payment, and approval:

Change Order Independent Cost Estimate:

Required: FTA Circular 4220 requires a cost or price analysis for every procurement action, including change orders. The starting point for the analysis is an independent cost estimate. Prior to receiving a change proposal, the City shall independently estimate the cost of performing the work. The ICE can be used as a basis of comparison for evaluating the proposed price received. A "change order" means any contract action that calls for the negotiation of a cost or price proposal arising out of a change in the contract requirements.

Change Order Cost/Price Analysis:

The Common Grant Rules require a cost/price analysis in connection with all change orders. The method and degree of cost/price analysis depends on the facts and circumstances surrounding each contract action. If the original contract contains only a lump sum price, additional cost and pricing data must be requested to perform a cost/price analysis.

The City shall perform a cost analysis when a contractor is requested to submit detailed cost elements (that is, labor hours, overhead, materials, and so forth) of the change order cost. Changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

The City is responsible for performing cost/price analysis for all change orders.

1. The following references provide guidance in preparing cost or price analysis:
2. FTA's "Best Practices Procurement Manual," Chapter 5
3. Pricing Guide for FTA Grantees www.fta.dot.gov/documents/Helpline_Price_Guide.doc
4. FAR Part 31, Contract Cost Principles and Procedures

Termination

A Contractor may be held in default of its contractual obligation under this Agreement if the CONTRACTOR:

1. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
2. fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;
3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
4. performs the Work that does not conform to Contract Documents requirements;
5. fails to meet the Contract Schedule or fails to make progress on the Work so as to endanger performance of the Agreement;
6. abandons or refuses to proceed with any or all the Work; or
7. otherwise breaches, fails to comply fully with, or is in default of any provision of the

Contract Documents.

If a contract of any type (fixed-price or cost-reimbursement) is contemplated for termination of convenience or for cause, a complete cost analysis must be performed to negotiate the final amount of the termination settlement.

Contracts can be terminated for the convenience of the City or for cause (also called default). Contracts are usually terminated for convenience when the City no longer has a need for the service or products as they are specified in the contract, or when it is not possible to substantiate that the contractor's performance is poor enough to terminate for cause. Contracts should be terminated for cause when the contractor fails to perform the contract as written.

Invoice and Payment

The Contract specifies the payment terms. The contractor must submit, and the City must process applications for progress payment in accordance with the requirements and General and Special Conditions of the contract.

A. Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.
2. Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
 - a. Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.
 - b. Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

- B. Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.
1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
 2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
 3. Percentage of Completion Method. The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

The Finance Department has several stages of involvement in third party contracts and at various stages of post contract award action. A major responsibility in third party contracts is to ensure timely payments. While the City and Project personnel are responsible for recommending and approving payments, the Finance Department is responsible for issuing checks and validating funds availability.

Invoices are first received by the project manager for approval. A request for payment of the invoice will then be forwarded to Finance. Once an approved invoice is received by the Finance Division, it will release payment if all documentation is in order. The project manager is responsible for identifying any retentions and withholdings. The Finance Division provides oversight to such retentions and withholding to ensure payment accuracy. At contract closeout, Finance Department is responsible for the final check processing.

Record Retention

The record retention requirement of three years shall commence only after the final audit and final payment is made and all other issues are resolved.

Contract Documentation

The City, in collaboration with all responsible parties, shall ensure that the history of all pre-award, post- award actions, and related project, operation, legal, and financial information are documented, collected, reviewed for compliance, maintained, distributed, archived and readily accessible to internal and external audits including the State of Florida and the FTA.

City personnel and consultants involved in and performing contract administration tasks shall prepare, maintain, and keep adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation and contract administration.

- Procurement documentation will include rationale for the method of procurement for each contract, including a sole source justification for any acquisition that does not qualify as competitive, as well as any change order deemed cardinal by the Procurement and Contracts Division.
- Contract type documentation will state the reasons for selecting the contract type used (i.e., fixed price, cost reimbursement, time and material);
- Contractor selection will include reasons for contractor selection or rejection, as well as a written responsibility determination for the successful contractor;
- Cost or Price Analysis: All procurement and change orders will evaluate and state its justification for the contract cost or price by including an ICE and cost or price analysis.
- Change Order: All change order information including essential documents, will be collected from the program/project organization, functional departments, and construction management contractors, and maintained in Live-link, and other project related information will be kept in the internal databases, readily available to internal audit and FTA. Change Orders documentation will include in-scope determination as well as a cost or price analysis to establish that the price is fair and reasonable.
- All Post-award Activities: partnering, inspection report, claims, disputes, invoice processing, and reports and forms.
- Access to Records. Apart from the more limited record access provisions of the Common Grant Rules, 49

U.S.C. Section 5325(g) provides FTA and DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Subcontracting

Unless otherwise specified, services assigned to subcontractors must be approved in advance by the City. The subcontractors must be qualified by the City to perform all work assigned to them. The Contractors must have written statements from the subcontractors indicating that the subcontractor is aware that all Federal Rules and Regulations apply. The City, Contractor, and subcontractors will establish procedures to verify compliance with all federal provisions by subcontractors.

Disputes, Claims, Litigation, and Settlement

The City will resolve all contractual and administrative issues including protests, disputes, and claims using good administrative practices and sound business judgment. FTA may be involved in the City's administrative decisions when the City uses federal funds to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation. For detailed FTA guidance, see FTA C 4220.1F, Page VII-1 through V-10.

The City will notify the Contractor of issues related to performance, achievement of milestones, and/or compliance with federal, state, or local regulations affecting the performance or completion of the contract as soon as those issues are identified. It is the responsibility of the Contractor to acknowledge and respond to the issue in writing upon receiving notice from the Project Manager. The Contractor should make every effort to remedy those issues as soon as practical, within up to 30 days. Should the issues remain after 30 days, the City may terminate the contract.

Finally, all agreements between the City and Contractor, including all attachments to it, constitute an agreement, that shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Okaloosa County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.

Resolution of Claims for Breach of Contract. As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the CITY shall select the mediator, who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement. The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of Agreement as to any issue in any way connected with this Agreement.

Project Monitoring

For all contracts for Products and Materials, the City will establish deliverable dates, pre- and post- award inspection dates, and checklists of receipt of the product that will remain on file for the useful life of the product. For all Service contracts, the City will establish appropriate milestones, progress points, and measures of effectiveness (MOE) as needed to monitor the progress, adequacy, and/or completion of the project. These measures will be established prior to commencing work and will be agreed to in writing by both parties.

