

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

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

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

**Tribal Transit Program Master Agreement
For Fiscal Year 2012**

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

TABLE OF CONTENTS

Section 1. Definitions.	11
Section 2. Tribal Transit Project Implementation.	17
a. General.	17
b. U.S. DOT Administrative Requirements.	18
c. Application of Federal, State, and Local Laws, Regulations, and Directives.	18
d. The Indian Tribe’s Primary Responsibility to Comply with Federal Requirements.	19
e. The Indian Tribe’s Responsibility to Extend Federal Requirements to Other Entities.	19
f. No Federal Government Obligations to Third Parties.	20
g. Changes in Tribal Transit Project Performance.	21
Section 3. Ethics.	22
a. Ethical Standards.	22
b. Debarment and Suspension.	23
c. Bonus or Commission.	24
d. Lobbying Restrictions.	24
e. Not Applicable.	24
f. False or Fraudulent Statements or Claims.	24
g. Trafficking in Persons.	25
Section 4. Federal Assistance.	27
Section 5. Not Applicable.	27
Section 6. Approved Project Budget.	27
a. Development and Approval.	27
b. Restrictions.	27
c. Amendment.	27
d. Transfer of Funds.	28
e. Budget Revision.	28
f. Additional Federal Funding.	28
g. Unspent Federal Funds.	28
Section 7. Accounting Records.	28
a. Retain Records.	28
b. Maintain Records.	29
c. Control of Tribal Transit Project Funds.	29

	d. Documentation of Tribal Transit Project Costs.	29
	e. Documentation of Tribal Transit Program Income.	30
	f. Checks, Orders, and Vouchers.	30
Section 8.	Reporting, Record Retention, and Access.	30
	a. Types of Reports.	30
	b. U.S. OMB Special Reporting Provisions.	30
	c. Report Formats.	32
	d. Record Retention.	33
	e. Access to Records of the Indian Tribe.	34
	f. Closeout of the Tribal Transit Project.	34
Section 9.	Payments.	34
	a. The Indian Tribe’s Payment Requests.	34
	b. FTA Payments.	34
	c. Costs Reimbursed.	37
	d. Not Applicable.	37
	e. Ineligible Costs.	37
	f. Effect of Federal Payments.	38
	g. Final Eligibility Determination.	38
	h. Closeout.	38
	i. Notification.	38
	j. Recovery of Improper Payments.	38
	k. Program Income.	39
	l. Federal Claims and Debts, Excess Payments, Disallowed Costs, Refunds Due, and Other Amounts Owed the Federal Government, Including Interest.	39
	m. De-obligation of Federal Funds.	40
Section 10.	Completion, Audit, Settlement, and Closeout of the Tribal Transit Project.	40
	a. Completion of the Tribal Transit Project.	40
	b. Audit of Indian Tribes.	40
	c. Amounts Owed to the Federal Government.	41
	d. Closeout of the Tribal Transit Project.	41
Section 11.	Right of the Federal Government to Terminate.	42
	a. Justification.	42
	b. Financial Implications.	42
	c. Expiration of Project Time Period of the Tribal Transit Project.	42
Section 12.	Civil Rights.	43
	a. Nondiscrimination – Tribal Transit Program.	43
	b. Equal Employment Opportunity.	43
	c. Contracting with Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms.	43
	d. Nondiscrimination on the Basis of Sex.	43

e. Not Applicable.	43
f. Accessibility.	43
g. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections.	45
h. Access to Services for People with Limited English Proficiency.	45
i. Environmental Justice.	45
j. Other Nondiscrimination Laws.	45
Section 13. Planning and Private Enterprise.	46
a. General.	46
b. Governmental and Private Nonprofit Providers of Nonemergency Transportation.	46
c. Not Applicable.	46
Section 14. Preference for United States Products and Services.	46
a. Not Applicable.	47
b. Cargo Preference - Use of United States-Flag Vessels.	47
c. Fly America.	47
Section 15. Procurement.	47
a. Federal Laws, Regulations, and Guidelines.	47
b. Full and Open Competition.	48
c. Exclusionary or Discriminatory Specifications.	48
d. Geographic Restrictions.	48
e. In-State Bus Dealer Restrictions.	48
f. Project Labor Agreements.	48
g. Federal Supply Schedules.	48
h. Force Account.	48
i. FTA Technical Review.	48
j. Relationship of Tribal Transit Project Approval to Third Party Contract Approval.	48
k. Preference for Recycled Products.	48
l. Clean Air and Clean Water.	49
m. National Intelligent Transportation Systems Architecture and Standards.	49
n. Rolling Stock.	49
o. Bonding.	50
p. Architectural Engineering or Related Services.	50
q. Design-Build Projects.	51
r. Award to Other than the Lowest Bidder.	51
s. Award to Responsible Contractors.	52
t. Access to Third Party Contract Records.	52
u. Electronic and Information Technology.	52
Section 16. Leases.	52
a. Capital Leases.	52
b. Not Applicable.	52

Section 17. Patent Rights.	53
a. General.	53
b. Federal Rights.	53
c. License Fees and Royalties.	43
Section 18. Rights in Data and Copyrights.	54
a. Definition of “Subject Data.”	54
b. General.	55
c. Federal Rights in Data and Copyrights.	55
d. Not Applicable.	56
e. License Fees and Royalties.	56
f. Hold Harmless.	56
g. Restrictions on Access to Patent Rights.	57
h. Data Developed Without Federal Funding or Support.	57
i. Not Applicable.	57
Section 19. Use of Real Property, Equipment, and Supplies.	58
a. Use of Tribal Transit Project Property.	58
b. General Federal Requirements.	58
c. Maintenance.	59
d. Records.	59
e. Incidental Use.	59
f. Encumbrance of Tribal Transit Project Property.	59
g. Useful Life of Tribal Transit Project Property.	60
h. Calculating the Value of Prematurely Withdrawn Tribal Transit Project Property.	61
i. Insurance Proceeds.	63
j. Transportation - Hazardous Materials.	63
k. Misused or Damaged Tribal Transit Project Property.	63
l. Disposition of Tribal Transit Project Property.	63
m. Responsibilities After Closeout of the Tribal Transit Project.	64
Section 20. Insurance.	64
a. Minimum Requirements.	64
b. Flood Hazards.	64
Section 21. Relocation.	65
a. Relocation Protections.	65
b. Nondiscrimination in Housing.	65
c. Prohibition Against the Use of Lead-Based Paint.	65
Section 22. Real Property.	65
a. Land Acquisition.	66
b. Covenant Assuring Nondiscrimination.	66
c. Not Applicable.	66

	d. FTA Approval of Changes in Real Property Ownership.	66
Section 23.	Construction.	66
	a. Drafting, Review, and Approval of Construction Plans and Specifications.	66
	b. Supervision of Construction.	66
	c. Construction Reports.	66
	d. Not Applicable.	66
	e. Seismic Safety.	66
Section 24.	Employee Protections.	67
	a. Construction Activities.	67
	b. Activities Not Involving Construction.	68
	c. Activities Involving Commerce.	68
	d. Public Transportation Employee Protective Arrangements.	68
Section 25.	Environmental Protections.	69
	a. National Environmental Policy.	69
	b. Air Quality.	70
	c. Clean Water.	71
	d. Use of Certain Public Lands.	71
	e. Wild and Scenic Rivers.	72
	f. Not Applicable.	72
	g. Wetlands.	73
	h. Floodplains.	73
	i. Endangered Species and Fishery Conservation.	73
	j. Waste Management.	73
	k. Hazardous Waste.	73
	l. Historic Preservation.	73
	m. Indian Sacred Sites.	74
	n. Mitigation of Adverse Environmental Effects.	74
Section 26.	Not Applicable.	75
Section 27.	Not Applicable.	75
Section 28.	Charter Service Operations.	75
	a. Applicability.	75
	b. Prohibition.	75
	c. Charter Service Agreement.	75
	d. Violations.	75
Section 29.	School Transportation Operations.	76
	a. Applicability.	76
	b. Prohibition.	76
	c. School Transportation Agreement.	77
	d. Violations.	77

Section 30. Metric System.	77
a. Use.	77
b. Deliverables.	77
Section 31. Not Applicable.	78
Section 32. Substance Abuse.	78
a. Drug-Free Workplace.	78
b. Alcohol Misuse and Prohibited Drug Use.	78
Section 33. Federal \$1 Coin Requirements.	78
Section 34. Not Applicable.	78
Section 35. Motor Carrier Safety.	78
a. Financial Responsibility.	79
b. Safety Requirements.	79
c. Driver Qualifications.	79
d. Substance Abuse Rules for Motor Carriers.	79
Section 36. Safe Operation of Motor Vehicles.	80
a. Seat Belt Use.	80
b. Distracted Driving, Including Text Messaging While Driving.	80
Section 37. Protection of Sensitive Security Information.	82
Section 38. Not Applicable.	82
Section 39. Not Applicable.	82
Section 40. Not Applicable.	82
Section 41. Not Applicable.	82
Section 42. Not Applicable.	82
Section 43. Not Applicable.	82
Section 44. Not Applicable.	82
Section 45. Not Applicable.	82
Section 46. Not Applicable.	82
Section 47. Not Applicable.	82
Section 48. Not Applicable.	82
Section 49. Not Applicable.	82
Section 50. Not Applicable.	82
Section 51. Not Applicable.	82
Section 52. Not Applicable.	82
Section 53. Special Provisions for Recovery Act Projects.	82
a. Identification of Recovery Act Funding.	82
b. Identification of Project(s).	83
c. Prompt Implementation.	83
d. Federal Requirements.	83
e. U.S. OMB Provisions.	83

f. One-Time Funding.	84
g. Funding Limits.	84
h. Integrity.	84
i. Violations of Law.	84
j. Maintenance of Effort.	85
k. Emblems.	85
l. Contracts Financed With Recovery Act Funds.	85
m. Future Federal Requirements and Directives.	85
Section 54. Not Applicable.	85
Section 55. Freedom of Information Act.	85
a. Applicability.	85
b. Project Records.	86
c. Confidentiality.	86
Section 56. Disputes, Breaches, Defaults, or Other Litigation.	86
a. Notification to FTA.	86
b. Federal Interest in Recovery.	87
c. Enforcement.	87
d. FTA Concurrence.	87
e. Alternative Dispute Resolution.	87
Section 57. Amendments to the Tribal Transit Project.	87
a. Changed Circumstances.	87
b. Changed Information.	87
Section 58. FTA’s Electronic Management System.	88
a. Indian Tribe Use.	88
b. TEAM System Terms.	88
Section 59. Information Obtained Through Internet Links.	88
a. Accuracy.	88
b. Relationship to the Tribal Transit Program Master Agreement.	89
c. Official Sources.	89
Section 60. Severability.	89

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

MASTER AGREEMENT

This edition of FTA's Tribal Transit Program Master Agreement has been extensively rewritten to comply with the Plain Writing Act of 2010, Pub. L. 111-274, October 13, 2010, 5 U.S.C. § 301 note.

The following terms and conditions apply to Federal assistance (funds or funding) for the Public Transportation on Indian Reservations Program (Tribal Transit Program) authorized by 49 U.S.C. § 5311(c)(1) that the Federal Transit Administration (FTA) awards through a Grant Agreement between FTA and a Federally Recognized Indian Tribe (Indian Tribe). If FTA awards 49 U.S.C. § 5311(c)(1) funding for a Tribal Transit Project, any electronic Grant Agreement indicating that the standard FTA Master Agreement applies to that Grant Agreement is incorrect. The Tribal Transit Program Master Agreement for the applicable Fiscal Year does in fact apply to the underlying Grant Agreement for the Tribal Transit Project.

Compliance

FTA and the Indian Tribe understand and agree that they both must comply with all applicable Federal laws and regulations, and should follow applicable Federal directives, except as FTA determines otherwise in writing.

In addition, the Indian Tribe needs to be sure that others participating in its Tribal Transit Project, whether as subrecipients, lessees, third party contractors, third party subcontractors, or otherwise (third party participants) comply with Federal laws and regulations, and follow Federal directives to the extent that the Indian Tribe's compliance with Federal requirements will not be compromised. An Indian Tribe or a third party participant that violates a Federal law or regulation, or fails to follow a Federal directive that applies to itself or the Tribal Transit Project may incur penalties.

FTA and the Indian Tribe understand and agree that not every provision of this Tribal Transit Program Master Agreement will apply to every Indian Tribe or every Tribal Transit Project for which FTA provides Federal funds. The type of Project, the Federal laws authorizing the Federal funding for the Tribal Transit Project, the Federal regulations governing how the Tribal Transit Project is implemented, and the Indian Tribe's legal status will determine which Federal laws, regulations, and directives apply.

This Tribal Transit Program Master Agreement includes a comprehensive listing of provisions applicable to the Tribal Transit Projects that will be funded under 49 U.S.C. § 5311(c)(1). FTA will enforce only those Federal laws, regulations, and directives that apply to the Indian Tribes, their third party participants, and their activities related to the Tribal Transit Project, as required by Federal law and regulations. Federal laws, regulations, and directives that do not apply will not be enforced.

