# REQUIREMENTS OF THE FEDERAL TRANSIT ADMINISTRATION

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## SECTION 1. CLAUSES APPLICABLE TO ALL CONTRACTS

### ENERGY CONSERVATION

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

### ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, contractor agrees that Pierce Transit, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit, examination, excerpts and transcriptions be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, contractor agrees to maintain all required records for at least three (3) years after Pierce Transit makes final payment and all other pending matters pertaining to the contract are closed.

### APPLICABILITY AND FEDERAL GRANT CONTRACT (FEDERAL CHANGES)

This procurement is subject to a financial assistance contract between Pierce Transit and the U.S. Department of Transportation. The contractor will be required to comply with all terms and conditions that have been included in this procurement specification.

In addition, Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Pierce Transit and FTA, as they may be amended or promulgated from time to time during the

term of this contract. Contractor's failure to comply shall constitute a material breach of this contract. The Contractor agrees to accept all changed requirements that apply to this contract.

**NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

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

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

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

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

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

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

**TERMINATION OF CONTRACT**

A. Termination for Convenience:

Pierce Transit for its convenience may terminate this contract, in whole or in part, at any time by written notice to the Contractor. After receipt of a Notice of Termination, and except as directed by the Pierce Transit, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the Notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in

the manner Pierce Transit directs. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations.

B. Termination for Default:

In addition to termination for convenience, if the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services and the Contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other material provisions of the contract, Pierce Transit may terminate this contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination on the Contractor, setting forth the manner in which the Contractor is in default and the effective date of termination. The Contractor will only be paid the contract price for goods delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract less any damages to Pierce Transit caused by such default. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs.

If the contract is terminated, the rights, duties and obligations of the parties, including compensation to the Contractor, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract. The termination of this contract shall in no way relieve the Contractor from any of its obligations under this contract nor limit the rights and remedies of Pierce Transit hereunder in any manner.

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

Pierce Transit in its sole discretion may, in the case of a termination for breach or default, allow the contractor fourteen (14) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Pierce Transit's satisfaction the breach or default or any of the terms, covenants, or conditions of the Contract within fourteen (14) calendar days after receipt by Contractor of written notice from Pierce Transit setting forth the nature of said breach or default, Pierce Transit shall have the right to terminate the Contract with a written 30-day cancellation notice without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Pierce Transit from also pursuing all available remedies against Contractor and its sureties for said breach of default.

In the event that Pierce Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Pierce Transit shall not limit Pierce Transit's remedies for any succeeding breach of that or of any other term, covenant or condition of the contract.

C. Termination or Suspension for Non-Appropriation:

Pierce Transit's Board of Commissioners may cancel this contract at the end of the then current fiscal period for non-appropriation of funds. Such cancellation shall be upon thirty (30) days written notice to the Contractor. Pierce Transit's fiscal period ends December 31 of each year. If the contract is

terminated as provided in this subsection Pierce Transit will be liable only for payment in accordance with the terms of this contract for costs incurred prior to the effective date of termination; and the Contractor shall be released from any obligation to provide further services pursuant to the contract as are affected by the termination. If the Contractor has in its possession any property belonging to Pierce Transit, the Contractor shall account for same and dispose of it in the manner Pierce Transit directs.

Funding under this contract beyond the current appropriation year is conditional upon the appropriation by the Pierce Transit Board of Commissioners of sufficient funds to support the activities described in this contract. Should such an appropriation not be approved, the contract will terminate at the close of the current appropriation year and the termination will be processed as a termination for convenience. Termination may be for all or part of the contact. In addition, Pierce Transit reserves the right to suspend delivery of all or part of an order if it is in the best interest of the Agency.

**CIVIL RIGHTS REQUIREMENTS**

The following requirements apply to the underlying contract:

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with

disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**CONTRACT BREACHES AND DISPUTE RESOLUTION**

Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be subject to the dispute resolution procedures in this Subparagraph. Prior to the initiation of any action or proceeding to resolve disputes between Pierce Transit and Contractor, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding.

At all times during the course of any unresolved dispute between the parties, the Contractor shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. The good faith completion of negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation.

Venue for any such litigation between the parties arising out of this Contract or related to the Project shall be exclusively in Pierce County Superior Court in Tacoma, Washington.

Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Pierce Transit or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* Contractors are encouraged to cooperate with Pierce Transit in its effort to ensure equal and open access to Pierce Transit's contracting opportunities for DBEs. A separate contract goal for DBE participation has not been established for this procurement.

b. The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as PIERCE TRANSIT deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The prime contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from Pierce Transit. The prime contractor agrees to not withhold retainage from sub-contractors' payments. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of Pierce Transit. This clause applies to both DBE and non-DBE sub-contractors.