Leases

Whenever any FTA-funded property, facilities, or equipment is to be leased out to a third party (including to the Senior Resource Association, the city's transit service provider), said lease shall be submitted to the FTA Region IV office for approval. No such leases shall be entered into by the City without first obtaining FTA approval. All leases will be reviewed by the City Attorney, City Community Development Director and City Purchasing Director, and will include Federal terms and conditions.

Charter Bus Reporting

Any charter service provided with federally funded vehicles must meet the conditions of the FTA Charter Service rule, contained in U.S.C. 5323 (d). Quarterly reports on charter activity, including charter applicable exceptions, will be submitted quarterly through the Electronic Award and Management System (EAMS) process. Charter service activity has also been added as a standing agenda item to the quarterly transit meeting conducted by the City and Senior Resource Association staff.

OVERSIGHT OF SUBRECIPIENTS

The County shall ensure that all sub recipients are in compliance with federal regulations including third party procurements, if applicable. The County shall assure that each of its sub-recipients complies with the applicable requirements and standards circular 4220.1F, and that each of sub-recipient is aware of the Federal statutory and regulatory requirements that apply to its actions as a sub-recipient. Neither a third-party contractor nor a third-party subcontractor is a "recipient".

EXHIBIT R

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet in order for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the Federal procurement requirements – it is not intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses. To understand the requirements fully, the user should review the provisions of 2 C.F.R. § 200.317 – 326, which is the source of these requirements. In addition, the user may review FEMA's Field Manual, *Public Assistance Grantee and Subgrantee Procurement Requirements*, which is available on the internet by searching for "FEMA Procurement Field Manual." While the Field Manual was drafted to specifically address the Federal procurement standards that were in effect prior to 26 December 2014 (44

C.F.R. § 13.36(a)-(i) – States, Local and Tribal Governments; and 2 C.F.R. § 215.40-48

– Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), many of the concepts are similar or identical in substance, and thus remains an excellent tool for navigating the current Federal procurement standards. If any questions arise, please contact your servicing attorney or legal counsel for assistance.

2 C.F.R. § 200.317 – 326 became effective on December 26, 2014. For disasters (and their associated projects) declared prior to that date, the relevant procurement standards can continue to be found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments) and 2 C.F.R. § 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).¹ As indicated above, while many of the concepts are similar or identical, there are some substantive differences between the old and the new standards. Accordingly, this checklist should not be used for procurements associated with declarations issued prior to 26 December 2014. Instead, see procurement standards Checklists 13.36 and 215.

Instructions: Each standard below is followed by a block for “Yes”, “No”, or in some cases, “Not applicable”. Red font is used to indicate the response which, if checked, indicates that the contract does not comply with federal requirements.

The term “non-Federal entity” (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, or tribal government or private-non-profit entity).

¹This includes projects associated with declarations issued prior to 26 December 2014, regardless of project start date. For example, if a disaster was declared on 1 November 2014, but contracting for a project under that declaration did not begin until 1 April 2015, then a State (or state agency/instrumentality) would still utilize the old procurement standards found at 44 C.F.R. § 13.36(a); local and tribal governments would follow § 13.36(b)-(i); and Institutions of Higher Education, Hospitals, and Private Non-Profits would use 2 C.F.R. §§ 215.40-48.

1. Does the procurement comply with the State's own procurement laws, rules, and procedures? §200.317 ☐ Yes ☐ No
2. Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. ☐ Yes ☐ No ☐ N/A – work does not involve the use of materials (e.g., debris removal or other services)
3. **Does the contract include the following clauses?**²
 - a. If the contract amount exceeds \$150,000³, does it address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for sanctions and penalties? ☐ Yes ☐ No ☐ N/A
 - b. If the contract amount exceeds \$10,000, does it address **termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement**? ☐ Yes ☐ No ☐ N/A
 - c. If the contract is for construction, does it include the required **Equal Employment Opportunity clause**?⁴ ☐ Yes ☐ No ☐ N/A
 - d. For construction contracts exceeding \$2,000 awarded under a Federal grant, does the contract include a **Davis-Bacon Act clause**⁵ and **Copeland "Anti-Kickback" Act clause**⁶ addressing prevailing wage rates? [Note that Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.] ☐ Yes ☐ No ☐ N/A

² See Appendix II of 2 CFR part 200 for a more detailed description of these clauses. See also PDAT Manual, section IV.H for a detailed discussion of these clauses, including sample text.

³ \$150,000 is the current dollar threshold for the simplified acquisition threshold, as authorized by 41 U.S.C. § 1908.

⁴ The EEO clause can be found at 41 C.F.R. § 60-1.4(b).

⁵ [Insert sample text]

⁶ The clause may read as follows:

Compliance with the Copeland "Anti-Kickback" Act

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- e. *If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers, does the contract include a **Contract Work Hours and Safety Standards clause**?⁷ ☐ Yes ☐ No ☐ N/A*
- a. *Rights to Inventions Made Under a Contract or Agreement.*⁸ ☐ N/A
- b. *If the contract or subgrant amount exceeds \$150,000, does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?⁹ ☐ Yes ☐ No ☐ N/A*
- c. *Does the contract include mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201)? ☐ Yes ☐ No*
- d. *Does the contract include a **Suspension and Debarment clause**?¹⁰ ☐ Yes ☐ No¹¹*
- e. *Does the contract include an **Anti-Lobbying clause**?¹² ☐ Yes ☐ No*

⁷ Must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

⁸ As FEMA does not award grants or subgrants associated with research and development projects, this contract clause is inapplicable.

⁹ The clause may read as follows:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

¹⁰ See PDAT Manual, pgs. 99-100 for sample text.

¹¹ A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract funded with Federal assistance.

¹² See PDAT Manual, pgs. 127-129. The clause may read substantially as follows:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

i. For contracts exceeding \$100,000, have bidders submitted an Anti-

Lobbying Certification? ☐ Yes ☐ No ☐ N/A

f. *Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials?* ☐ Yes ☐ No ☐ N/A – work does not involve the use of materials (e.g., debris removal or other services)

If a State agency is awarding the contract, stop here. If the contract is being awarded by a local or tribal government or private nonprofit entity, continue with the checklist.