Terminology

To determine the extent to which the provisions of this Tribal Transit Program Master Agreement do apply to the Indian Tribe and Tribal Transit Project, FTA and the Indian Tribe understand and agree that each provision of the Tribal Transit Program Master Agreement must be interpreted in view of the requirements of the Tribal Transit Program Master Agreement as a whole and the underlying Grant Agreement for the Tribal Transit Project. For the most part, we have eliminated repetitive phrases with the result that a single provision of the Tribal Transit Program Master Agreement, read apart from the rest of this Master Agreement and the underlying Grant Agreement, will not convey the extent of the requirement expressed.

For example, in this Tribal Transit Program Master Agreement:

- **References to “Federal law(s),” “Federal regulation(s),” and “Federal directive(s)” mean references to those parts of those Federal laws, Federal regulations, and Federal directives that apply to the Indian Tribe, the specific third party participant, or the Tribal Transit Project, as the context may require. FTA and the Indian Tribe understand and agree that any requirement in this Tribal Transit Program Master Agreement for compliance with “Federal law(s),” “Federal regulation(s),” and “Federal directive(s)” means compliance with “applicable Federal law(s),” “applicable Federal regulation(s),” and “applicable Federal directive(s).”**
- **New terms used in this Tribal Transit Program Master Agreement, such as “third party participant,” “third party agreement,” or “underlying grant agreement,” as well as the terms used previously have the precise meaning as specifically stated in their definitions in Section 1 of this Tribal Transit Program Master Agreement.**

Expiration Date

This Tribal Transit Program Master Agreement does not have an Expiration Date. It continues to apply to the Tribal Transit Project until modified or superseded by:

- Federal laws, regulations, or directives that become effective at a later date, or
- An amendment to the underlying Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement issued at a later date.

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

Section 1. Definitions. The Indian Tribe understands and agrees that the following definitions apply throughout this Tribal Transit Program Master Agreement, and control the meaning of the terms and conditions in this Tribal Transit Program Master Agreement:

a. *Application* means the Indian Tribe’s signed and dated request for Federal funds, including any amendment to its application, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Indian Tribe and that FTA has accepted or approved.

b. *Approval* means a deliberate written statement of a Federal Government official who is authorized to permit the Indian Tribe to take or omit an action that may not be taken or omitted without the Federal Government’s permission.

Except as FTA determines otherwise in writing:

(1) Approval of a specific action does not include permission to take or omit other similar actions,

(2) An oral permission or interpretation has no legal force, authority, or effect, and

(3) That permission may be transmitted in typewritten hard copy or electronically.

For purposes of this Tribal Transit Program Master Agreement, the definition of “approval” also applies to “concurrence” and “waiver.”

c. *Approved Project Budget*

(1) Means the most recent statement of:

(a) Project costs,

(b) The maximum amount of Federal funds for which the Indian Tribe is currently eligible,

(c) The specific tasks (including specific contingencies) covered, and

(d) The estimated cost of each task FTA has approved.

(2) As used in the “Approved Project Budget,”

(a) “Scopes” means categories of activities within a Project, and

(b) “Scope Level Codes” means category codes of activities within a Project.

(3) Data in the “Approved Project Budget” does not establish the precise boundaries of

limits of the “Scope of the Project.” FTA reserves the right to consider information other than the data displayed in the “Approved Project Budget” to establish what constitutes the “Scope of the Project” for legal or other purposes.

d. *Concurrence*, has the same meaning as the definition of *Approval* in Section 1.b.

e. *Federal Directive* includes:

(1) Any Executive Order of the President of the United States,

(2) Any Federal document signed by an authorized Federal official that provides official instructions or advice about a Federal program, such as:

(a) FTA or U.S. DOT Directives, and

(b) Published policies,

(c) Administrative practices,

(d) Circulars,

(e) Guidelines,

(f) Guidance, or

(g) Letters signed by an authorized Federal official.

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

g. *Federal Transit Administration* means:

(1) An operating administration of the U.S. Department of Transportation (U.S. DOT), and

(2) Designates the former Urban Mass Transportation Administration (also referred to as UMTA), so that any reference to the Urban Mass Transportation Administration is recognized to be a reference to the Federal Transit Administration, when appearing in any of the following records of the United States:

(a) Law,

(b) Map,

(c) Regulation,

- (d) Document,
- (e) Paper, or
- (f) Other.

h. *Federal Transit Administrator* means:

(1) The head of the Federal Transit Administration, and

(2) Designates the former Urban Mass Transportation Administrator, so that any reference to the Urban Mass Transportation Administrator is recognized to be a reference to the Federal Transit Administrator, when appearing in any of the following records of the United States:

- (a) Law,
- (b) Map,
- (c) Regulation,
- (d) Document,
- (e) Paper, or
- (f) Other.

i. *FTA* is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”

j. *Federally Recognized Indian Tribe* means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended.

k. *Grant Agreement* under the Tribal Transit Program means an instrument FTA uses to award Federal funds authorized by 49 U.S.C. § 5311(c)(1) to a specific Indian Tribe to support a particular Tribal Transit Project in which FTA does not take an active role or retain substantial control over. The Grant Agreement:

(1) Usually includes:

- (a) The FTA Award establishing the Tribal Transit Project’s boundaries or limits,
- (b) The Indian Tribe’s signed Execution statement,
- (c) FTA’s latest Tribal Transit Program Master Agreement, which is incorporated by

reference and made part of the Grant Agreement for the specific Tribal Transit Project, and

(2) Sometimes includes:

- (a) Special Conditions,
- (b) Special Requirements,
- (c) Special Provisions, or
- (d) Conditions of Award.

l. *Indian Tribe*, as used in this Tribal Transit Program Master Agreement, means a Federally Recognized Indian Tribe that receives Tribal Transit Program assistance authorized by 49 U.S.C. § 5311(c)(1) directly from FTA to support its Tribal Transit Project. As used in this Tribal Transit Program Master Agreement, “Indian Tribe” means a Grantee or Recipient of Tribal Transit Program funds.

m. *Project* means, for purposes of this Tribal Transit Program Master Agreement,

(1) The activity or activities (task or tasks) of a Grant Agreement for the Tribal Transit Project listed in:

- (a) The Project Description,
- (b) The Approved Project Budget,
- (c) Any modifications identified in the Conditions of Award of the underlying Grant Agreement, and
- (d) Any other Special Conditions, Requirements, or Provisions that apply to the Tribal Transit Project.

(2) For purposes of legal interpretations and other matters, FTA reserves the right to consider information other than the data displayed in FTA’s electronic management system under “Scopes” and “Scope Level Codes” of the “Approved Project Budget” to determine what constitutes the “Scope of the Project” or eligible Tribal Transit Project activities.

n. *Public Transportation*, for purposes of the Federal transit program, has the same meaning as “transit,” and “mass transportation,” and:

- (1) Includes transportation by a conveyance that provides regular and continuing:
 - (a) General transportation to the public, or

- (b) Special transportation to the public, but
- (2) Does not include:
- (a) Schoolbus transportation,
 - (b) Charter transportation,
 - (c) Sightseeing transportation,
 - (d) Intercity bus transportation, or
 - (e) Intercity passenger rail transportation provided by Amtrak or a successor to the entity described in 49 U.S.C. chapter 243 (Amtrak).
- o. *Recipient*, for purposes of this Tribal Transit Program Master Agreement, means the Indian Tribe that receives Federal funds directly from FTA to support its Tribal Transit Project. Unless FTA determines otherwise in writing, it includes:
- (1) The entire legal entity of which the Indian Tribe “Recipient” identified in the underlying Grant Agreement for the Tribal Transit Project is a part, and
 - (2) Each party to, member of, or participant in the multi-party entity identified as the “Recipient” in the underlying Grant Agreement for the Tribal Transit Project, including:
 - (a) A consortium,
 - (b) A partnership,
 - (c) A joint venture,
 - (d) A team, or
 - (e) Other multi-party organization,
- p. *Subagreement* means an agreement through which the Indian Tribe awards Federal assistance funds to a subrecipient. The term “subagreement” also includes the term “subgrant,” but does not include the terms “third party contract,” “third party subcontract,” or “lease.”
- q. *Subrecipient* means any entity that receives Federal assistance funds awarded by an FTA Recipient, rather than by FTA directly. The term “subrecipient” also includes the terms “subgrantee,” but does not include “third party contractor,” “third party subcontractor,” or “lessee.”
- r. *Third Party Agreement*, for purposes of this Tribal Transit Program Master Agreement unless

FTA determines otherwise in writing, includes the following agreements or arrangements financed in whole or part with Federal funds FTA awarded to the Indian Tribe as a Recipient:

- (1) Subagreements with subrecipients,
- (2) Leases,
- (3) Third party contracts,
- (4) Third party subcontracts, and
- (5) Other similar arrangements or agreements.

s. *Third Party Contract* means a contract or purchase order awarded by the Indian Tribe as a Recipient to a contractor or vendor, financed in whole or in part with Federal funds awarded by FTA. It does not include the terms “subagreement,” or “lease.”

t. *Third Party Participant*, for purposes of this Tribal Transit Program Master Agreement unless FTA determines otherwise in writing, includes all participants in the Tribal Transit Project that are not the Indian Tribe Recipient or FTA, such as:

- (1) Subrecipients,
- (2) Lessees,
- (3) Third party contractors,
- (4) Third party subcontractors, and
- (5) Other participants in the Indian Tribe’s Tribal Transit Project.

u. *Third Party Subcontract* means a subcontract that is entered into by the third party contractor or third party subcontractor at any tier and that is financed in whole or in part with Federal funds originally derived from FTA.

v. *Tribal Transit Program* means the Public Transportation on Indian Reservations Program authorized by 49 U.S.C. § 5311(c)(1) that provides Federal funds directly to Federally Recognized Indian Tribes.

w. *Tribal Transit Project* means the underlying Project financed with Tribal Transit Program funds authorized by 49 U.S.C. § 5311(c)(1) that FTA has awarded to an Indian Tribe.

x. *Underlying Grant Agreement*, for purposes of this Tribal Transit Program Master Agreement, means the specific Grant Agreement that provides a specified amount of Federal funding for the Tribal Transit Project.

y. *U.S. DOT* is the acronym for the United States Department of Transportation, including its operating administrations

w. *Waiver* has the same meaning as the definition of *Approval* in Section 1.b.

Section 2. Implementation of the Tribal Transit Project.

a. General. The Indian Tribe, as the Recipient, agrees to carry out the Tribal Transit Project as follows:

(1) Project Description. The Indian Tribe agrees to perform the work as described its Application, which is incorporated by reference in the approved Grant Agreement for the Tribal Transit Project.

(2) Effective Date. The Effective Date of the underlying Grant Agreement or Amendment to that Grant Agreement is the date when the FTA Authorized Official has awarded Federal funds for the Tribal Transit Project, which is displayed in the underlying Grant Agreement or Amendment to that Grant Agreement. The Indian Tribe agrees to undertake Tribal Transit Project work promptly after receiving notice that FTA has awarded Federal funds for the Tribal Transit Project.

(3) The Indian Tribe's Capacity. The Indian Tribe agrees to maintain sufficient legal, financial, technical, and managerial capacity to:

(a) Plan, manage, and complete the Tribal Project and provide for the use of Tribal Transit Project property,

(b) Carry out the safety and security aspects of the Tribal Transit Project, and

(c) Comply with:

1 The underlying Grant Agreement,

2 This Tribal Transit Program Master Agreement,

3 The Approved Project Budget,

4 Tribal Transit Project schedules,

5 The Indian Tribe's annual Certifications and Assurances, and

6 Federal laws and regulations, and

(4) Follow Federal directives, except as FTA determines otherwise in writing.

(4) Completion Dates. The Indian Tribe agrees to complete the Tribal Transit Project within a reasonable time. Nevertheless, except as otherwise specified, FTA and the Indian Tribe agree that milestone dates and other Tribal Transit Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

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

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

(1) Federal Laws, Regulations, and Directives. The Indian Tribe agrees that:

(a) Federal laws and regulations are Federal requirements that control Tribal Transit Project award and implementation. The Indian Tribe understands and agrees it may violate Federal laws or regulations, the underlying Grant Agreement, or this Tribal Transit Program Master Agreement if it adopts an alternative procedure or course of action without first securing FTA’s approval in writing.

(b) Federal directives, as defined in this Tribal Transit Program Master Agreement, provide Federal guidance. FTA strongly encourages the Indian Tribe to follow Federal directives to ensure compliance with Federal requirements.

(c) Federal laws, regulations, and directives that apply to the Tribal Transit Project and the Indian Tribe when the FTA Authorized Official awards Federal funds for the Tribal Transit Project may be modified from time to time.

(d) New Federal laws, regulations, and directives may become effective after the Indian Tribe executes the underlying Grant Agreement, and might apply to that Grant Agreement.

(e) The most recent of Federal laws, regulations, and directives will apply to its Tribal Transit Project at any specific time, except as FTA determines otherwise in writing by:

- 1 Special Condition within the underlying Grant Agreement,
- 2 Special Requirement within the underlying Grant Agreement,
- 3 Special Provision within the underlying Grant Agreement,
- 4 Condition of Award within the underlying Grant Agreement,
- 5 Change to an FTA directive, or

6 Letter to the Indian Tribe signed by an authorized FTA official.

(d) All standards or limits in the underlying Grant Agreement and this Tribal Transit Program Master Agreement are minimum requirements, except as FTA determines otherwise in writing.