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

f. Pierce Transit will require contractors to submit regular reports of the actual payments made to DBE firms for work committed to the at the time of contract award. Pierce Transit will review the reports submitted by the prime contractor and seek confirmation, as needed, that payment was actually made to the DBE firm.

g. If a prime contractor is found not to be in compliance with its DBE commitment, it shall be so notified by Pierce Transit and directed to cure the problem within an appropriate time period. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with re-solicitation costs to be borne by the prime contractor or its bond. In addition, Pierce Transit may consider a contractor's non-compliance when evaluating contractor responsibility in future bids or proposals.

**INCORPORATION OF FTA TERMS**

The provisions contained herein include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in these contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Pierce Transit requests that would cause Pierce Transit to be in violation of the FTA terms and conditions.

**FTA PROTEST PROCEDURES**

Bidders are hereby notified that, if this contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that Pierce Transit failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) days after Pierce Transit renders a final decision or five (5) days after the Bidder knows or has reason to know that Pierce Transit has failed to render a final decision. Protests to the FTA must be filed in accordance with FTA Circular 4220.lF (as periodically updated).

If a protest has been filed with the FTA, Pierce Transit will not make an award of contract unless Pierce Transit determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to Pierce Transit or the Federal Government.

## ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

Pierce Transit and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and the following regulations and any amendments thereto:

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. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;

D. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

E. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;

F. General Services Administration regulations, "Construction and Alteration of Public Buildings", "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;

G. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;

H. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

## CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

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

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

4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5. Payrolls and Basic Records (Nonconstruction). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of work. Such records shall contain the name, address, and social security number of each such worker, his or her classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**CERTIFICATION REGARDING DEBARMENT SUSPENSION AND OTHER RESPONSIBILITY MATTERS (applicable to contracts over $25,000)**

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

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

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

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

## SECTION 2. CONTRACTS OVER $150,000.00

### BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a sixty-five percent (65%) domestic content.

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

Contractor agrees to assume the risk of increased cost or time requirements related to compliance with Buy America requirements.

### CLEAN WATER

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

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

### CLEAN AIR

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

### DISCLOSURE OF LOBBYING ACTIVITIES

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

**SECTION 3. TRANSIT OPERATIONS / OPERATIONAL / SAFETY SENSITIVE**

**TRANSIT EMPLOYEE PROTECTIVE PROVISION (Transit operations)**

1. The Contractor agrees to comply with applicable transit employee protective requirements as follows:

   (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interest of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project for which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of the subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 40 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

   (b) Transit Employee Protective Requirements for Projects Authorized by 40 U.S.C. - 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310)a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333 (b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in Grant Agreement of Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

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

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

**CHARTER SERVICE OPERATIONS (Operational)**

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

**SCHOOL BUS OPERATIONS (Operational)**

Pursuant to 60 U.S.C. 5323(f) and 49 C.F.R. Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

**DRUG AND ALCOHOL TESTING COMPLIANCE (Operational / Safety Sensitive)**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Washington, or Pierce Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and submit the Management Information System (MIS) reports to Human Resources, Pierce Transit, PO Box 99070, Lakewood, WA 98496-0070. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurance for Federal Transit Administration Grants and Cooperative Agreements", which is published annually in the Federal Register.

**SECTION 4. AIR / WATER TRANSPORTATION**

**FLY AMERICA**

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

## CARGO PREFERENCE - USE OF U.S. FLAG VESSELS

The Contractor agrees:

a. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Pierce Transit (through the contractor in the case of a subcontractor's bill-of-lading.), marked with appropriate identification of the project.

c. To insert these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transportation of equipment, material or commodities by ocean vessel.

## SECTION 5. ADMINISTRATION OF RECORDS / RESEARCH / RECYCLED PRODUCT

### PRIVACY ACT REQUIREMENTS (Administration of records)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

### RIGHTS IN DATA AND COPYRIGHTS (Research)

The following requirements apply to each contract involving experimental, developmental or research work:

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

2. The following restrictions apply to all subject data first produced in the performance of this contract:

   (a) Except for its own internal use, the or the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to contracts with academic institutions.

   (b) As authorized by 49 C.F.R. 18.34 and C.F.R. 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use, and to authorize other to use, for government purposes, any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes", means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

      1) Any subject data developed under a grant, cooperative agreement, subgrant, sub- agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

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

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

   (d) Unless prohibited by State law, upon request for the Federal Government, the contractor agrees to indemnify, save and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this contract. The contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

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

(f) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this attachment has been added is exempt from the requirements of subsections b, c, and d of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.

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

3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

**PATENT RIGHTS (Research)**

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

2. Unless the federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F. R. Part 401.

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

**RECYCLED PRODUCTS (Yearly purchases of $10,000.00 or more of EPA designated items)**

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

2. The contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provide by the FTA.

## 49 CFR PART 20-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq* .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS.**

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

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

Date

_____

Signature_____

Company Name_____

Title

_____

*Or*

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

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

Date

_____

Signature

_____

Company Name

_____

Title

_____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Bidder, _____, (insert name of company) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (federal, state or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE BIDDER_____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

_____
Signature and Title of Authorized Official

Subscribed and sworn to before me this ___ day of _____, 20___.

_____
Notary Public

In and for the State of _____
Residing in _____