4. General requirements¹³

- a. *Does the procurement comply with the NFE's¹⁴ own procurement laws, rules, and procedures?* §200.318(a) ☐ Yes ☐ No
- b. *Does the NFE maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders?* §200.318(b) ☐ Yes ☐ No
- c. *Does the NFE have - §200.318(c)(1):*
- i. Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts? ☐ Yes ☐ No
 - ii. Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest?¹⁵ ☐ Yes ☐ No
 - iii. Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts?¹⁶ ☐ Yes ☐ No
 - iv. Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. ☐ Yes ☐ No

¹³ See, 2 C.F.R. § 200.318

¹⁴ Non-Federal Entity (NFE)

¹⁵ Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

¹⁶ However, NFEs may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

- d. *If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, does the non-Federal entity have written standards of conduct covering organizational conflicts of interest?* § 200.318(c)(2)¹⁷ **Δ Yes Δ No Δ N/A**
- e. The NFE must avoid acquisition of unnecessary or duplicative items. Has the NFE *considered* consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d) **Δ Yes Δ No**
- f. *Encouraged*, but not required standards.¹⁸
- g. *Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources?* § 200.318(h) **Δ Yes Δ No**
- h. *Is the NFE keeping records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price?* § 200.318(i) **Δ Yes Δ No**
- i. *Is the contract a time-and-materials contract?*¹⁹ § 200.318(j) **Δ Yes Δ No**
 - i. If so, has the NFE documented why no other contract is suitable?
┘ Yes Δ No

¹⁷ Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

¹⁸ §200.318(e) – to foster greater economy and efficiency, the NFE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services (this section provides the authority for state schedule and mutual aid agreements, for example); §200.318(f) – NFEs are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs; and §200.318(g) – NFEs are encouraged to use value engineering clauses in contracts for construction projects (value engineering is a systematic and creative analysis of each contract item or task to encourage the contractor to develop more cost effective means to produce or procure requirements.).

¹⁹ Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, a time-and-materials contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. **[Note that FEMA will only reimburse costs under a time-and-materials contract for the first 70 hours of work performed. See FEMA PA Guide (2007 ed.), pg. 53.]**

- ii. Does the contract include a ceiling price that the contractor exceeds at its own risk? ☒ **Yes** ☐ **No**
- j. *Is the NFE alone* responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k) ☐ *Yes* ☐ *No*

5. **Competition:**

- a. All procurement transactions must be conducted in a manner providing **full and open competition** consistent with the standards of this section. *Does the procurement involve any of the following*²⁰ § 200.319(a):
 - i. Placing unreasonable requirements on firms in order for them to qualify to do business? ☒ **Yes** ☐ **No**
 - ii. Requiring unnecessary experience and excessive bonding? ☒ **Yes** ☐ **No**
 - iii. Noncompetitive pricing practices between firms or between affiliated companies?²¹ ☒ **Yes** ☐ **No**
 - iv. Noncompetitive contracts to consultants that are on retainer contracts?²² ☒ **Yes** ☐ **No**
 - v. Organizational conflicts of interest?²³ ☒ **Yes** ☐ **No**
 - vi. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement? ☒ **Yes** ☐ **No**
 - vii. Any arbitrary action in the procurement process? ☒ **Yes** ☐ **No**
- b. Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a) ☐ *Yes* ☐ *No*
☐ *N/A*

²⁰ This list is non-exclusive and only serves as an example of some of the types of situations that are considered to be restrictive of competition.

²¹ For example, bid suppression or bid rigging.

²² For example, out-of-scope disaster work added to the consultant’s work on retainer.

²³ See, Fns 14 & 16.

- c. *Does the contract include a state or local geographic preference for local contractors?*²⁴ § 200.319(b) **Δ Yes Δ No**
- d. Do the NFE's written procurement procedures ensure that all solicitations comply with the following: § 200.319(c)
 - i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? § 200.319(c)(1) **Δ Yes Δ No**
 - ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? § 200.319(c)(2)
┘ Yes Δ No
- e. If the NFE is using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d) **□ N/A**
 - i. Is the list current? **□ Yes □ No**
 - ii. Does the list include enough qualified sources to ensure maximum open and free competition? **□ Yes □ No**
 - iii. Were any potential bidders precluded from qualifying during the solicitation period?²⁵ **Δ Yes Δ No**

6. Method of Procurement

- a. Is the NFE using one of the following acceptable methods of procurement? § 200.320
 - i. **Micro-purchase** (i.e., purchases below \$10,000, see, §200.67 Micro-purchases). § 200.320(a) **Δ Yes Δ No**
 - 1. [Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.]
 - 2. To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers? **Δ Yes Δ No**
┘ N/A – not practicable
 - ii. **Small purchase procedures** § 200.320(b) **Δ Yes Δ No**

²⁴ Geographic preferences are generally not allowed under FEMA grants. The only exception is that when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

²⁵ Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

1. [Note: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the **lesser** of either (1) the federal small purchase threshold (i.e., \$150,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold – *if more restrictive than the federal threshold.*]
2. Did the NFE obtain price or rate quotations from an adequate number of qualified sources?²⁶ **Δ Yes Δ No**

iii. Sealed bids § 200.320(c)²⁷ Δ Yes Δ No

1. [Note: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed bidding is the preferred method for procuring construction]
2. Are *all* of the following conditions to use sealed bidding present?
§ 200.320(c)(1) **Δ Yes Δ No**
 - a. A complete, adequate, and realistic specification or purchase description is available **Δ Yes Δ No**
 - b. Two or more responsible bidders are willing and able to compete effectively for the business **Δ Yes Δ No**
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price **Δ Yes Δ No**
3. *If sealed bids are used*, the following requirements apply: § 200.320(c)(2)

²⁶ FEMA has determined that for simplified purchase procedures, an adequate number of qualified sources is considered to be three (3). See, FEMA Recovery Fact Sheet 9580.212 – Public Assistance Grant Contracting Frequently Asked Questions (FAQ), FAC No. 3.

²⁷ Sealed bidding is generally used where price is the most important evaluation factor for the NFE. Accordingly, contract award under the sealed bidding method of procurement is made to the bidder submitting *the lowest priced, responsive and responsible bid*. “Responsive” refers to whether the bidder meets all the material requirements of the Invitation for Bid (IFB), while “Responsibility” is described at § 200.318(h).