(e) It will include in each third party agreement notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Tribal Transit Project, except as FTA determines otherwise in writing.

(2) Pre-emption of State, Territorial, and Local Law. If a Federal law pre-empts a State, territorial, or local law, regulation, or ordinance:

(a) The Indian Tribe must comply with Federal law and regulations.

(b) The underlying Grant Agreement and this Tribal Transit Program Master Agreement, however, do not require the Indian Tribe to take any action that would violate tribal, State, territorial, or local law, regulations, or ordinances.

(c) If compliance with any provision of Federal law or regulations, the underlying Grant Agreement, or this Tribal Transit Program Master Agreement violates or would require the Indian Tribe to violate any tribal, State, territorial, or local law, regulation, or ordinance, the Indian Tribe agrees to:

1 Notify FTA immediately in writing, and

2 Make appropriate arrangements with FTA to:

a Proceed with the Tribal Transit Project or,

b Terminate the Tribal Transit Project expeditiously, if necessary.

d. The Indian Tribe's Primary Responsibility to Comply with Federal Requirements. The Indian Tribe agrees that it, rather than any other entity, including any third party participant, is ultimately responsible for full compliance with Federal laws and regulations, Federal directives, the underlying Grant Agreement for the Tribal Transit Project, and this Tribal Transit Program Master Agreement, except if the Federal Government, through appropriate official action, relieves the Indian Tribe of part or all responsibility to the Federal Government.

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

(1) Entities Affected. Only the Indian Tribe and FTA are parties to the underlying Grant Agreement. Nevertheless, the Indian Tribe and FTA need the cooperation of other third party participants to attain compliance with certain Federal laws, regulations, and directives. Therefore,

(a) The Indian Tribe agrees to ensure that each third party participant complies with applicable Federal laws and regulations, and follows Federal directives, except as FTA determines otherwise in writing.

(b) If a third party participant is expected to fulfill any responsibilities typically performed by the Indian Tribe, the Indian Tribe agrees to ensure that the third party participant carries out the Indian Tribe's responsibilities as provided in the underlying Grant Agreement or this Tribal Transit Program Master Agreement.

(2) Agreements Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which they affect a third party participant and the Tribal Transit Project. Thus, the Indian Tribe agrees to use a written third party agreement to ensure that the third party participant complies with Federal laws and regulations and follows Federal directives, except as FTA determines otherwise in writing. Specifically, the Indian Tribe agrees that:

(a) Required Provisions. Its third party agreement will include all appropriate provisions stating the third party participant's responsibilities under Federal laws, regulations, and directives, except as FTA determines otherwise in writing.

(b) Flowdown. Its third party agreement will include any necessary provisions requiring the third party participant to include Federal provisions in its subagreements and other third party agreements to the lowest tier required, except as FTA determines otherwise in writing.

(c) Performance of the Indian Tribe's Responsibilities. When a third party agreement requires the third party participant to undertake Tribal Transit Project activities and responsibilities usually performed by the Indian Tribe, that third party agreement must include appropriate provisions that would extend the provisions normally applicable to the Indian Tribe by the underlying Grant Agreement or this Tribal Transit Program Master Agreement to the third party participant performing the Indian Tribe's responsibilities, except as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. Except as the Federal Government expressly consents in writing, the Indian Tribe agrees that:

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

(a) The Tribal Transit Project,

(b) Any third party participant at any tier, or

(c) Any other person or entity that is not a party (Indian Tribe or FTA) to the underlying Grant Agreement.

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Tribal Transit Project, the Federal Government has no obligations or liabilities to any:

(a) Third party participant, or

(b) Any other person or entity that is not a party (Indian Tribe or FTA) to the underlying Grant Agreement for the Tribal Transit Project.

g. Changes in Performance of the Tribal Transit Project. The Indian Tribe agrees to notify the FTA Regional Counsel for the Region in which it operates public transportation or implements the Project, or the Headquarters manager for the Tribal Transit Project and Chief Counsel immediately in writing in the following circumstances:

(1) Changes in Laws or Conditions. Any change that may adversely affect its ability to carry out the Tribal Transit Project under the terms of the underlying Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement, such as:

(a) A change in State or local law,

(b) Changed conditions, including its:

1 Legal capacity,

2 Financial capacity,

3 Technical capacity, or

(c) Any other serious event,

(2) Adverse Actions. Any current or prospective legal matter with potentially serious consequences, such as:

(a) A major dispute,

(b) A breach,

(c) A default, or

(d) Litigation,

(3) Federal Concerns. Any matter, including any change or adverse action described in Sections 2.g(1) and 2.g.(2) of this Tribal Transit Program Master Agreement, that may adversely affect the Federal Government's:

- (a) Interests in the Tribal Transit Project, or
- (b) Administration or enforcement of Federal laws or regulations,

(4) Federal Government as “Party.” An action such as naming the Federal Government as a party to litigation in any forum for any reason.

Section 3. Ethics.

a. Ethical Standards. The Indian Tribe agrees to maintain a written code or standards of conduct governing the performance of their officers, employees, or agents engaged in selection, the award, and administration of third party contracts, providing, at a minimum that:

(1) Conflicts of Interest. The Indian Tribe’s officers, employees, board members or agents may not participate in selection, award, or administration of a federally funded third party agreement at any tier if a real or apparent personal or organizational conflict of interest would result.

(a) Personal Conflicts of Interest. A personal conflict of interest occurs when:

1 Any of the following people affiliated with the Indian Tribe:

a An officer, employee, board member, or agent,

b Any immediate family member, an officer, employee, board member, or agent, or

c The partner of an officer, employee, board member, or agent,

2 Either:

a Has a financial or other interest in an entity under consideration or selected for award, or

b Is an employee, or about to be an employee, of an entity under consideration or selected for award.

(b) Organizational Conflicts of Interest. An organizational conflict of interest includes, but is not limited to, a condition that occurs when the Tribal Transit Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage to:

1 That third party participant or another third party participant performing the Tribal Transit Project work, or

2 Impairs that third party participant's objectivity in performing the Tribal Transit Project work.

(2) Gifts. Gifts include gratuities, favors, or anything of monetary value.

(a) Prohibitions. The Indian Tribe's officers, employees, board members, or agents may not solicit or accept anything of monetary value (gift) from a present or potential third party participant of any type.

(b) Exceptions. The Indian Tribe may permit its officers, employees, board members, or agents to accept a gift, however, provided that:

1 The financial value of the gift is insubstantial, or

2 The gift is an unsolicited item of nominal intrinsic value.

(3) Penalties. Penalties, sanctions, or other disciplinary actions must be established for violations of the code or standards of conduct by the Indian Tribe's officers, employees, board members, or agents, or by their third party participants or their agents, as permitted by State or local law or regulations.

b. Debarment and Suspension. The Indian Tribe agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:

(a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,

(b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at <http://epls.gov/>, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:

(a) Federal debarment and suspension requirements, and

(b) Review the “Excluded Parties Listing System” at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations, 2 C.F.R. Part 1200.

c. Bonus or Commission. The Indian Tribe affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain Federal funding for its Tribal Transit Project.

d. Lobbying Restrictions. The Indian Tribe agrees that as provided by 31 U.S.C. § 1352(a), it will not use Federal funds to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a Member of Congress, to award or extend the underlying Grant Agreement.

e. Not Applicable.

f. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Indian Tribe acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Tribal Transit Project:

1 The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and

2 U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31.

(b) By executing the underlying Grant Agreement:

1 It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to the Federal Government in connection with the Tribal Transit Project.

2 It acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Indian Tribe makes, presents, or submits to the Federal Government, a false, fictitious, or fraudulent:

a Claim,

b Statement,

c Submission,

d Certification,

e Assurance, or

f Representation.

(2) Criminal Fraud. The Indian Tribe acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Tribal Transit Project:

1 Federal transit law, specifically 49 U.S.C. § 5323(1), and

2 18 U.S.C. § 1001

(b) That Federal Government may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

1 Claim to the Federal Government,

2 Statement to the Federal Government,

3 Submission to the Federal Government,

4 Certification to the Federal Government,

5 Assurance to the Federal Government, or

6 Representation to the Federal Government.

g. Trafficking in Persons. The Indian Tribe agrees to comply with:

(1) Subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

(2) This Section 3.g(2) of this Tribal Transit Program Master Agreement, containing the following award terms excerpted from “U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 C.F.R. Part 175, which FTA has included at the direction of U.S. OMB:

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

1 Employee means either:

a An individual who is employed by the Indian Tribe and who is participating in the underlying Grant Agreement, or

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

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

3 Private entity:

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

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

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

5 Commercial sex act has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

6 Coercion has the meaning given in section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(b) Duties of Each Indian Tribe. The Indian Tribe agrees to:

1 Inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Section 3.g(2)(c) of this Tribal Transit Program Master Agreement below.

2 That FTA may unilaterally terminate its funding for the underlying Agreement. FTA's right to terminate unilaterally:

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

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

3 Include Section 3.g(2)(a)3 of this Tribal Transit Program Master Agreement in any subagreement it enters into with a private entity, as defined in Section 3.g(2)(a) of this Master Agreement.

(c) Prohibitions. The Indian Tribe agrees that it and its employees that participate in the underlying Grant Agreement may not--

1 Engage in severe forms of trafficking in persons during the period of time that the underlying Grant Agreement is in effect,

2 Procure a commercial sex act during the period of time that the underlying Grant Agreement is in effect, or

3 Use forced labor in the performance of the underlying Grant Agreement.

Section 4. Federal Assistance.

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

Section 5. Not Applicable.

Section 6. Approved Project Budget.

Except as FTA determines otherwise in writing, the Indian Tribe agrees that:

a. Development and Approval. It will prepare a budget for its Tribal Transit Project that, upon approval by FTA, will be designated the "Approved Project Budget," and will be incorporated by reference and made part of the underlying Grant Agreement.

b. Restrictions. It will incur costs for its Tribal Transit Project and withdraw Tribal Transit Project funds only as permitted by the latest Approved Project Budget.

c. Amendment. It will obtain FTA approval:

(1) Before:

(a) Amending the Approved Project Budget, and

(b) Seeking an accompanying amendment to the underlying Agreement,

(2) Except if the amended “Approved Project Budget” would be only a re-allocation among budget items or fiscal years that:

(a) Does not increase the total amount of Federal funding, or

(b) Change the scope of the underlying Grant Agreement.

d. Transfer of Funds. It will obtain written FTA approval before making transfers of funds not expressly authorized in Federal laws, regulations, FTA circulars, or other applicable Federal directives.

e. Budget Revision. It will obtain advance written approval for any budget revision that would require additional Federal funding.

f. Additional Federal Funding. An award of additional Federal funds will require a new Approved Project Budget.

g. Unspent Federal Funds. It will inform FTA promptly if it believes it will have unspent Federal funds after the Tribal Transit Project’s performance period ends.

Section 7. Accounting Records.

As provided by Federal laws, regulations, and directives, except as FTA determines otherwise in writing, the Indian Tribe agrees that:

a. Retain Records. It will retain all Tribal Transit Project account and financial documents related in whole or in part to the Tribal Transit Project, including:

(1) Checks,

(2) Payrolls,

(3) Invoices,

(4) Contracts,

(5) Vouchers,

(6) Orders,

(7) Other financial documents, and

(8) Other accounting documents.

b. Maintain Records. It will maintain Tribal Transit Project account and financial records:

- (1) Readily accessible for review,
- (2) Clearly identified with the Tribal Transit Project, and
- (3) As feasible, separate from records not related to the Tribal Transit Project.

c. Control of Tribal Transit Project Funds. It will:

(1) Deposit all Federal funds it receives in a financial institution; FTA encourages the Recipient to use financial institutions owned at least fifty (50) percent by minority group members, and

(2) As provided by Federal laws, regulations, and Federal directives, except as FTA determines otherwise in writing, record in the Tribal Transit Project account:

- (a) All amounts the Federal Government provides to the Indian Tribe, and
- (b) All other funds provided for, accruing to, or otherwise received on account of the Project (Project funds).

d. Documentation of Tribal Transit Project Costs. It will support:

- (1) Tribal Transit Project costs, including:
 - (a) Any approved property or
 - (b) Any approved services,
- (2) With by detailed descriptions of the type and justification for the costs:
 - (a) Properly executed payrolls,
 - (b) Time records,
 - (c) Invoices,
 - (d) Contracts,
 - (e) Vouchers, or
 - (f) Other appropriate records.

e. Documentation of Tribal Transit Program Income. It will maintain accurate records of all program income derived from Tribal Transit Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

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

Section 8. Reporting, Record Retention, and Access.

a. Types of Reports. Except as determined otherwise in writing, the Indian Tribe agrees to provide to FTA, and to others if FTA so directs:

(1) All reports required by Federal laws, regulations, and directives,

(2) The underlying Grant Agreement for its Tribal Transit Project, this Tribal Transit Program Master Agreement, and

(2) Any other reports FTA may specify.

b. U.S. OMB Special Reporting Provisions.

