

SECTION G - FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

- A. ACCESS TO RECORDS:** The will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. CIVIL RIGHTS LAWS AND REGULATIONS:** The Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof:
- a. Nondiscrimination.** In accordance with Federal transit law 49 USC section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - b. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC section 2000e *et seq.*, and Federal transit laws at 49 USC section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the US Department of Labor (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 USC section 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC section 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not limited to, the following, employment, promotion, 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.
 - c. Age.** In accordance with the Age Discrimination in Employment Act, 29 USC sections 621-634, US Equal Employment Opportunity Commission (US EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR part 1625, the Age Discrimination Act of 1975, as amended, 42 USC section 6101 *et seq.*, US Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90, and Federal transit law at 49 USC section 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.
 - d. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC section 794, the Americans with Disabilities Act of 1990, as amended, 42 USC section 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 USC section 4151 *et seq.*, and Federal transit law at 49 USC section

5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- C. Disadvantaged Business Enterprise (DBE):** This contract is subject to the requirements of 49 C.F.R. pt. 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 percent. The recipient's overall goal for DBE participation is 2%.

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

If a separate contract goal has been established, Contractors 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 C.F.R. § 26.53.

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

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

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

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of

payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies both to DBE and non-DBE subcontracts.

- D. 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. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.
- E. Government-wide Debarment and Suspension:** This contract is a covered transaction for purposes of 49 CFR part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR part 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the City of Winchester. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the City of Winchester, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 2 CFR part 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- F. No Government Obligation to Third Parties:** The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- G. Program Fraud and False or Fraudulent Statements and Related Acts:** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC section 3801 *et seq.* and US DOT regulations, "Program Fraud Civil Remedies," 49 CFR 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.

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 USC chapter 53, the Government reserves the right to impose the penalties of 18 USC section 1001 and 49 USC section 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

- H. 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 (DOT) 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. The Contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 USC 7704 note, except as the Federal Government determines otherwise in writing.
- I. Termination:** 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 City of Winchester may terminate this contract for default. The City of Winchester 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.
- J. 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.
- K. 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 4220.1F 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 City of Winchester requests which would cause Winchester Transit to be in violation of the FTA terms and conditions.

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