- a. Did the NFE solicit bids from an adequate number²⁸ of known suppliers, providing them sufficient response time prior to the date set for opening the bids? ☒ Yes ☐ No
- b. If the NFE is a local or tribal government, was the invitation for bids publically advertised? ☒ Yes ☐ No ☐ N/A
- c. Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond? ☒ Yes ☐ No
- d. Did the NFE open all bids at the time and place prescribed in the invitation for bids? ☒ Yes ☐ No
- e. For local and tribal governments, were the bids opened publicly? ☒ Yes ☐ No ☐ N/A
- f. Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder? ☒ Yes ☐ No
- g. If any bids were rejected, was there a sound documented reason supporting the rejection? ☐ Yes ☐ No ☐ N/A

iv. Procurement by competitive proposals²⁹ § 200.320(d) ☒ Yes ☐ No

- 1. [Note: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.]
- 2. Did the NFE publicize the Requests for Proposals (RFPs) and identify all evaluation factors and their relative importance? ☒ Yes ☐ No

²⁸ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of known sources under the sealed bidding method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.” (See fn. 26)

²⁹ Whereas contract awards under sealed bidding are focused on selecting the lowest responsive responsible bid, NFEs under the competitive procurement method may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal is more expensive but reflects a better overall value to the NFE (e.g. “best value” contracting).

3. Did the NFE solicit proposals from an adequate number of qualified sources?³⁰ **Δ Yes Δ No**
4. Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients? **Δ Yes Δ No**
5. Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? **Δ Yes Δ No**
6. [Note regarding architectural/engineering (A/E) professional services: The NFE may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.**]

v. Noncompetitive proposals § 200.320(f)³¹ Δ Yes Δ No

1. [Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s)]
2. Do one or more of the following circumstances apply? **Δ Yes Δ No**
 - a. The item is available only from a single source **Δ Yes Δ No**
 - b. The public exigency or emergency³² for the requirement will not permit a delay resulting from competitive solicitation **Δ Yes Δ No**
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in

³⁰ Unlike, for simplified purchase procedures, FEMA has not defined an "adequate number" of qualified sources under the competitive procurement method. While left undefined, a NFE is likely to meet this requirement through the application of "full and open competition."

³¹ § 200.320(e) is reserved.

³² For an explanation of what "emergency" and exigency" mean, see PDAT Manual, pg. 68.

Response to a written request from the non-Federal entity

☒ **Yes** ☐ **No**

- d. After solicitation of a number of sources, competition is determined inadequate.³³ ☐ **Yes** ☐ **No**

7. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- a. Has the NFE taken the following affirmative steps³⁴ to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?³⁵ § 200.321 ☐ **Yes** ☐ **No** ☐ **N/A (document)**
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists? ☐ **Yes** ☐ **No** ☐ **N/A (document)**
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources? ☐ **Yes**
☒ **No** ☐ **N/A – no potential sources (document)**
 - iii. Dividing total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises?³⁶ ☐ **Yes**
☒ **No** ☐ **N/A – not economically feasible (document)**
 - iv. Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and

³³ Before utilizing this exception, Applicants should review their solicitation and the publicizing of their solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Applicant should revise the solicitation and re-publicize the solicitation in order to resolve the competitive concerns.

³⁴ The following affirmative steps are non-exclusive; while these steps must be taken, additional steps, as determined by the NFE, local, state, or tribal government regulations or procedures, may also be taken.

³⁵ Collectively referred to as "socioeconomic contractors" or "socioeconomic contracting," this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps. Failure to do so has been frequently identified as a justification to de-obligate funding by the Department of Homeland Security (DHS), Office of Inspector General (OIG).

³⁶ This is not the same as breaking a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds to utilize their streamlined acquisition procedures (e.g. "project splitting.")

women's business enterprises? **Δ Yes Δ No Δ N/A – the requirement does not permit (document)**

- v. Using the services and assistance, *as appropriate*, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce **Δ Yes Δ No Δ N/A – not appropriate (document)**
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? **Δ Yes Δ No Δ N/A – no subcontracts will be let (document)**

8. Contract cost and price

- a. *If the contract amount (including contract modifications) exceeds \$150,000, did the NFE perform a cost or price analysis? § 200.323(a)* **Δ Yes Δ No Δ N/A**
- b. Did the NFE negotiate profit as a separate element of the price for each contract in *which there is no price competition and in all cases where cost analysis is performed?* § 200.323(b) **Δ Yes Δ No Δ N/A**
- c. Is the contract a “cost plus a percentage of cost” or “percentage of construction cost” contract?³⁷ [Note: This form of contract is prohibited under the Federal procurement standards and is ineligible for FEMA reimbursement]
Δ Yes Δ No

9. Bonding requirements for construction or facility improvement contracts exceeding \$150,000

- a. [Note: *For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e., \$150,000), the Federal*

³⁷ This type of contract is separate and distinct from cost plus fixed fee, cost plus incentive fee, and cost-plus award fee type contracts, which are permissible and used to incentivize contractors to perform to a higher standard of quality, lower cost, or faster performance. Cost plus percentage of cost contracts on the other hand provide none of these incentives; instead, there is a reverse incentive for the contractor to increase its costs as the higher its costs go, the more profit it earns, as its potential earnings are uncapped. The following characteristics are suggestive of a prohibited cost plus percentage of cost contract: (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the contractor's entitlement increases commensurately with increased performance costs.

Awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.]

- b.** If such a determination (see above) has not been made, does the procurement include the following? **Δ Yes Δ No Δ N/A**
- i.** A bid guarantee from each bidder equivalent to five percent of the bid price? **Δ Yes Δ No Δ N/A**
1. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- ii.** A performance bond on the part of the contractor for 100 percent of the contract price? **Δ Yes Δ No Δ N/A**
1. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- iii.** A payment bond on the part of the contractor for 100 percent of the contract price. **Δ Yes Δ No Δ N/A**
1. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

END OF CHECKLIST

EXHIBIT Q

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, **II A.**
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, **II B.**
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, **II C.**

b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R.

§ 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines

"construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant

orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance, with the Contract Work Hours and Safety Standards Act:

"Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor

contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance.** Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households - Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."
- b. If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or

performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

"Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA."

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, § I; and Chapter IV, § 6.d and Appendix C, § 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, § 6.d and Appendix C, § 2.
- d. In general, an "excluded" party claim to receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

"Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ,r 6.c and Appendix C, ,r 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

"Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor ~~certifies~~] to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, 1K; 2 C.F.R. § 200.322; Chapter V, 17.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding :fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

"(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpo/>. The list of EPA-designate items is available at [/www.e12a.oov/cpol12roducts.htm](http://www.e12a.oov/cpol12roducts.htm)."

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non- Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, **1** XXVI (2013).

- d. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements applies to this contract:

- (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract."

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, **1** XXV (2013).
-

- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval."