(1) Authority. U.S. OMB has issued regulatory guidance in Title 2, Code of Federal Regulations, instructing Federal agencies to include the following special “award terms” as authorized by the following Federal laws:

(a) Federal Funding Accountability and Transparency Act of 2006 (FFATA),

(b) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Pub. L. 110-252, June 30, 2008, which amended the FFATA, and

(c) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417, Oct. 14, 2008, which further amended the FFATA.

(2) Universal Identifier and Central Contractor Registration. The Indian Tribe agrees to comply with the following award terms in “Appendix A” of U.S. OMB guidance, “Universal Identifier and Central Contractor Registration,” 2 C.F.R. Part 25, which FTA has included in this Tribal Transit Program Master Agreement at the direction of U.S. OMB:

(a) Requirement for Central Contractor Registration (CCR). Unless exempted from the Central Contractor Registration Requirement (CCR) as provided by 2 C.F.R. § 25.110, the Indian Tribe agrees:

1 To maintain the currency of its information in the CCR until the later of the following:

a It submits its final financial report required by the underlying Grant Agreement and this Tribal Transit Program Master Agreement, or

b It receives the final payment under the Tribal Transit Project, whichever is later.

2 That it must review and update its information in the CCR at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a Federal or federally assisted agreement, law, regulation, or regulatory guidance that U.S. OMB might issue.

(b) Definitions. For purposes of Section 8.b(2) of this Tribal Transit Program Master Agreement, the Indian Tribe agrees that the following definitions apply:

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

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

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

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

b A foreign public entity,

c A domestic or foreign nonprofit organization,

d A domestic or foreign for-profit organization, and

(b) Reporting Total Compensation of Indian Tribe Executives.

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

a The total Federal funding authorized to date for the underlying Grant Agreement is \$25,000 or more,

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

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

(ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal funds subject to the Transparency Act, Pub. L. 109-282, as defined in 2 C.F.R. § 170.320 (and subawards), and

c The public does not have access to information about the compensation of the Indian Tribe executives through periodic reports filed under:

(i) Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a),

(ii) Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or

(iii) Section 6104 of the Internal Revenue Code of 1986.

To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.

2 Where and when to report. The Indian Tribe agrees to report executive total compensation described in Section 8.b(3)(b) of this Tribal Transit Program Master Agreement:

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

b By the end of the month after the month in which the underlying Grant Agreement is made, and annually thereafter.

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

c. Report Formats. The Indian Tribe agrees that:

(1) FTA may specify the formats of all reports, documents, or information:

- (a) Developed under the Tribal Transit Project,
 - (b) Required to be submitted to FTA, and
 - (c) Intended to be provided to the public,
- (2) FTA may specify:
- (a) Typewritten hard copy formats,
 - (b) Electronic formats, and
 - (c) Other formats as FTA determines, and
- (3) Electronic submissions must comply with the Federal electronic accessibility requirements of:
- (a) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and
 - (b) U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194.
- d. Record Retention. As the Federal Government may require, the Indian Tribe agrees to maintain intact and readily accessible:
- (1) Types of Records. All records related in whole or in part to the Tribal Transit Project as follows:
- (a) Data,
 - (b) Documents,
 - (c) Reports,
 - (d) Records,
 - (e) Subagreements,
 - (f) Leases,
 - (g) Third party contracts,
 - (h) Arrangements,

- (i) Other third party agreements of any type, and
- (j) Supporting materials related to the foregoing records.

(2) Retention Period. All records listed in Section 8.d(1), from the beginning of the Tribal Transit Project, through the course of the Tribal Transit Project, until three years after the Indian Tribe has submitted its final expenditure report and other pending matters are closed.

e. Access to Records of Indian Tribe. The Indian Tribe agrees to provide, and also require its third party participants at each tier to provide, the following people sufficient access to inspect and audit the Tribal Transit Project, as required by 49 U.S.C. § 5325(g):

(1) The U.S. Secretary of Transportation, and the Secretary's duly authorized representatives,

(2) The Comptroller General of the United States, and his or her duly authorized representatives, and

(3) State officials, and their duly authorized representatives.

f. Closeout of the Tribal Transit Project. The Indian Tribe agrees that closeout of the Tribal Transit Project does not alter the reporting and record retention requirements of this Section 8.

Section 9. Payments.

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

a. The Indian Tribe's Payment Requests. Except as FTA determines otherwise in writing, when seeking Federal payments for Tribal Transit Project costs, the Indian Tribe agrees that:

(1) It will identify all sources of Federal funds from which the payment is to be derived, and

(2) It will submit to FTA all financial and progress reports required to date, and

b. FTA Payments. The Indian Tribe agrees that FTA will make all payments of Federal funds through the Automated Clearing House (ACH) payment method regardless of the amount, but not before the Indian Tribe has executed the underlying Grant Agreement, except as FTA determines otherwise in writing. FTA determines whether permit payments will be through a "letter of credit" or require "requisitions."

(1) Electronic Clearing House Operation Payments. The Indian Tribe agrees that if payment is made by letter of credit through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Indian Tribe agrees:

- (a) Federal Regulations and Directives. It will comply with:
- 1 FTA ECHO requirements, which implement:
 - a U.S. Department of Treasury (U.S. Treasury), “Treasury Financial Manual,” Vol. 1, Part 6, Chapter 2000, “Cash Advances Under Federal Grant and Other Programs,” and
 - b U.S. Treasury Circular 1075, Part 205, “Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs,” contained within the preceding “Treasury Financial Manual,” Vol. 1, Part 6, Chapter 2000,
 - 2 The ECHO System Operations Manual, “Guidelines for Disbursements,” and
 - 3 This Section 9.b(1) of this Tribal Transit Program Master Agreement.
- (b) Limited to Tribal Transit Project Expenses. It will withdraw Federal funds only to pay eligible Tribal Transit Project expenses.
- (c) Immediate Use. The Indian Tribe agrees that:
- 1 It will not withdraw Federal funds until actually needed for immediate payment of Tribal Transit Project expenses, and
 - 2 It will use those funds for payment of Tribal Transit Project expenses no later than three (3) days after receiving those funds, except as the Federal Government permits otherwise in writing.
- (d) Limits. It will not withdraw more than the sum of Federal funds the Federal Government has awarded in the underlying Grant Agreement for its Tribal Transit Project or the current available balance for its Tribal Transit Project, whichever is less.
- (e) Control. It will provide for control and accountability for all Federal funds consistent with Federal requirements and procedures for use of the ECHO system.
- (f) Reporting. It will report its cash payments and balances promptly, unless FTA determines otherwise in writing.
- (g) Penalties. If it fails to comply with this Section 9.b(1), it may incur or be subjected to remedies and penalties, including, but not limited to the following:
- 1 Access to FTA’s ECHO System. The Federal Government may revoke or suspend the Indian Tribe’s ECHO Control Number and access to the ECHO System if the Indian Tribe:

a Fails to use those funds to pay Tribal Transit Project costs within three (3) days,

b Fails to return withdrawn but unspent funds to the Federal Government within a reasonable time, or

c Fails to establish procedures to minimize the time elapsing between advances of Federal funds and payments of Tribal Transit Project costs.

2 Interest. The Indian Tribe agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” specifically 31 C.F.R. § 901.9(i). The amount of interest due may be determined by:

a The amount of interest the Indian Tribe demonstrates it earned on its premature withdrawals of Federal funds,

b The amount of interest based on the “Treasury tax and loan account” rate prescribed by 31 U.S.C. § 3717 for debts owed to the United States, or

c An amount of interest as the Federal Government otherwise determines.

3 Revocation of Funds. The Federal Government may revoke the unexpended portion of Federal funds awarded for the Tribal Transit Project.

(2) Requisition. If FTA uses the requisition payment method, the Indian Tribe agrees that:

(a) Indian Tribe Responsibilities. The Indian Tribe agrees that it will complete and submit:

1 “Payment Information Form – Echo-ACH Payment System, Revised 10/92” to FTA’s Accounting Division, and

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

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

1 FTA will approve payment by direct deposit, provided that the Indian Tribe:

a Has complied with the underlying Grant Agreement and this Tribal Transit Program Master Agreement,

b Has satisfied FTA that the Federal funds requested are needed for Tribal Transit Project purposes in that requisition period, and

c Is making adequate progress toward completion of the Tribal Transit Project.

2 After demonstrating satisfactory compliance with the requirements of the preceding Section 9.b(2) of this Tribal Transit Program Master Agreement, FTA may reimburse the Indian Tribe's apparent allowable costs incurred (or to be incurred in the requisition period), if consistent with the Approved Project Budget for the Tribal Transit Project, but not to exceed the maximum amount of Federal funds that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. Except as FTA determines otherwise in writing, the Indian Tribe agrees that Tribal Transit Project costs must be:

(1) Consistent with the Tribal Transit Project Description, the Approved Project Budget, the underlying Grant Agreement, and this Tribal Transit Program Master Agreement,

(2) Necessary to carry out the Tribal Transit Project,

(3) Reasonable for the property or services acquired,

(4) The actual net costs (the price paid minus any refunds, rebates, or other items of value it has received that reduced the costs it actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the underlying Grant Agreement,

(6) Satisfactorily documented,

(7) Treated consistently as provided in federally approved accounting principles and procedures, and

(8) Eligible for Federal funding under Federal laws, regulations, and directives, including U.S. DOT regulations pertaining to allowable costs, specifically 49 C.F.R. § 18.22(b), which identify the applicable Federal cost principles as U.S. OMB, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225.

d. Not Applicable.

e. Ineligible Costs. The Indian Tribe understands and agrees that, except as FTA determines otherwise in writing, FTA will treat the following ineligible costs as excluded costs:

(1) Any Tribal Transit Project cost the Indian Tribe has incurred before the Effective Date of the underlying Grant Agreement or any Amendment to that underlying Grant Agreement,

unless otherwise permitted by Federal law, regulation, or directive, accompanied by FTA's written approval,

(2) Any cost not included in the latest Approved Project Budget,

(3) Any cost for Tribal Transit Project property or services received in connection with a third party agreement that is required to be, but has not been, concurred in or approved in writing by FTA,

(4) Any ordinary governmental or nonproject operating cost as prohibited by 49 U.S.C. § 5323(h),

(5) Any profit or fee the Indian Tribe seeks for its services in connection with the underlying Grant Agreement, and

(6) Any cost ineligible for FTA participation as provided by Federal laws or regulations, as provided in Federal directives.

f. Effect of Federal Payments. The Indian Tribe understands and agrees that any payment made for a Tribal Transit Project cost does not constitute:

(1) The Federal Government's final decision about the eligibility of the cost for payment under the Tribal Transit Project, and

(2) A waiver of any violation of any Federal law or regulation, the underlying Grant Agreement, or this Tribal Transit Program Master Agreement.

g. Final Eligibility Determination. The Indian Tribe acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the Tribal Transit Project audit has been completed.

h. Closeout. The Indian Tribe agrees that Project closeout will not alter:

(1) Its responsibility to return any amounts due the Federal Government resulting from later refunds, corrections, or other similar transactions;

(2) The Federal Government's right to disallow costs and recover funds based on a later audit or other review.

i. Notification. The Federal Government will notify the Indian Tribe in writing if it determines that the Indian Tribe is not entitled to receive any portion of the Federal funds paid.

j. Recovery of Improper Payments. Unless prohibited by Federal law or regulation, the Federal Government may recover any funds necessary to satisfy any outstanding monetary claims it may have against the Indian Tribe.

k. Program Income. The Recipient agrees as follows:

(1) State, Local, or Indian Tribal Governments. After FTA and the Recipient have entered into the underlying Agreement, FTA may permit a Recipient that must comply with 49 C.F.R. Part 18 to add program income to funds committed to that Project, and use that program income for purposes of and under the conditions of the underlying Agreement, in addition to uses authorized by 49 C.F.R. § 18.25.

(2) Costs Associated With Program Income. Except as FTA determines otherwise in writing, the costs incident to the earning program income may be deducted from the gross income when determining program income, if these costs have not been charged to the underlying Grant Agreement.

l. Federal Claims and Debts, Excess Payments, Disallowed Costs, Refunds Due, and Other Amounts Owed the Federal Government, Including Interest.

(1) The Indian Tribe's Responsibility to Pay. The Indian Tribe agrees that:

(a) After receiving notice of specific amounts due, whether for:

- 1 Excess payments for disallowed costs,
- 2 Refunds due and amounts recovered from third parties or other sources,
- 3 Claims or debts, or
- 4 Other funds it owes to the Federal Government,

(b) It will pay the Federal Government the amounts it owes, including:

- 1 Interest,
- 2 Penalties, and
- 3 Administrative charges.

(2) Amount of Interest. The Indian Tribe agrees that the method by which interest is calculated depends on which process the Federal Government uses to recover the funds owed. The Indian Tribe therefore understands and agrees to pay the amount of interest to the Federal Government determined as follows:

(a) Federal Claims or Debts Under the Debt Collection Act. When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3701 *et seq.* to collect claims or debts owed by the Indian Tribe for any reason as

authorized under that Act (including excess payments and disallowed costs), the Indian Tribe agrees that the amount of interest it will owe will be determined by:

1 Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or

2 Common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

(b) Other Processes. When the Federal Government uses methods other than the 31 U.S.C. 3701 *et seq.* and 31 C.F.R. Part 900 procedures to recover moneys owed by the Indian Tribe for any reason, the Indian Tribe agrees that common law interest due will be determined:

1 By joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. Part 900, specifically 31 C.F.R. § 901.9(i), or

2 As FTA may determine otherwise.

m. De-obligation of Federal Funds. The Indian Tribe agrees that the Federal Government may de-obligate unexpended Federal funds before closeout of the Tribal Transit Project.

Section 10. Completion, Audit, Settlement, and Closeout of the Tribal Transit Project.

a. Completion of the Tribal Transit Project. Within ninety (90) calendar days after completion or termination of the Tribal Transit Project, the Indian Tribe agrees to submit:

(1) Its final Financial Status Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425),

(2) A certification of Tribal Transit Project expenses, and

(3) The necessary Tribal Transit Project audit reports.

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

(1) Audits Required. It will obtain the following audits:

(a) Annual “Single Audit”. Financial and compliance audits that comply with:

1 The Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*,

2 49 C.F.R. § 18.26, if the Indian Tribe is a State, Local, or Indian Tribal Government,

3 OMB Circular A-133, Revised, “Audits of States, Local Governments, and Non-Profit Organizations,”

4 The latest OMB A-133 Compliance Supplement for U.S. DOT Supplement, and any revision to that OMB Compliance Supplement, and

(b) Other Audits. Other audits the Federal Government may require.

(2) Auditing Standards. It will conform to U.S. Government Accountability Office (U.S. GAO) “Government Auditing Standards” in conducting audits.

(3) Costs of Audits. Audit costs for Tribal Transit Project administration and management are allowable as authorized by Federal Cost Principles in U.S. OMB, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225.

c. Amounts Owed to the Federal Government. The Indian Tribe agrees to return to the Federal Government:

(1) Any excess Federal payments it receives for disallowed costs,

(2) Any amounts it recovers from third parties or other sources, and

(3) Any penalties, interest, and administrative charges required by Section 9.1 of this Tribal Transit Program Master Agreement.

d. Closeout of the Tribal Transit Project. The Indian Tribe agrees that closeout of the Tribal Transit Project:

(1) Occurs when FTA notifies the Indian Tribe that the Tribal Transit Project is closed, and either:

(a) Approves the final Federal payment, or

(b) Acknowledges receipt of the proper refund.

(2) Does not alter its audit responsibilities, and

(3) Does not invalidate any continuing requirements of:

(a) Federal law, regulations, or directives,

(b) The underlying Grant Agreement for the Tribal Transit Project or this Tribal Transit Program Master Agreement, or

- (c) FTA's final notice or acknowledgment of closeout of the Tribal Transit Project.

Section 11. Right of the Federal Government to Terminate.

a. Justification. After receiving notice, the Indian Tribe agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding to be provided for the Tribal Transit Project for the following reasons:

(1) The Indian Tribe has violated the underlying Grant Agreement or this Tribal Transit Program Master Agreement, especially if that violation would endanger substantial performance of the Tribal Transit Project,

(2) Any failure to make reasonable progress on the Tribal Transit Project, or

(3) The Federal Government determines that the continuation of Federal funding for the Tribal Transit Project does not adequately serve the purposes of the law authorizing the Tribal Transit Project.

b. Financial Implications. The Indian Tribe agrees that:

(1) In general, termination of Federal funding for the Tribal Transit Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.

(2) The Federal Government may:

(a) Require the Indian Tribe to refund:

1 The entire amount of Federal funds provided for the Tribal Transit Project, or

2 Any lesser amount as the Federal Government may determine,

(b) If the Federal Government determines that the Indian Tribe has willfully misused Federal funds by:

1 Failing to make adequate progress,

2 Failing to make appropriate use of Tribal Transit Project property, or

3 Failing to comply with the underlying Grant Agreement or this Tribal Transit Program Master Agreement.

c. Expiration of Project Time Period for the Tribal Transit Project. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Tribal

Transit Project does not, by itself, constitute an expiration or termination of the underlying Grant Agreement.

Section 12. Civil Rights.

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

a. Nondiscrimination – Tribal Transit Program. The Indian Tribe agrees to comply with, and assures each third party participant will comply with:

(1) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,

(2) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21, and

b. Equal Employment Opportunity. The Indian Tribe agrees to, and assures that each third party participant will, comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

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

d. Nondiscrimination on the Basis of Sex. The Indian Tribe agrees to comply with the following Federal prohibitions against discrimination on the basis of sex:

(1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*, and

(2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25.

e. Not Applicable.

f. Accessibility. The Indian Tribe agrees to comply with Federal prohibitions against discrimination against elderly individuals or individuals with disabilities of:

(1) The following Federal laws:

(a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,

(b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

(c) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities,

(d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) The following Federal regulations:

(a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,

(b) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27,

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38,

(d) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35,

(e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36,

(f) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19,

(g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630,

(h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F,

(i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194,

(j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609, and

(3) Other applicable Federal civil rights and nondiscrimination directives.

g. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Indian Tribe agrees to comply with the confidentiality and civil rights protections of:

(1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and

(3) The Public Health Service Act, as amended, 42 U.S.C. 290dd – 290dd-2.

h. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

(1) Facilitating compliance with and following Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

i. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 *Fed. Reg.* 18377, April 15, 1997.

j. Other Nondiscrimination Laws. The Indian Tribe agrees to comply with other applicable Federal nondiscrimination laws and regulations, and follow Federal directives prohibiting discrimination, except as the Federal Government determines otherwise in writing.

Section 13. Planning and Private Enterprise.

a. General. The Indian Tribe agrees that:

(1) Its Tribal Transit Project will be consistent with documents, including a formal plan, if any, provided to FTA in support of the development and basis of the Tribal Transit Project.

(2) Its Tribal Transit Project is or will be coordinated with transportation service assisted by other Federal sources to the maximum extent feasible.

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. Federal transit law, specifically 49 U.S.C. § 5323(k):

(1) Assures to the extent feasible the following entities opportunities to become involved in FTA projects:

(a) Federally funded governmental agencies that:

1 Receive funds for nonemergency transportation, but

2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(b) Federally funded nonprofit organizations that:

1 Receive funds for nonemergency transportation, but

2 Do not receive funds for nonemergency transportation from U.S. DOT, and

(2) Provides to the extent feasible those entities described in the preceding Section 13(b)(1) of this Tribal Transit Program Master Agreement, as feasible, the opportunity to:

(a) Participate and coordinate with FTA recipients in the design and delivery of FTA funded transportation services, and

(b) Be included in planning FTA funded transportation services.

c. Not Applicable.

Section 14. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees to comply with the following U.S. domestic preference requirements:

a. Not Applicable.

b. Cargo Preference - Use of United States-Flag Vessels. Shipping requirements of:

(1) 46 U.S.C. § 55305, and

(2) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.

c. Fly America. Air transportation requirements of:

(1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and

(2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.

Section 15. Procurement.

The Indian Tribe agrees not to use FTA funds for third party procurements unless there is satisfactory compliance with Federal requirements. Therefore:

a. Federal Laws, Regulations, and Guidance. The Indian Tribe agrees:

(1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,

(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36, and other applicable Federal regulations that affect its third party procurements as may be later amended,

(3) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and

(4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the “Best Practices Procurement Manual” may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.

b. Full and Open Competition. The Indian Tribe agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and 49 C.F.R. § 18.36(c).

c. Exclusionary or Discriminatory Specifications. The Indian Tribe agrees not to use any FTA Project funds for any procurement based on exclusionary or discriminatory specifications, as provided by 49 U.S.C. § 5325(h), unless authorized by other applicable Federal law or regulations.

d. Geographic Restrictions. The Indian Tribe agrees not to use any State or local geographic preference, except:

(1) A preference expressly mandated by Federal law, or

(2) A preference permitted by FTA. *For example*, in procuring architectural engineering, or related services, the contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

e. In-State Bus Dealer Restrictions. The Indian Tribe agrees that any State law requiring buses to be purchased through in-State dealers will not apply to purchases of vehicles funded by 49 U.S.C. chapter 53, as provided by 49 U.S.C. § 5325(i).

f. Project Labor Agreements. As a condition of contract award, the Indian Tribe may require a third party contractor or subcontractor to have an affiliation with a labor organization, such as a project labor agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 41 U.S.C. ch. 39, Refs. & Annos., except as the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. The Indian Tribe agrees that it may not use Federal Supply Schedules to acquire federally assisted property or services, except as permitted by Federal laws or regulations, U.S. GSA, U.S. DOT, FTA, or as provided in Federal directives or determinations.

h. Force Account. The Indian Tribe agrees that FTA may determine the amount of Federal funds it may use for its force account costs.

i. FTA Technical Review. The Indian Tribe agrees that FTA may review and approve its technical specifications and requirements as FTA believes necessary to ensure proper Project administration of the Tribal Transit Project.

j. Relationship of Tribal Transit Project Approval to Third Party Contract Approval. The Indian Tribe agrees that FTA's award of Federal funds for the Tribal Transit Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Tribal Transit Project, except as FTA determines otherwise in writing.

k. Preference for Recycled Products. Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient by:

(1) Complying and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and

(2) Complying with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

l. Clean Air and Clean Water. The Indian Tribe agrees to include in each third party agreement exceeding \$100,000, adequate provisions to ensure that each third party participant will agree to:

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

(2) Refrain from using any violating facilities,

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

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

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

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

m. National Intelligent Transportation Systems Architecture and Standards. The Indian Tribe agrees to use its best efforts to:

(1) Conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and

(2) Follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 *Fed. Reg.* 1455, January 8, 2001, and any other applicable implementing Federal directives, except as the Federal Government determines otherwise in writing.

n. Rolling Stock. The Indian Tribe agrees to comply, with the following procurement requirements for FTA funded rolling stock:

(1) Method of Acquisition. Each third party contract award for rolling stock will be based on any of the following factors in compliance with 49 U.S.C. § 5325(f):

(a) Initial capital costs,

(b) Performance,

(c) Standardization,

- (d) Life cycle costs,
- (e) Other relevant factors, or
- (f) Another competitive procurement process.

(2) Multi-year Options. As required by 49 U.S.C. § 5325(e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts with options supported with funds authorized by 49 U.S.C. chapter 53 may not exceed five (5) years after the date of the original contract.

(3) Not Applicable.

(4) Bus Testing. Complete the bus testing required by:

- (a) Federal transit law, specifically 49 U.S.C. § 5318(e), and
- (b) FTA regulations, “Bus Testing,” 49 C.F.R. Part 665.

o. Bonding. The Indian Tribe agrees to comply with the following bonding requirements and restrictions as required by Federal regulations and guidance, except to the extent FTA determines otherwise in writing:

(1) Construction. As provided by Federal regulations and modified by FTA directives, it will provide the following bonds for construction activities:

- (a) Bid guarantee,
- (b) Contract performance, and
- (c) Payment bonds.

(2) Activities Not Involving Construction. For Tribal Transit Project activities not involving construction:

- (a) It will not impose excessive bonding, and
- (b) It will follow applicable FTA guidance.

p. Architectural Engineering or Related Services. When procuring architectural engineering or related services funded under 49 U.S.C. chapter 53 or under any other law requiring the Tribal Transit Project to be administered under 49 U.S.C. chapter 53, the Indian Tribe agrees comply, with the following requirements or 49 U.S.C. § 5325(b):

(1) It and its subcontractors at any tier:

(a) Will negotiate for these services in the same manner as a contract for those services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Will comply with an equivalent State qualifications-based requirement for contracting for those services, if the State has adopted that type of law before August 10, 2005.

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

(a) Will use the FAR cost principles of 48 C.F.R. Part 31 when carrying out and auditing its third party contracts or subcontracts.

(b) Will accept the indirect cost rates established by a cognizant Federal or State government agency consistent with FAR requirements that apply for one-year accounting periods, if those rates are not currently under dispute.

(c) After the indirect cost rates are accepted by a cognizant Federal or State government agency, will use those indirect cost rates for contract or subcontract estimation, negotiation, administration, reporting, and payment without limitation by administrative or de facto ceilings.

(d) As required by 49 U.S.C. § 5325(b)(2)(D), together with the members of any group of entities sharing cost or rate data described in the preceding Section 15.p(2)(c) of this Tribal Transit Program Master Agreement, do the following:

1 Will notify any affected firm before requesting or using that data,

2 Will maintain the confidentiality of that data, and assure that the data is not accessible or provided to others, and

3 Will not disclose that data under any circumstances if prohibited by 49 U.S.C. § 5325(b) or other applicable law.

q. Design-Build Projects. As provided in 49 U.S.C. § 5325(d)(2), the Indian Tribe may use a design-build procurement to carry out its Tribal Transit Project after it has complied with Federal laws, and regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing.

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

s. Award to Responsible Contractors. The Indian Tribe agrees that:

(1) Capability. It will award third party contracts only to contractors able to carry out the procurement successfully, as provided by 49 U.S.C. § 5325(j), and

(2) Criteria. Before awarding a third party contract, it will consider the proposed contractor's:

(a) Integrity,

(b) Compliance with public policy,

(c) Past performance, including any performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), and

(d) Financial and technical resources.

t. Access to Third Party Contract Records. The Indian Tribe agrees to require, and assures that its s will require, their third party contractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Tribal Transit Project management as determined by FTA.

u. Electronic and Information Technology. The Indian Tribe agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements of:

(1) Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and

(2) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

Section 16. Leases. The Indian Tribe agrees that:

a. Capital Leases. It will comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639.

b. Not Applicable.