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations and Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

14. No Obligation by Federal Government.

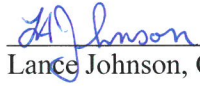
- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
 - b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related
 - c. Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."
-

ADDITIONAL INFORMATION, REQUIREMENTS AND RESPONSIBILITY

It shall be the responsibility of the Finance Department to keep this OI current.



Lance Johnson, City Manager

Adopted 06.17.2019

Resolution 19-07



Julio C. Lacayo, Jr.

Financial Management Consultant
Government Services Group, Inc.

Government Services Group, Inc.
1500 Mahan Drive, Suite 250
Tallahassee, FL 32308

Phone: 904.703.2609
Fax: 407.629.6963

jlacayo@gmail.com

Education

- Master of Public Administration, Barry University
- Bachelor of Science (BS) – Public Administration (Cum Laude), Flagler College

Other Training and Certifications

- National Incident Management System (NIMS) Training – Finance / Administration – Volunteers and Donations (ESF15)

Specialization & Background

Julio Lacayo, Jr. has held leadership finance roles in strong mayor-council and city manager forms of government, as well as with constitutional officers in the State of Florida. His distinctive experiences have allowed him to work in consulting projects for local governments in Florida.

Mr. Lacayo is a multi-lingual finance professional with over 16 years' experience in non-profit and government finance, focused on community outreach programs, and government operations.

Mr. Lacayo has demonstrated strengths in the areas of managerial and financial reporting, staff development, complex revenue forecasting & budgeting, TRIM compliance, fund accounting, and grants compliance/management. He is a member and Past President (June 2016-17) of the Florida First Coast Chapter Florida Government Finance Officers Association (FGFOA).

Accomplishments

- As Interim Deputy Finance Director for the Town of Highland Beach, managed and maintained accurate financial records of utility operations, accounts payable, procurement, payroll, general ledger, and cash remittance. Supported the finance director, police department, library, public works, building department, water utility, post office, town clerk and town manager departments. Responsibilities included oversight of accounts payable/receivable, utility billing, and human resources.
- As Director of Business Services at the Flagler County Sheriff's Office, created and managed agency budget process (\$32 mil), revenue forecasting, grants, agency payroll, cash flow, insurance & pension obligations, A/R & A/P, purchasing, and financial reporting. Analyzed spending against budget with individual departments, resolved variances, presented year end of accounts. Established financial policies, procedures, and controls to respond to changes in operational needs. Completed Federal Management Agency (FEMA) reimbursement requests and external reporting requirements.
- As Management and Budget Analyst Senior at the City of Jacksonville - Budget Office, performed revenue forecasting: Ad Valorem (\$510 mil), 5-year Fund Forecasts, State Shared, Non-departmental revenues. Departmental budgets under administration: Public Works (\$86 mil); Planning & Development (\$17.7 mil); Tax Collector's Office (\$16 mil); and Jacksonville Finance & Housing Authority. Coordinated successfully with Property Appraiser and Tax Collector to meet all TRIM deadlines for Duval County.



Krystal Strickland

CPA, CGFO, MBA, MAFM

Sr. Project Manager
Government Services Group, Inc.

Government Services Group, Inc.
1500 Mahan Drive, Suite 250
Tallahassee, FL 32308

Phone: 407.362.8817
Fax: 407.629.6963

kstrickland@govserv.com

Education

- Master Accounting and Financial Management (MAFM), Keller Graduate School
- Master Business Administration (MBA), Portland State University
- Bachelor of Arts (BA), Portland State University

Other Training and Certifications

- Certified Government Finance Officer (CGFO)
- Certified Public Accountant (CPA) Florida #AC47062
- Certified Public Accountant (CPA) California #118345

Specialization & Background

Krystal Strickland is a senior project manager who oversees a department of grant management and financial validation consultants. Ms. Strickland is the Assistant System Manager of the Highway 79 Corridor Authority, and she works on a variety of financial and management consulting projects for state and local governments in Florida.

Ms. Strickland is a multi-lingual finance and accounting professional with over 20 years' experience in non-profit and government accounting, focused on community and economic development programs, and government utilities.

Ms. Strickland has demonstrated strengths in the areas of managerial and financial reporting, staff management, complex budgeting, fund accounting, grants management debt issuance and management, and US government agency compliance. Ms. Strickland has experience applying for and managing debt from the State Revolving Loan Fund (SRF), USDA rural development, and issuance of municipal revenue bonds. Member of the AICPA, FICPA, GFOA, and FGFOA (Florida Government Finance Officers Association).

Accomplishments

- As Interim CFO for the Town of Highland Beach, led budget adoption season and managed town accounting and financial reporting while the Town was in the process of hiring a Town Manager and a qualified Finance Director. Coordinated successfully with Property Appraiser and Tax Collector to meet all TRIM deadlines. Supported a police department, library, public works, building department, water utility, post office, town clerk and town manager departments. Responsibilities included oversight of investments, utility billing, human resources, payroll, and capital project financing.
- Led preparation of annual CAFR for the Florida Governmental Utility Authority (FGUA). Led preparation and management of annual operating and capital budgets totaling over \$101 million (FY2018). Ensured bond covenant compliance and debt service for \$444 million in bonded debt for the utility authority for approximately seven years.
- Through the North Florida Broadband Authority, worked closely with construction managers to ensure smooth installation of equipment on 94 tower sites across 15 counties in North Florida.
- Over 10 years with Mercy Corps International, created and managed multi-year, multi-currency budgets for economic development and conflict prevention programs for 15 countries in Asia, Eastern Europe, Africa and the Indian sub-continent. Full cycle from proposal to close. Developed and trained staff in finance, accounting and grant compliance to account and manage governments and private grants for economic development, construction, and non-banking financial institutions.



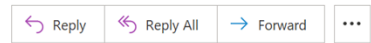
GOVERNMENT SERVICES GROUP, INC.

Authority to execute addendum with GSG



Kyle Bauman <kbauman@asglegal.com>

To  Lance Johnson



Fri 3/20/2020 11:58 AM

[CAUTION: This email originated from outside of the City of Destin email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Lance,

Pursuant to our Declaration of State of Emergency and our Procurement Policy, you have the authority as City Manager to execute the addendum with GSG.

Thanks,
Kyle

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: April 1, 2020**TYPE OF AGENDA ITEM:** City Manager Report**TO:** City Council**THRU:** Lance Johnson, City Manager**FROM:** Rey Bailey, City Clerk**DATE:** March 4, 2020**SUBJECT:** Election Services Agreement between the City of Destin and Okaloosa County Supervisor of Elections

I. BACKGROUND: At its November 4, 2019 meeting, the Destin City Council adopted Ordinance 19-11-CC moving the City's election day from the second Tuesday in March and aligns the City's election day with the State general election on the first Tuesday following the first Monday of November.