Section 17. Patent Rights.

a. General. The Indian Tribe agrees that:

(1) Depending on the nature of the Tribal Transit Project, the Federal Government may acquire rights when the Indian Tribe or third party participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery.

(2) The Federal Government's rights arise when the patent or patentable information is:

- (a) Conceived under the Tribal Transit Project, or
- (b) Reduced to practice under the Tribal Transit Project.

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of this Tribal Transit Program Master Agreement, the Indian Tribe agrees to:

- (a) Notify FTA immediately, and
- (b) Provide a detailed report satisfactory to FTA.

b. Federal Rights. The Indian Tribe agrees that:

(1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Indian Tribe agrees to transmit the Federal Government's patent rights to FTA as specified in:

- (a) 35 U.S.C. 200 *et seq.*, and
- (b) 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.

c. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from Tribal Transit Project are program income.

(2) The Indian Tribe has no obligation to the Federal Government with respect to those license fees or royalties, except:

(a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and

(b) As FTA determines otherwise in writing.

Section 18. Rights in Data and Copyrights.

a. Definition of “Subject Data”. As used in this Section 18 of this Tribal Transit Program Master Agreement, “subject data” means recorded information that:

(1) Copyright. Are copyrighted or not copyrighted,

(2) Delivery. Are delivered or specified to be delivered under the underlying Grant Agreement, and

(3) Examples. Include, but are not limited to:

(a) Computer software,

(b) Standards,

(c) Specifications,

(d) Engineering drawings and associated lists,

(e) Process sheets,

(f) Manuals,

(g) Technical reports,

(h) Catalog item identifications, and

(i) Related information.

(4) Exceptions. “Subject data” do not include:

- (a) Financial reports,
- (b) Cost analyses, or
- (c) Other similar information used for Tribal Transit Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the underlying Grant Agreement:

(1) Prohibitions. The Indian Tribe may not:

- (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or
- (b) Permit others to do so.

(2) Exceptions. The prohibitions of the preceding Section 18.b(1) of this Tribal Transit Program Master Agreement do not apply:

- (a) To publications or reproductions for the Indian Tribe’s own internal use,
- (b) To an institution of higher learning,
- (c) To the portion of data that the Federal Government has previously released or approved for release to the public, or
- (d) To the portion of data that has the Federal Government’s prior written consent for release.

c. Federal Rights in Data and Copyrights. The Indian Tribe agrees as follows:

(1) License Rights. The Indian Tribe must provide the Federal Government a license to “subject data” that is:

- (a) Royalty-free,
- (b) Non-exclusive, and
- (c) Irrevocable.

(2) Uses. The Federal Government’s license must the permit it to:

- (a) Reproduce the subject data,

- (b) Publish the subject data,
- (c) Otherwise use the subject data, and
- (d) Permit others to use the subject data for Federal Government purposes.

(3) Federal Government Purposes. As used in this Section 18 of this Tribal Transit Program Master Agreement, “for Federal Government purposes,” means that:

- (a) The Federal Government may use its license only for its own direct purposes, and
- (b) The Federal Government may not provide or otherwise extend to other parties, without the copyright owner’s consent, its license to:

1 Any subject data developed and funded at any tier through the underlying Grant Agreement, and

2 Any rights of copyright to which the Indian Tribe or third party participant purchases ownership using Federal funds.

d. Not Applicable.

e. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

(1) License fees and royalties for copyrighted material or trademarks derived from the Tribal Transit Project are program income.

(2) The Indian Tribe has no obligation to the Federal Government with respect to those license fees or royalties, except:

(a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and

(b) As FTA determines otherwise in writing.

f. Hold Harmless. Upon request by the Federal Government, the Indian Tribe agrees that:

(1) Violation by the Indian Tribe. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government’s officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,

(a) If it willfully or intentionally violates:

1 Any proprietary rights,

2 Copyrights, or

3 Right of privacy,

(b) Occurring from any of the following uses of Tribal Transit Project data:

1 Publication,

2 Translation,

3 Reproduction,

4 Delivery,

5 Use, or

6 Disposition.

(2) Violation by Federal Officers, Employees or Agents. The Indian Tribe will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f(1) caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Tribal Transit Program Master Agreement pertaining to rights in data either:

(1) Implies a license to the Federal Government under any patent, or

(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. The Indian Tribe understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.

(1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Tribal Transit Program Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Tribal Transit Project.

(2) Identification of Information. The Indian Tribe understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential.”

i. Not Applicable.

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

The Indian Tribe understands and agrees that the Federal Government retains a Federal interest in all federally funded real property, equipment, and supplies (Tribal Transit Project property) until, and to the extent, the Federal Government removes that Federal interest. Therefore:

a. Use of Tribal Transit Project Property. The Indian Tribe agrees to maintain continuing control of the use of Tribal Transit Project property satisfactory to FTA.

(1) Use for Tribal Transit Project Purposes. The Indian Tribe agrees to use Tribal Transit Project property for appropriate Tribal Transit Project purposes (including joint development purposes as well as uses that provide program income to support public transportation):

(a) For the duration of the useful life of that property, which may extend beyond the duration of the underlying Grant Agreement, and

(b) Consistent with other requirements FTA may impose.

(2) Delay or Failure to Use Tribal Transit Project Property. The Indian Tribe agrees that the Federal Government may require it to return the entire amount of Federal funds spent on that property if, during its useful life, the Indian Tribe has:

(a) Unreasonably delayed using its Tribal Transit Project property, or

(b) Failed to use its Tribal Transit Project property.

(3) The Indian Tribe further agrees to notify FTA immediately when:

(a) It uses any Tribal Transit Project property in a manner substantially different from:

1 The representations in its Application or other documents submitted in support of the underlying Grant Agreement, or

2 The requirements of the underlying Grant Agreement including this Tribal Transit Program Master Agreement. or

(b) It withdraws any Tribal Transit Project property from Tribal Transit Project use.

b. General Federal Requirements.

(1) Indian Tribal Government. The Indian Tribe agrees that it will comply with the property management standards of 49 C.F.R. §§ 18.31 – 18.34,

(b) Comply with other Federal regulations as applicable, and

(c) Follow Federal directives as applicable, except as FTA determines otherwise in writing.

(2) Reimbursement. The Indian Tribe also agrees that it will comply with FTA's reimbursement requirements for premature dispositions of certain Tribal Transit Project equipment, stated in this Section 19.g of this Tribal Transit Program Master Agreement and FTA directives, except as FTA determines otherwise in writing.

c. Maintenance. The Indian Tribe agrees that it will maintain its Tribal Transit Project property in good operating order, as required by Federal laws and regulations, and as provided in Federal directives, except as FTA determines otherwise in writing.

d. Records. The Indian Tribe agrees that:

(1) Record-keeping. It will keep satisfactory records of its use of the Tribal Transit Project property, and

(2) Provide Information. Upon request, it will provide FTA the information required to assure compliance with this Section 19 of this Tribal Transit Program Master Agreement.

e. Incidental Use. The Indian Tribe agrees that:

(1) General. Any incidental use of Tribal Transit Project property will not exceed that permitted under Federal laws or regulations and as provided in Federal directives.

(2) Alternative Fueling Facilities. As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally funded alternative fueling facilities and equipment, only if:

(a) The incidental use does not interfere with its public transportation operations or the Tribal Transit Project,

(b) It fully recaptures all costs related to the incidental use from the nontransit public entity or private entity,

(c) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation, and

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

f. Encumbrance of Tribal Transit Project Property. Absent the express written consent of the Federal Government, the Indian Tribe agrees to preserve the Federal interest in and maintain satisfactory continuing control of its Tribal Transit Project property as follows:

(1) Written Transactions. The Indian Tribe agrees that it will not execute any of the following documents if doing so would either adversely affect the Federal interest in or impair its continuing control of the use of its Tribal Transit Project property:

- (a) Transfer of title,
- (b) Lease,
- (c) Lien,
- (d) Pledge,
- (e) Mortgage,
- (f) Encumbrance,
- (g) Third party contract,
- (h) Subagreement,
- (i) Grant anticipation note,
- (j) Alienation,
- (k) Innovative finance arrangement, such as:
 - 1 A cross border lease,
 - 2 A leveraged lease, or
 - 3 Otherwise, or
- (l) Any other obligation affecting the Tribal Transit Project property,

(2) Oral Transactions. The Indian Tribe agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Tribal Transit Project property that would either adversely affect the Federal interest in or impair its continuing control of the use of its Tribal Transit Project property, and

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

g. Useful Life of Tribal Transit Project Property. The Indian Tribe agrees that:

(1) Determining the Useful Life. FTA may establish the useful life of Tribal Transit Project property, and

(2) Required Use. It will use Tribal Transit Project property continuously and appropriately throughout the useful life of that property.

(3) Expired Useful Life. When the useful life of Tribal Transit Project property has expired, it will comply with FTA's disposition requirements.

(4) Premature Withdrawal. The Federal Government retains a Federal interest in the fair market value of Tribal Transit Project property prematurely withdrawn from appropriate use. Therefore:

(a) Notice. It will notify FTA immediately when any Tribal Transit Project property is prematurely withdrawn from appropriate use, whether by:

1 Planned withdrawal,

2 Misuse, or

3 Casualty loss.

(b) Amount of Federal Interest. The Federal interest in the Tribal Transit Project property will be determined on the basis of the ratio of the Federal funds provided for the Tribal Transit Project property to the actual cost of that property.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Indian Tribe agrees that if its Tribal Transit Project property is prematurely withdrawn from appropriate use:

1 It will return an amount equal to the remaining Federal interest in the withdrawn Tribal Transit Project property to the Federal Government, or

2 With FTA approval, it will invest an amount equal to the remaining Federal interest in the withdrawn property in like-kind property that is eligible for funding within the scope of the Tribal Transit Project that provided Federal funds for the property that has been prematurely withdrawn from use.

h. Calculating the Value of Prematurely Withdrawn Tribal Transit Project Property. The Indian Tribe agrees that the fair market value of Tribal Transit Project property prematurely withdrawn from Tribal Transit Project use will be calculated as follows:

(1) Equipment and Supplies. Except as FTA determines otherwise in writing:

(a) The fair market value of Tribal Transit Project equipment and supplies will be

calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA.

(b) The fair market value of the withdrawn Tribal Transit Project equipment and supplies will be based on their value immediately before the occurrence prompting their withdrawal from appropriate use,

1 Irrespective of whether the Tribal Transit Project property was withdrawn from use due to fire, casualty, or natural disaster, and

2 Irrespective of the extent of insurance coverage.

(2) Real Property. The Indian Tribe agrees that the fair market value of real property financed under the Tribal Transit Project shall be determined by:

(a) Competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24,

(b) Straight line depreciation of improvements to the real property coupled with the value of the land as determined by FTA on the basis of appraisal, or

(c) Other applicable Federal law or regulations.

(3) Exceptional Circumstances. The Indian Tribe agrees as follows:

(a) The Federal Government may require another method to be used to determine the fair market value of Tribal Transit Project property withdrawn from service.

(b) In unusual circumstances, the Indian Tribe may request that another reasonable valuation method be used including, but not limited to:

1 Accelerated depreciation,

2 Comparable sales, or

3 Established market values.

(c) In determining whether to approve such a request, the Federal Government may consider any:

1 Action the Indian Tribe took,

2 Omission the Indian Tribe made, or

3 Unfortunate occurrence the Indian Tribe suffered.

i. Insurance Proceeds. The Indian Tribe agrees to use any insurance proceeds it receives for the damaged or destroyed Tribal Transit Project property as follows:

(1) Replacement. It may apply those insurance proceeds to the cost of replacing the damaged or destroyed Tribal Transit Project property, or

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

j. Transportation - Hazardous Materials. When transporting any hazardous materials, the Indian Tribe agrees to comply with U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173.

k. Misused or Damaged Tribal Transit Project Property. If any damage to Tribal Transit Project property results from abuse or misuse occurring with the Indian Tribe's knowledge and consent, the Indian Tribe agrees that:

(1) Restore. It will restore the damaged property to its original condition, or

(2) Refund. It will refund the value of the Federal interest in that property, as the Federal Government may require.

l. Disposition of Tribal Transit Project Property. The Indian Tribe understands and agrees as follows:

(1) Methods. With prior FTA approval, the Indian Tribe may dispose of Project property in the following ways and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects as permitted by 49 U.S.C. § 5334(h)(4).

(a) Lease. Except as the Federal Government has determined otherwise in writing, if it leases Project property to another party, it will:

1 Use a written lease or another similar document to:

a Retain ownership of the leased property,

b Assure that the lessee will use the property appropriately, and

2 Provide a copy of the lease and any relevant documents to FTA upon request.

(b) Transfer.

1 Indian Tribe's Request. It may transfer any Tribal Transit Project property funded under 49 U.S.C. chapter 53 to a local governmental authority provided if:

- a The Tribal Transit Project property will be used for a public purpose,
- b The Federal Transit Administrator approves the transfer, and
- c The transfer conforms with 49 U.S.C. §§ 5334(h)(1) – 5334(h)(3).