At its January 7, 2020 meeting, the Supervisor of Elections presented four cost sharing options for the Board of County Commissioners to consider for municipalities holding regularly scheduled election in conjunction with countywide general elections. The Board of County Commissioners elected to proceed with "Option 2." Option 2 provides that the County will absorb the cost of conducting municipal elections held in conjunction with countywide general elections, including cost of additional ballot cards that may be required.

Additionally, Option 2 present two add on items for the City to consider. At the City's option it may request that all legally required advertisements be published and administered by the Supervisor's office. The City would be required to reimburse the Supervisor for the actual, full cost of these advertisements. Additionally, the City may pay the Supervisor a flat fee of \$500 to handle and administer all candidate qualifying and campaign finance filings. The City Council elected to exercise both options in January 2020.

II. DISCUSSION: On March 3, 2020, the City's attorneys received a request from counsel for the Supervisor seeking to enter into a written agreement memorializing the agreement between the parties. The written agreement has been reviewed by the City's attorneys and City staff and it accurately reflects the relationship between the parties and will allow the City to hold this and future municipal elections in conjunction with the State General Election in November of even-numbered years, largely through the Supervisor's office.

A. Link to Strategic Goals / Objectives: Service Excellence

B. Effect on Budget (EOB): By holding its election in conjunction with the countywide general election in November of each even numbered year, and

if historical costs remain consistent, the City should save an average of approximately \$9,500 once every four years when compared to holding its election on the second Tuesday in March of each even numbered year.

C. Level of Service (LOS): Exercising the add-on options offered by the Supervisor and County in Option 2 will maintain the same level of service and will not increase costs as the City has long paid the Supervisor for these costs.

III. CONCLUSION:

IV. RECOMMENDED MOTION: I move to approve the proposed Election Services Agreement between the City of Destin and Okaloosa County Supervisor of Elections, direct the Mayor to execute the document, and reaffirm the City's exercise of both add-on options, as presented in the Elections Services Agreement.

Attachments:

1. Municipal Proposals from Supervisor of Elections to BOCC
2. Action Agenda - January 21, 2020
3. Proposed Election Services Agreement Between the City of Destin and Okaloosa County Supervisor of Election

Proposal

Municipalities Holding Regularly Scheduled Elections in Conjunction with Countywide General Elections

Option 1:

- \$.40 /per voter to share costs of regular ballots, poll workers, setup, delivery, recovery, and results, to include any mandatory recounts.
- Full cost of additional ballot cards (should a second card be forced by municipal races) paid by municipality.
- Optional (to the municipalities): Ads published by SOE on behalf of municipality, full cost of legal advertising paid by municipality.
- Optional (to the municipalities): \$500.00 flat fee for Supervisor of Elections' office to handle candidate qualifying and campaign finance filings.

Option 2:

- County absorbs cost of conduct of municipal elections held in conjunction with countywide general elections, including additional ballot cards.
- Optional (to the municipalities): Ads published by SOE on behalf of municipality, full cost of legal advertising paid by municipality.
- Optional (to the municipalities): \$500.00 flat fee for Supervisor of Elections' office to handle candidate qualifying and campaign finance filings.

Option 3:

- County absorbs entire cost of conduct of municipal elections held in conjunction with countywide general elections, including additional ballot cards and cost of legal advertising.
- Optional (to the municipalities): \$500.00 flat fee for Supervisor of Elections' office to handle candidate qualifying and campaign finance filings.

Option 4:

- Select a flat-rate scheme (based on the number of registered voters) that is all-inclusive but must be re-visited periodically as costs increase.
- Optional (to the municipalities): \$500.00 flat fee for Supervisor of Elections' office to handle candidate qualifying and campaign finance filings.

**ACTION AGENDA
REGULAR MEETING
DESTIN CITY COUNCIL
JANUARY 21, 2020
ANNEX COUNCIL CHAMBERS**

AGENDA APPROVAL

Councilmember Morgan requested that nomination of Mr. James Geveden to the LPA be added under his name on the agenda.

Councilmember Morgan asked that agenda item 7G(1) be placed as agenda item 4A under City Manager Report.

Councilmember Menchel requested that agenda item 7J(2) be placed as agenda item 4B under City Manager Report.

Motion to approve the agenda, as amended, passed 7-0.

1. APPROVAL OF MINUTES

A. Approval of minutes of November 4, 2019 Regular City Council Meeting

Motion to approve minutes of November 4, 2019 Regular City Council meeting passed 7-0.

2. PROCLAMATIONS / RECOGNITIONS / **SPECIAL PRESENTATIONS / ANNOUNCEMENTS

A. Parks and Recreation Committee – Presentation of Fiscal Year 2019 Accomplishments and Fiscal Year 2020 Work Plans – Ms.Teresa Hebert, Board Chair

Motion to approve the Parks and Recreation Committee's Fiscal 2019 Annual Report and Fiscal Year 2020 Work Plans passed 7-0.

B. Destin Community Event Center Project – Mr. Jay Patel, NashBuilt, Inc. COO

**3. PUBLIC COMMENTS ON AGENDA ITEMS THAT ARE NOT PUBLIC HEARINGS
AND ANY OTHER MATTERS NOT ON THE AGENDA**

4. CITY MANAGER REPORTS

A. Food for Thought Lease Agreement

Motion to instruct City staff and the City Attorney to renegotiate the terms of the lease with Food for Thought to include renewal options and to reduce the rent term to \$1 per year passed 7-0.

B. Memorandum of Understanding between the City of Destin and Okaloosa County regarding City FDEP Permit # 0288799-003-JC

Motion to approve the Memorandum of Understanding Between Okaloosa County and the City of Destin for East Pass Dredging, authorize the Mayor to execute the MOU, and direct City staff to take all actions necessary to ensure the East Pass is dredged as soon as possible passed 7-0.

C. Staff and City Land Use Attorney Update on Eglin Property

Motion to have the Parks and Recreation Committee explore this opportunity, its benefits and its costs and bring back a recommendation to the Council for consideration; to include the NCO Beach Club passed 7-0.