2 Federal Government Direction. The Indian Tribe agrees that the Federal Government may require it to transfer title to any federally funded Tribal Transit Project property, as provided by 49 C.F.R. Part 18.

(c) Sale. If it sells Tribal Transit Project property, the Indian Tribe agrees to use the sales procedures in 49 C.F.R. Part 18.

(2) Use of Proceeds. As permitted by 49 U.S.C. § 5334(h)(4), the Indian Tribe may use the proceeds to reduce the gross project cost of other eligible capital public transportation projects.

m. Responsibilities After Closeout of the Tribal Transit Project. Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees that closeout of the Tribal Transit Project will not change the Indian Tribe's property management requirements of:

- (1) Federal laws, regulations, and directives effective now or at a later date, and
- (2) This Section 19 of this Tribal Transit Program Master Agreement.

Section 20. Insurance.

In addition to other insurance requirements that may apply, the Indian Tribe agrees that:

a. Minimum Requirements. At a minimum, it will comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except as the Federal Government determines otherwise in writing.

b. Flood Hazards. It will comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Tribal Transit Project activity involving:

- (1) Construction having an insurable cost of \$10,000 or more, or
- (2) An acquisition having an insurable cost of \$10,000 or more.

Section 21. Relocation.

The Indian Tribe agrees to provide fair and equitable treatment to displaced people and businesses resulting from any interest in real property acquired for the Tribal Transit Project, irrespective of whether Federal funding is used to pay the cost of that real property interest. The Indian Tribe agrees that:

a. Relocation Protections. When people or businesses must be relocated for Tribal Transit Project purposes, it will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5324(a),

(2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and

(3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

b. Nondiscrimination in Housing. When it must provide housing to comply with Federal relocation requirements for individuals, it will:

(1) Comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*, and

(2) Facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note, except as the Federal Government determines otherwise in writing.

c. Prohibition Against the Use of Lead-Based Paint. If it constructs or rehabilitates residential structures on behalf of people displaced by the Tribal Transit Project, it will not use lead-based paint, and will comply with:

(1) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and

(2) U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

Section 22. Real Property.

The Indian Tribe agrees to provide fair and equitable treatment to persons whose real property or interests in real property is acquired for the Tribal Transit Project resulting from any interest in real property acquired for the Tribal Transit Project. The Indian Tribe agrees that:

a. Land Acquisition. Irrespective of Federal participation in the cost of real property acquired for the Tribal Transit Project, it will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5324(a),

(2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and

(3) U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24.

b. Covenant Assuring Nondiscrimination. It will include a covenant in the title of the real property acquired for the Tribal Transit Project to assure nondiscrimination during the useful life of the Tribal Transit Project.

c. Not Applicable.

d. FTA Approval of Changes in Real Property Ownership. It will not dispose of, modify the use of, or change the real property title or any other interests in the site and facilities used in the Tribal Transit Project without permission and instructions from FTA.

Section 23. Construction.

Except as the Federal Government determines otherwise in writing, the Indian Tribe agrees that:

a. Drafting, Review, and Approval of Construction Plans and Specifications. It will comply with FTA recommendations and determinations pertaining to the drafting, review, and approval of its construction plans and specifications.

b. Supervision of Construction. It will maintain competent and adequate engineering supervision at the construction site of the Tribal Transit Project to ensure that the completed work conforms to the approved plans and specifications.

c. Construction Reports. It will provide progress reports, information, and other data required by FTA or the State in which the construction takes place.

d. Not Applicable.

e. Seismic Safety. The Indian Tribe agrees that:

(1) It will comply with:

(a) The Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*,

(b) U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117, and

(2) Except as the Federal Government determines otherwise in writing, it will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note.

Section 24. Employee Protections.

a. Construction Activities. The Indian Tribe agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing protections for construction employees involved in Tribal Transit Project activities:

(1) Prevailing Wage Requirements.

(a) FTA’s Davis-Bacon Related Act, specifically 49 U.S.C. § 5333(a),

(b) The Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and

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

(2) Wage and Hour Requirements.

(a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

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

(3) “Anti-Kickback” Prohibitions.

(a) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874,

(b) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145, and

(c) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R.

Part 3, and

(4) Safety at the Construction Site.

(a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

(b) U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

b. Activities Not Involving Construction. The Indian Tribe agrees to comply, and assures that each third party participant will comply, with the following Federal laws and regulations providing Wage and Hour protections for nonconstruction employees:

(1) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. 3701 *et seq.*, and

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

c. Activities Involving Commerce. The Indian Tribe agrees to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* to the extent that the FLSA applies to employees performing Tribal Transit Project work involving commerce, and as otherwise determined applicable.

d. Public Transportation Employee Protective Arrangements for the Tribal Transit Program. As provided by Federal law, regulations, U.S. Department of Labor guidelines, the U.S. Secretary of Labor, or the Secretary’s designee, the Indian Tribe agrees to provide the applicable employee protective arrangements as follows:

(1) It will comply with Federal transit law, specifically 49 U.S.C. § 5333(b),

(2) It will follow U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215,

(3) It will comply with the U.S. DOL’s revised Special Warranty for the Nonurbanized Area Program authorized under 49 U.S.C. § 5311 and documents cited therein, that is most current on the date when it executed the underlying Grant Agreement, including any alternative comparable arrangements, or revisions that U.S. DOL has specified for the Tribal Transit Project,

(4) That the U.S. DOL’s revised Special Warranty for the Nonurbanized Area Program authorized under 49 U.S.C. § 5311 described in the preceding Section 24.d(3) of this Tribal Transit Program Master Agreement is appropriate for use in each of its Tribal Transit Program

annual grants and any Recovery Act grants awarded after October 1, 2008, and

(5) That the U.S. DOL revised Special Warranty, documents cited therein, special arrangements, or revisions as described in the preceding Section 24.d(3) of this Tribal Transit Program Master Agreement, are incorporated in and made part of that underlying Grant Agreement.

Section 25. Environmental Protections.

The Indian Tribe recognizes that many Federal, State, and local environmental and resource use laws, regulations, and directives, in effect now or in the future, may apply to the Tribal Transit Project.

This Tribal Transit Program Master Agreement identifies some of the Federal laws, regulations, and directives that may apply to its Tribal Transit Project. The Indian Tribe understands and agrees that those Federal laws, regulations, and directives cited in this Tribal Transit Program Master Agreement may be an incomplete list of environmental and resource use requirements that might apply to its Tribal Transit Project. Nor, in some cases, may Federal requirements be sufficient to meet its State and local environmental and resource use requirements.

In addition to other environmental or resource use requirements that might apply to the Indian Tribe or the Tribal Transit Project, to the extent applicable, the Indian Tribe agrees to comply, and assures that its third party participants will comply, with the following Federal laws and regulations and follow Federal directives in effect now or that become effective in the future, except as the Federal Government determines otherwise in writing.

a. National Environmental Policy. Federal funding requires the full compliance with applicable environmental laws and regulations. Accordingly, the Indian Tribe agrees to, and assures that its third party participants will:

(1) Comply and facilitate compliance with the following Federal laws, regulations, and executive orders:

(a) Federal transit law, specifically 49 U.S.C. § 5324(b),

(b) The National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 – 4335 (as restricted by 42 U.S.C. § 5159, if applicable),

(c) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508,

(d) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622,

(e) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note, and

(f) Other Federal environmental protection laws, regulations, and executive orders that apply to the Tribal Transit Project or Indian Tribe.

(2) Follow the Federal directives stated herein, except as the Federal Government determines otherwise in writing:

(a) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, especially:

1 Guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures,

2 Guidance on implementing 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, and

(b) Other Federal environmental directives that apply to the Tribal Transit Project or the Indian Tribe.

b. Air Quality. The Indian Tribe agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Indian Tribe agrees that:

(1) Public Transportation Operators. It will comply with:

(a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85,

(b) U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86, and

(c) U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans (SIP) by:

(a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Tribal Transit Project,

(b) Assuring that any Tribal Transit Project identified as a Transportation Control Measure in its State's SIP will be wholly consistent with the design concept and scope of the Tribal Transit Project described in the SIP,

(c) Complying with:

1 Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

2 U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A, and

3 Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

c. Clean Water. The Indian Tribe agrees to comply, and assures that its third party participants will comply, with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. The Indian Tribe agrees that:

(1) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f – 300j-6.

(2) Violating Facilities. It will:

(b) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) Facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Indian Tribe agrees to comply with, and assures that its third party participants will comply with:

(1) U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Tribal Transit Project may be carried out using any publicly owned land from a:

(a) Park of:

1 National significance as determined by Federal officials authorized under law,

2 State significance as determined by State officials authorized under law, or

3 Local significance as determined by local officials authorized under law,

(b) Recreation area of:

1 National significance as determined by Federal officials authorized under law,

2 State significance as determined by State officials authorized under law, or

3 Local significance as determined by local officials authorized under law,

(c) Wildlife refuge of:

1 National significance as determined by Federal officials authorized under law,

2 State significance as determined by State officials authorized under law, or

3 Local significance as determined by local officials authorized under law, or

(d) Waterfowl refuge of:

1 National significance as determined by Federal officials authorized under law,

2 State significance as determined by State officials authorized under law, or

3 Local significance as determined by local officials authorized under law.

(2) Joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Indian Tribe agrees to comply with, and assures that its third party participants will comply with, the following Federal protections for the national wild and scenic rivers system:

(1) The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 – 1287, relating to protecting components of the national wild and scenic rivers system,

(2) U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and

(3) U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

f. Not Applicable.

g. Wetlands. The Indian Tribe agrees to, and assures that its third party participants will, facilitate compliance with the protections for wetlands provided in Executive Order No. 11990, as amended, “Protection of Wetlands,” 42 U.S.C. § 4321 note.

h. Floodplains. The Indian Tribe agrees to, and assures that its third party participants will, facilitate compliance with the flood hazards protections in floodplains provided in Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

i. Endangered Species and Fishery Conservation. The Indian Tribe agrees to comply with, and assures that its third party participants will comply with, the protections for endangered species of:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 – 1544, and

(2) The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*

j. Waste Management. The Indian Tribe agrees to comply with, and assures that its third party participants will comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 – 6992k.

k. Hazardous Waste. The Indian Tribe agrees to, and assures that its third party participants will, facilitate compliance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 – 9675, which establishes requirements for the treatment of areas affected by hazardous waste.

l. Historic Preservation. The Indian Tribe agrees to, and assures that its third party participants will:

(1) Comply with U.S. DOT law, specifically 49 U.S.C. § 303, which requires certain findings to be made before a Tribal Transit Project may be carried out using any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.

(2) Encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f,

(3) Facilitate compliance with Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note, and

(4) Comply with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a – 469c,

(5) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of

Historic and Cultural Properties,” 36 C.F.R. Part 800, which requires, among other things, the Indian Tribe to:

(a) Consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Tribal Transit Project, and

(b) Notify FTA of affected properties, and

(6) Comply with Federal regulations and follow Federal directives to avoid or mitigate adverse effects on those historic properties, except as the Federal Government determines otherwise in writing.

m. Indian Sacred Sites. The Indian Tribe agrees to, and assures that its third party participants will, facilitate compliance with Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, as provided in the:

(1) The American Indian Religious Freedom Act, 42 U.S.C. § 1996, and

(2) Executive Order No. 13007, “Indian Sacred Sites,” 42 U.S.C. § 1996 note, except as the Federal Government determines otherwise in writing.

n. Mitigation of Adverse Environmental Effects. If the Tribal Transit Project causes or results in any adverse environmental effect, the Indian Tribe agrees to, and assures its third party participants will, make reasonable efforts to minimize the impacts of every adverse effect by:

(1) Complying with:

(a) All environmental mitigation measures that may be identified as commitments in applicable environmental documents, such as:

1 Environmental assessments,

2 Environmental impact statements,

3 Memoranda of agreement,

4 Documents required by 49 U.S.C. § 303, and

5 Other applicable environmental documents, and

(b) Any conditions the Federal Government might impose in a finding of no significant impact or record of decision, and

(2) Assuring that:

(a) Any mitigation measures agreed on will be incorporated by reference and made part of the underlying Grant Agreement:

(b) Any deferred mitigation measures will be incorporated by reference and made part of the underlying Grant Agreement as soon as agreement with the Federal Government is reached, and

(c) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

Section 26. – Section 27. Not Applicable.

Section 28. Charter Service Operations. The Indian Tribe understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, FTA’s “Charter Service” requirements apply to it and any third party participant involved in a Tribal Transit Project funded under the Tribal Transit Program.

b. Prohibition. Neither it nor any third party participant involved in its Tribal Transit Project will engage in charter service operations, except as permitted under:

- (1) Federal transit law, specifically 49 U.S.C. § 5323(d),
- (2) FTA regulations, “Charter Service,” 49 C.F.R. Part 604,
- (3) Any other Federal Charter Service regulations, or
- (4) Federal directives, except as FTA determines otherwise in writing.

c. Charter Service Agreement. The Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Grant Agreement.

d. Violations.

(1) If:

(a) It has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances, and

(b) It has conducted charter service operations prohibited by FTA's Charter Service regulations:

(2) Then:

(a) FTA's Charter Service regulations and any amendments to these regulations will apply to any charter service it or its third party participants provide,

(b) The definitions in FTA's Charter Service regulations will apply to it and its third party participants that conduct charter operations, and

(c) A pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including:

1 Barring it or any third party participant operating public transportation under the Tribal Transit Project that has provided prohibited charter service from receiving FTA funds, or

2 Withholding an amount of Federal funds as provided by Appendix D to FTA's Charter Service regulations.

Section 29. School Transportation Operations.

The Indian Tribe understands and agrees that:

a. Applicability. To the extent required by Federal law and regulations, Federal "School Operations" requirements apply to it and any third party participant in a Project funded under the Tribal Transit Program.

b. Prohibition. Neither it nor any third party participant that is participating in its Tribal Transit Project will engage in school transportation service exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as permitted under:

(1) Federal transit law, specifically 49 U.S.C. § 5323(f) or (g),

(2) FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. § 5323(f) or (g),

(3) Any other Federal "School Operations" regulations, or

(4) Federal directives, except as FTA determines otherwise in writing.

c. School Transportation Agreement. The School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the underlying Grant Agreement.

d. Violations.

(1) If:

(a) It has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA, and

(b) It has conducted school transportation service prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g):

(2) Then:

(a) FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its third party participants provide,

(b) The definitions in FTA's School Bus Operations regulations will apply to it and any third party participant that conducts school transportation operations, and

(c) FTA will bar a Indian Tribe or any third party participant that has operated school transportation service in violation of FTA's School Transportation laws and regulations from receiving Federal transit funds in an amount FTA considers appropriate.

Section 30. Metric System.

As U.S. DOT or FTA may direct, the Indian Tribe agrees that:

a. Use. It will use metric measurements for the Tribal Transit Project, as provided by:

(1) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a *et seq.*, and other applicable Federal law,

(2) Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note, and

(3) Other applicable U.S. DOT or FTA Federal directives, except as the Federal Government determines otherwise in writing, and

b. Deliverables. It will accept products and services with dimensions in metric measurement.

Section 31. Not Applicable.

Section 32. Substance Abuse.

a. Drug-Free Workplace. The Indian Tribe agrees to:

(1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 8103 *et seq.*,

(2) Facilitate compliance with U.S. OMB guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 C.F.R. Part 182, and

(3) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 C.F.R. Part 32, and any amendments to those regulations when they are issued.

b. Alcohol Misuse and Prohibited Drug Use. The Indian Tribe agrees to comply with, and assures its third party participants will comply with:

(1) Federal transit law, specifically 49 U.S.C. § 5331, and

(2) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655.

Section 33. Federal “\$1 Coin” Requirements.

As required by the Federal Government, the Indian Tribe agrees that:

a. It will comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p),

b. Its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required for their use, and

c. It will display signs and notices of the \$1 coin capability of the equipment and facilities on its premises, including vending machines, where coins or currency are used.

Section 34. Not Applicable.

Section 35. Motor Carrier Safety.

The Indian Tribe agrees to comply with, and assures its third party participants will comply with, the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, as applicable:

a. Financial Responsibility. The economic and insurance registration requirements of:

(1) The economic registration and insurance requirements of U.S. FMCSA regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. Part 387, if it:

- (a) Is engaged in operations requiring compliance with 49 C.F.R. Part 387,
- (b) Is engaged in interstate commerce, and
- (c) Is not within a defined commercial zone, and

(2) 49 U.S.C. § 31138(e)(4), which modifies 49 C.F.R. Part 387 by reducing the amount of insurance that must be provided to the highest amount required by any State in which the transit provider operates, if it:

- (a) Operates within a transit service area,
- (b) Is engaged in interstate commerce, and
- (c) Receives Federal funding under 49 U.S.C. §§ 5307, 5310, and 5311.

b. Safety Requirements. The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. Parts 390 through 396, if it:

(1) Is engaged in operations by the requiring compliance with 49 C.F.R. Parts 390 through 396,

- (2) Is engaged in interstate commerce,
- (3) Is not within a defined commercial zone, and

(4) Is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States),

c. Driver Qualifications. The driver’s license requirements of U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383, and

d. Substance Abuse Rules for Motor Carriers. The substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. Part 382, and implementing Federal guidance, if it, including a transit provider, operates a

commercial motor vehicle that:

- (1) Has a gross vehicle weight rating of more than 26,000 pounds, or
- (2) Is designed to transport sixteen (16) or more passengers, including the driver.

Section 36. Safe Operation of Motor Vehicles.

a. Seat Belt Use. FTA encourages the Indian Tribe to facilitate compliance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate:

- (a) Company-owned vehicles,
- (b) Company-rented vehicles, or
- (c) Personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Tribal Transit Project.

b. Distracted Driving, Including Text Messaging While Driving. FTA encourages the Indian Tribe to facilitate compliance with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note,

(2) DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009,

(3) The following Special Provision:

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

1 "Driving":

a Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

b Does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

2 “Text Messaging”:

a Means reading from or entering data into any handheld or other electronic device, including a device for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

b Does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answering an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Indian Tribe agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while:

1 Using an employer supplied electronic device, and

2 Driving:

a A vehicle you own or rent,

b A vehicle the Government owns, leases or rents,

c A privately-owned vehicle when on official Tribal Transit Project-related business or when performing any work for or on behalf of the Tribal Transit Project, or

d Any vehicle, on or off duty.

(c) Size of the Indian Tribe. The Indian Tribe agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing:

1 New rules and programs or re-evaluating existing programs to prohibit text messaging while driving, and

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

(d) Extension of Provision. The Indian Tribe agrees:

1 To include this Special Provision in its third party agreements, and

2 To encourage its third party participants:

a To comply with this Special Provision, and

b Include this Special Condition in each third party subagreement at each tier

financed with Federal funds.

Section 37. Protection of Sensitive Security Information.

The Indian Tribe agrees to comply with the protections for sensitive security information of:

- a. 49 U.S.C. § 40119(b),
- b. 49 U.S.C. § 114(r),
- c. U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and
- d. U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

Section 38. – Section 52.

Section 53. Special Provisions for Recovery Act Projects.

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

a. Identification of Recovery Act Funding. An underlying Grant Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

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

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

(3) If the “Citation of Statute(s) Authorizing Project” of the underlying Grant Agreement displays “PL 111-5 – OST Surface Transportation – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the “TIGER Discretionary Grant Program.”

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

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

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

e. U.S. OMB Provisions. The Indian Tribe agrees to comply with U.S. OMB, "Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards," 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449, April 23, 2009. Specifically, the Indian Tribe acknowledges and agrees that:

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

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

(b) It will submit the requisite reports no later than ten calendar days after each calendar quarter in which it receives the Federal award funded in whole or in part by the Recovery Act.

(c) It will have a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>).

(d) It will maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active Federal award funded with Recovery Act funds.

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

(2) Buy America Requirements under Section 1605 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Buy America requirements sufficient for compliance with Section 1605 of the Recovery Act.

(3) Wage Rate Requirements under Section 1606 of the Recovery Act. Statutory provisions

of 49 U.S.C. chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

(4) Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act, as required by Congress and as provided in 49 C.F.R. § 18.20, it will maintain records that identify adequately the source and application of Recovery Act funds.

(b) If it must comply with the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” it will separately identify its Recovery Act expenditures on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133, by:

1 Identifying Recovery Act expenditures separately on the SEFA, and

2 Identifying Recovery Act expenditures as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and

3 Including the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

f. One-Time Funding. It acknowledges that receipt of Recovery Act funds is a “one-time” disbursement that does not create any future obligation by FTA to advance similar funding amounts.

g. Funding Limits.

(1) The total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Grant Agreement, including the latest amendment to the underlying Grant Agreement.

(2) The Government’s liability to make payments to the Indian Tribe is limited to the eligible Project costs that can be financed with those Recovery Act funds as displayed on the underlying Grant Agreement, including the latest amendment to that underlying Grant Agreement.

h. Integrity. All data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

i. Violations of Law. It must report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person:

(1) Has submitted a false claim under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or

(2) Has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

j. Maintenance of Effort. If it is a State, it will comply with the maintenance of effort certification it has made in compliance with Section 1201 of the Recovery Act.

k. Emblems. U.S. DOT encourages it to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in each third party agreement used in connection with its Recovery Act Project(s).

l. Contracts Financed With Recovery Act Funds. In compliance with Section 1554 of the Recovery Act, it will:

(1) Award contracts financed under this Act as fixed-price contracts through the use of competitive procedures to the maximum extent possible, and

(2) Post a summary of the contract on the Recovery Act web site maintained by the Recovery Accountability and Transparency Board when it does not award fixed price contracts or does not use competitive procedures.

m. Future Federal Requirements and Directives. It will:

(1) Comply with future Federal requirements that may be imposed on the use of Recovery Act funds, and

(2) Follow Federal directives that may be issued, except as Federal Government determines otherwise in writing.

Section 54. Not Applicable.

Section 55. Freedom of Information Act.

The Indian Tribe understands and agrees that:

a. Applicability. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to information submitted to FTA and U.S. DOT, on typewritten hard copy or electronically.

b. Project Records. All applications and materials submitted to FTA related to its Tribal Transit Project:

(1) Will become Federal agency records, and

(2) Are or will be subject to FOIA and to public release through individual FOIA requests, unless FTA determines that a valid exemption under FOIA or another statute applies.

c. Confidentiality. President Obama's January 21, 2009, Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act directs Federal agencies to adopt a presumption of disclosure. Therefore:

(1) FTA does not consent to honor any "routine" confidentiality statements that may appear on any typewritten hard copy or electronic information or that accompanies submission of Project information, unless a Federal law or regulation requires that the information or document must be kept confidential.

(2) As permitted by Federal law and regulations, FTA will review information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold the information or those documents.

(3) Any genuinely confidential or privileged information should be:

(a) Marked clearly and specifically, and

(b) Justified as confidential or privileged under FOIA standards.

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

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

a. Notification to FTA. It will notify the FTA Chief Counsel or Regional Counsel immediately of any current or prospective legal matter:

(1) Such as:

(a) A major dispute,

(b) A breach,

(c) A default,

- (d) Litigation, or
 - (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason,
- (2) That may affect the Federal Government's:
- (a) Interests in the Tribal Transit Project, or
 - (b) Administration or enforcement of Federal laws or regulations.

b. Federal Interest in Recovery.

(1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Tribal Transit Project.

(2) Liquidated Damages. However, the Indian Tribe may return all liquidated damages it receives to its Tribal Transit Project Account rather than return the Federal share of those liquidated damages to the Federal Government.

c. Enforcement. It will pursue its legal rights and remedies available under any third party agreement or available under Federal, State, or local laws or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Tribal Transit Project and the Indian Tribe.

e. Alternative Dispute Resolution. FTA encourages the Indian Tribe to use alternative dispute resolution procedures, as may be appropriate.

Section 57. Amendments to the Tribal Transit Project.

The Indian Tribe agrees that:

a. Changed Circumstances. It will execute an Amendment to the underlying Grant Agreement when a change in circumstances of its Tribal Transit Project causes an inconsistency with:

- (1) The underlying Grant Agreement, or
- (2) This Tribal Transit Program Master Agreement.

b. Changed Information. If the fundamental information in its Application has changed, it will:

- (1) Amend its Application if the change takes place before FTA awards funding for the

Tribal Transit Project, and if necessary,

(2) Execute an amendment to the underlying Grant Agreement if the change takes place after FTA awards funding for the Tribal Transit Project.

Section 58. FTA's Electronic Management System.

a. Indian Tribe Use.

(1) Unless FTA permits otherwise in writing, the Indian Tribe agrees to use FTA's electronic management system to submit information and reports to FTA.

(2) FTA, however, may determine the extent to which the Indian Tribe may use its electronic management system to execute legal documents.

b. TEAM System Terms. The Indian Tribe and FTA agree that:

(1) Except as FTA states otherwise in writing, the terms in the current FTA Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of such matters as:

- (a) The "Project,"
- (b) The "Scope" of the Project,
- (c) Project "Activities," and
- (d) Other similar terms.

(2) FTA may treat information other than that reflected in its current TEAM system as determinative of what constitutes:

- (a) The "Project,"
- (b) The "Scope" of the Project,
- (c) Project "Activities," and
- (d) Other similar terms.

Section 59. Information Obtained Through Internet Links.

a. Accuracy. The Indian Tribe understands and agrees that any information obtained through

any electronic link in this Tribal Transit Program Master Agreement:

- (1) Does not represent an official version of a Federal law, regulation, or directive, and
- (2) Might be inaccurate.

b. Relationship to the Tribal Transit Program Master Agreement. Information obtained through electronic links in this Tribal Transit Program Master Agreement is:

- (1) Not incorporated by reference into this Tribal Transit Program Master Agreement, and
- (2) Not made part of this Tribal Transit Program Master Agreement.

c. Official Sources. Official sources of Federal regulatory information are:

- (1) The *Federal Register*, and
- (2) The Code of Federal Regulations.

Section 60. Severability.

The Indian Tribe agrees that if any provision of the underlying Grant Agreement or this Tribal Transit Program Master Agreement is determined invalid, the remaining provisions that conform to Federal laws and regulations will continue in effect.