D. Request to Approve Consultant for Building Height Analysis

Motion to approve the proposal from Fisher Planning & Development Consultants, dated January 15, 2020, not to exceed \$18,000 payable from the City's fund balance, authorize staff to make the required budget amendments, and authorize Fisher Planning & Development Consultants to commence work pursuant to the time table set forth therein passed 7-0.

E. Airport Road Guardrail Design, authorization to execute task order

Motion to table this item passed 7-0.

Councilmember Menchel asked staff to narrow down the timeline for the actual placement of the guardrail system, and to request the Sheriff's Office adopts a "zero tolerance" policy on Airport Road.

Motion to instruct the City's Public Information Manager to work with other members of staff in putting out a public relations campaign announcing to the general public the increased speed enforcement along Airport Road by the Sheriff's Office; and to instruct staff to bring back some options and recommendations with regards to costs associated with the radar signage passed 7-0.

F. Stahlman Avenue Intersection Assessment, authorization to execute task order

Councilmember Ramswell requested they include the underground pedestrian tunnel as one of the options to consider at the Stahlman Avenue and US Hwy 98 intersection.

Motion to authorize the City Manager to execute a Task Order with Volkert Engineering to provide an assessment of the Stahlman Avenue/US Hwy 98 intersection and adjacent areas consistent with the base scope of work provided to include the Local Concerns meeting in an amount not to exceed \$64,696 to be taken from the Transportation Impact fees and to make any necessary budget amendments passed 6-1; with Councilmember Braden dissenting.

G. Development Review System Software Update

H. The City is partnering with the United States Army Corps of Engineers to conduct a Harbor Capacity Study for the Harbor and Choctawhatchee Bay areas.

Motion to form a Harbor Capacity Study Steering Committee passed 7-0.

It was the consensus of the Council to adopt an application form for the steering committee and present all completed applications to Council on the second meeting in February 2020.

I. Announcements

The City Manager made the following announcements:

- **Workshop on potential uses of half-cent sales tax on January 27th at 5:30 PM at the Annex Council Chambers**
- **Social Media/Public Records/Ethics Training on January 30th at City Hall**
- **It does not appear that streetlights are included in the plans for the Henderson Beach Drive/Commons Drive intersection. County staff recommends that the Destin City Manager or Mayor write a letter to BOCC requesting they include lights in that project for safety reasons (there was a Council consensus to send the letter)**
- **Second edition of Task Tracking Report went out on Friday. Encourage a one-on-one discussion with Council members**

5. PUBLIC HEARINGS

A. First reading of Ordinance 20-01-PC – Amending Chapter 6 of the City of Destin's Comprehensive Plan, "Coastal Management Element", providing updates to the Coastal Management Element pursuant to State law.

Motion to approve proposed Ordinance 20-01-PC and direct staff to forward the EAR report and the ordinance to the State Department of Economic Opportunity (DEO) passed 7-0.

6. *CONSENT AGENDA

- A. Valentine's Day 8k Request
- B. Draft Minutes of Standing Committee/Board Meetings

Motion to approve Consent Agenda items 6A and 6B, as printed above, passed 7-0.

7. COMMENTS/PRESENTATIONS FROM MAYOR, COUNCIL, LAND USE ATTORNEY AND CITY ATTORNEY

- A. Councilmember Braden

Will the insurance company cover the stucco repair for the Community Center?

- B. Councilmember Ramswell

Lisa Firth to contact and gather representatives from different stakeholders (i.e., Parks and Rec, lifeguards, Sheriff's Office, Okaloosa County, Code Compliance, vendors, City Attorney, etc.) to discuss beach issues before the start of the season.

- C. Councilmember Menchel

- 1) Okaloosa County Sheriff's Office "increased" traffic enforcement on Airport Road

2) Adopting a resolution specifying that the City Council meeting agenda is to be published by Thursday, prior to the meeting to which it pertains

Motion to adopt Resolution 20-2 to rescind Resolution 18-22 and upheld previous provisions of Section 6-2 of Resolution 13-15 to allow staff more time to process the agenda passed 7-0.

Update tracking report Item #5 – *Requesting additional funding from the TDC for the Sheriff's contact.* Legal opinion as referenced in 01/17/20 update has already been received from the City Attorney.

D. Councilmember Overdier
E. Councilmember Marler

1) Revisit discussion on building parking garages

Motion to revisit the parking garage issue failed 2-5 (Marler/Overdier - Yes; Morgan / Destin/Menchel/Ramswell / Braden – No.

F. Councilmember Destin

Check on status of bid document for the Capt. Royal Melvin Heritage Park with the County.

G. Councilmember Morgan

1) Nomination of Mr. James Geveden to the Local Planning Agency

Motion to appoint Mr. James Geveden to the Local Planning Agency passed 7-0.

Place Coleman Lake outfall update on the next agenda and for staff to prepare a report.

H. Mayor Gary Jarvis

I. Land Use Attorney

- 1) Pointe Mezzanine mediation set for February 5th, 2020.
- 2) Briefing on proposed legislation (SB 1128/HB 1011), dealing with Short-Term Rentals

Motion to authorize the Mayor to write a letter and to instruct the City staff and Land Use Attorney to bring back a resolution opposing the Short-Term Rental legislation proposed at the State level passed 7-0.

J. City Attorney

- 1) Update to Destin Election and request for direction

Motion to exercise both add-on options offered by the Supervisor of Elections and Okaloosa County, thereby having the Supervisor of Elections administer all legally required advertisements and public notices for the City's election, and administer all candidate qualifying and campaign finance filings passed 7-0.

8. PUBLIC COMMENTS

ADJOURNMENT: 9:10 PM

ELECTION SERVICES AGREEMENT

This Election Services Agreement (the “Agreement”) entered into this ____ day of _____, 2020, by and between the City of Destin, Florida, a Florida Municipal Corporation, (the "City") and Paul Lux, as Supervisor of Elections of Okaloosa County, Florida, (the "Supervisor").

WHEREAS, the City is seeking to conduct its regularly scheduled municipal election (the “Municipal Election”) at the General Election to be held on November 3rd, 2020 (the “General Election”);

WHEREAS, the Supervisor is willing to conduct the Municipal Election at the General Election; and

WHEREAS, this Agreement is intended to address the respective responsibilities of the parties related to the conducting of its Municipal Election at the General Election.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and the Supervisor do agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and are incorporated herein as essential terms of the Agreement.

SECTION 2: SCOPE OF SERVICES.

A. **Base Services.** The Supervisor shall agree to conduct the Municipal Election of the City at the General Election to be held on November 3, 2020 and in conjunction with the conducting of the Municipal Election, will provide the following base services (the “Base Services”):

1. The Supervisor shall conduct the Municipal Election at the General Election and to conduct the elections in compliance with the Election Laws of the State of Florida. This Agreement shall only apply to the conduct of regularly scheduled municipal elections at the General Election and shall not apply to any specially set or scheduled municipal election.
2. The Supervisor will maintain Voter Registration Roll for the City’s Municipal Election.

3. The Supervisor will conduct the Municipal Election at the same Polling Places which are being utilized for the conduct of the General Election.
4. The Supervisor will provide adequate voting equipment for conduct of the General Election, including the Municipal Election, and provide the costs associated with maintaining such equipment.
5. The Supervisor will hire, appoint and train sufficient clerks and inspectors for the conduct of the General Election, including the Municipal Election for each Polling Place.
6. The Supervisor will furnish registration records for each City Polling Place.
7. The Supervisor will provide for the production of all necessary ballots for the conduct of the General Election, including the Municipal Election, including absentee ballots.
8. The Supervisor will provide for the tabulation and counting of all votes within each precinct and provide the costs associated with tabulation and counting of the votes.
9. Following the certification of the election results for the Municipal Election, the Supervisor shall provide those results to the Clerk for the City.

B. **Costs for Base Services.** Okaloosa County has agreed to fund the cost of the Base Services in conducting the Municipal Election at the General Election without any additional contribution by the City.

C. **Optional Services.**

1. In addition to the Base Services described above, the City may request the Supervisor to perform the following Optional Services. To the extent that the City requests that the Supervisor provide the following Optional Service, it shall denote such service by placing the initials of the Mayor, or his designee, at the appropriate response as to which of the below Optional Service the City requests that the Supervisor to perform for the reimbursement of costs set forth below.

OPTIONAL SERVICES		
Accept	Reject	Optional Services
_____	_____	The City requests that the Supervisor provide all legal advertisements required under the law for the Municipal Election and in consideration for his provisions of these Optional Services agrees to pay the actual cost of all such advertising.
_____	_____	The City requests that the Supervisor handle all candidate qualification filings and manage all of the campaign finance filings for the Municipal Elections. In consideration for the Supervisor's provision of these Optional Services, the City agrees to pay the amount of \$100 for each qualified candidate in each municipal race or \$500, whichever is greater.

2. Failure to initial the acceptance of any Optional Service shall be deemed a rejection and that Optional Service shall be the sole responsibility of the City to perform and the Supervisor shall have no obligation or responsibility to perform such service.

D. **Indemnification.** It is acknowledged that the services to be provided by this Agreement are for the Base Services and for such Optional Services affirmatively selected by the City to be provided by the Supervisor. Any other service to be provided or any Optional Service rejected by the City shall be solely the responsibility of the City and the Supervisor shall have no obligation or responsibility to perform such services. The City shall indemnify the Supervisor, his employees, clerks, inspectors and volunteers from any damages, costs or liability, including attorney's fees, resulting from the failure of the City to perform any service not being provided by the Supervisor under the terms of this Agreement.

E. **Canvassing Board.** For the conduct of the Municipal Election held at the General Election pursuant to this Agreement, the County Canvassing Board established under section 102.141, Florida Statutes shall be the entity responsible for the certification of the results of the General Election, including the Municipal Election.

F. **Invoicing.** Upon conclusion of the Municipal Election, the Supervisor shall invoice the City for the cost of conducting the Municipal Election for all Optional Services provided under this Agreement. The City shall pay such amount within thirty (30) days of invoicing by the Supervisor.

SECTION 3. TERM

A. **Term.** This agreement shall become effective upon execution by all parties and shall terminate on December 31, 2021.

B. **Automatic Extension.** Unless one party notifies the other in writing prior to a term's expiration that it wishes to terminate this Agreement after the term ends, then this Agreement shall be automatically extended for an additional two-year term. This automatic extension shall continuously occur on December 31 of each odd-numbered year unless the termination provisions of this section are followed by the party wishing to terminate.

SECTION 4. REPRESENTATIONS AND WARRANTIES. Each party hereby represents and warrants to the other that it has all requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties, and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

SECTION 5. AMENDMENTS. Neither this Agreement nor any portion of it may be modified or waived orally. The provisions hereof may be amended or waived only pursuant to an instrument in writing, approved by the City and the Supervisor. This agreement shall not be assigned without the permission of all parties to the agreement.

SECTION 6. JURY TRIAL WAIVER. IN THE EVENT THAT LITIGATION IS FILED BY ANY PARTY TO ENFORCE ANY TERMS OF THIS AGREEMENT, THEN ALL PARTIES AGREE THAT THEY HEREBY WAIVE ANY RIGHT TO A JURY TRIAL ON ANY ISSUES ARISING OUT OF THIS AGREEMENT.

SECTION 7. LITIGATION. If litigation is instituted seeking to enforce the terms of this Agreement, or in any way related to this Agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in the litigation, including fees and cost incurred in any resulting appeal, and any fees and costs incurred litigating entitlement to and the reasonableness of any attorney's fees and costs.

SECTION 8. SEVERABILITY. If any one or more of the provisions of this Agreement shall be held contrary to any express provision of law or contrary to any policy of express law, then the remainder of this Agreement shall remain in full force and effect.

SECTION 9. GOVERNING LAW AND VENUE. The validity, construction and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for any action arising out of this Agreement shall be in Okaloosa County, Florida.

SECTION 10. NOTICE. If written notice to a party is required under this Agreement, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested.

As to the Supervisor as follows:

Paul Lux
Supervisor of Elections
302 N. Wilson St.
Suite 102
Crestview, FL 32536-3474

As to the City as follows:

City Manager
City of Destin
4200 Indian Bayou Trail
Destin, FL 32541

SECTION 11. SOVEREIGN IMMUNITY. The parties further agree that nothing contained herein is intended to nor shall be construed a waiver of the Supervisor's or City's rights and immunities under the common law or section 768.28, Florida Statutes, as amended from time to time.

SECTION 12. THIRD PARTY BENEFICIARY. Neither the City nor the Supervisor do not intend by any provision hereof, to create any right or benefits in favor of any person, firm, or corporation not a party to this agreement.

**SUPERVISOR OF ELECTIONS
OKALOOSA COUNTY**

CITY OF DESTIN, FLORIDA

Paul Lux, CERA
Supervisor of Elections

By: _____
Gary Jarvis, Mayor

Date: _____

Date: _____

ATTEST:

Rey Bailey, Clerk