



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
d/b/a  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **ACCESS TO RECORDS AND REPORTS**

#### **Applicability to Contracts**

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

#### **Flow Down**

**The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.**

#### **Model Clause/Language**

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Access to Records and Reports**

**Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

**Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records,

accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

**SEE MASTER AGREEMENT.**

**VENDOR CERTIFIES COMPLIANCE WITH 49 U.S.C. 5325 /18 CFR 18.36 (i) /49 CFR 633.17**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

## **BID PROTEST PROCEDURES**

Volusia County has established Bid Protest Procedures that can be reviewed at:  
[www.volusia.org/purchasing](http://www.volusia.org/purchasing).

In addition, on this federally funded project, bidders have the right to appeal directly to the Federal Transit Administration within five days of the date when the bidder has received actual or constructive notice of our final decision. Appeals to the Federal Transit Administration should be sent to the following address.

**Federal Transit Administration  
Region IV  
Office of Procurement Management  
230 Peachtree, NW  
Suite 1400  
Atlanta, GA 30303**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **CIVIL RIGHTS LAWS AND REGULATIONS**

##### **Applicability to Contracts**

The following Federal Civil Rights laws and regulations apply to all contracts.

Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- c. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- d. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC)

implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

- e. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Flow Down**

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

### **Model Clause/Language**

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Civil Rights and Equal Opportunity**

Votran / Volusia County is an Equal Opportunity Employer. As such, Votran / Volusia County agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Votran / Volusia County agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

**Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

#### **49 C.F.R. part 26**

##### **Background and Applicability**

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. *See 49 C.F.R. § 26.51(e).* Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)

[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

### **Flow Down**

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

### **Clause Language**

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

## **Overview**

It is the policy of Votran / Volusia County and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of Votran / Volusia County to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. Votran / Volusia County shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, Votran / Volusia County may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with Votran / Volusia County.

## **Contract Assurance**

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 Votran / Volusia County deems appropriate.

## **DBE Participation**

For the purpose of this Contract, Votran / Volusia County will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying Votran / Volusia County or the Unified Certification Program (UCP)*]]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an Votran / Volusia County whose DBE certification process has received FTA approval; or
3. Certified by another Votran / Volusia County approved by the Votran / Volusia County.

## **DBE Participation Goal**

The DBE participation goal for this Contract is set at 5.2 % using race-neutral means of facilitating DBE participation. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 5.2% of the total Contract price.

**Votran is required to seek DBE participation and expects vendors to make a good faith effort to reach the goal. If the goal is not met, the vendor should provide documentation of their good faith efforts. No penalty will be accessed if the goal is not met.**

## **Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

- A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value

of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

- A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by Votran / Volusia County.
- An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
- An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), Votran / Volusia County will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that Votran / Volusia County will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

- Documented communication with the Votran / Volusia County 's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- Pre-bid meeting attendance. At the pre-bid meeting, Votran / Volusia County generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
- The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
- Written notification to DBE's encouraging participation in the proposed Contract; and

- Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by Votran / Volusia County that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to Votran / Volusia County's DBE Liaison, Ralf Heseler; c/o Votran 950 Big Tree Road, South Daytona, FL 32119; [rheseler@volusia.org](mailto:rheseler@volusia.org); 386-257-6000. The DBE Liaison will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Votran / Volusia County will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not

administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without Votran / Volusia County's prior written consent. Votran / Volusia County may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify Votran / Volusia County in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

Votran / Volusia County shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to Votran / Volusia County that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to

*Votran / Volusia County.* Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

Votran / Volusia County to have access to necessary records to examine information as Votran / Volusia County deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

The authorized representative(s) of Votran / Volusia County, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

### **Sanctions for Violations**

If at any time Votran / Volusia County has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, Votran / Volusia County may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein

## **DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

## **DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

## **DBE IDENTIFICATION AND INFORMATION FORM**

<b>Name and Address</b>	<b>Contact Name and Telephone Number</b>	<b>Participation Percent (Of Total Contract Value)</b>	<b>Description Of Work To Be Performed</b>	<b>Race and Gender of Firm</b>

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **DISTRACTED DRIVING**

Required For All FTA Funded Contracts

FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

By signing below, you agree that you are in compliance with FTA Master Agreement (25) Section 34 as outlined above.

#### **SEE MASTER AGREEMENT**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **ENERGY CONSERVATION**

42 U.S.C. 6321 *et seq.*

49 C.F.R. part 622, subpart C

#### **Applicability to Contracts**

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

#### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

42 U.S.C. 6321 *et seq.*

49 C.F.R. part 622, subpart C



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **FEDERAL CHANGES**

Required For All FTA Funded Contracts

##### **Applicability to Micro-Purchases:**

Micro purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

##### **Flow Down:**

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

##### **Model Clause/Language:**

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

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

**VENDOR SIGNATURE REQUIRED FOR ALL CONTRACTS. SEE MASTER AGREEMENT**

**VENDOR CERTIFIES COMPLIANCE WITH 49 CFR Part 18**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

2 C.F.R. part 180  
2 C.F.R part 1200  
2 C.F.R. § 200.213  
2 C.F.R. part 200 Appendix II (I)  
Executive Order 12549  
Executive Order 12689

#### **Background and Applicability**

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions;

- (a) Collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

#### **Flow Down**

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

## **Model Clause/Language**

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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 the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

2 C.F.R. part 180

2 C.F.R. part 1200

2 C.F.R. § 200.213

2 C.F.R. part 200 Appendix II (I) Executive Order 12549

Executive Order 12689



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA** **Circular 4220.1F**

##### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

##### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

##### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

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

**VENDOR SIGNATURE IS REQUIRED FOR ALL PROCUREMENT PROJECTS.**

**VENDOR CERTIFIES COMPLIANCE CIRCULAR 4220.1F**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

##### **Applicability to Contracts**

The No Obligation clause applies to all third party contracts that are federally funded.

##### **Flow Down**

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

##### **Model Clause/Language**

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

##### **No Federal Government Obligation to Third Parties.**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

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

49 U.S.C. § 5323(l) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31

#### **Applicability to Contracts**

The Program Fraud clause applies to all third party contracts that are federally funded.

#### **Flow Down**

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

#### **Model Clause/Language**

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Program Fraud and False or Fraudulent Statements or 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 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be

applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

49 U.S.C. § 5323(l) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **SAFE OPERATION OF MOTOR VEHICLES**

23 U.S.C. part 402

Executive Order No. 13043 Executive Order No. 13513

U.S. DOT Order No. 3902.10

#### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

#### **Flow Down Requirements**

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

#### **Model Clause/Language**

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

## **Safe Operation of Motor Vehicles**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

### **SEE MASTER AGREEMENT**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

23 U.S.C. part 402

Executive Order No. 13043 Executive Order No. 13513

U.S. DOT Order No. 3902.10



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **TERMINATION**

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B)

### **Applicability to Contracts**

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

### **Flow Down**

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Termination for Convenience (General Provision)**

Votran / Volusia County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in Votran / Volusia County best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Votran / Volusia County to be paid the Contractor. If the Contractor has any property in its possession belonging to Votran / Volusia County, the Contractor will account for the same, and dispose of it in the manner Votran / Volusia County directs.

### **Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Votran / Volusia County may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Votran / Volusia County that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, 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.

### **Opportunity to Cure (General Provision)**

The Votran / Volusia County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) 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 Votran / Volusia County's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within (30) days after receipt by Contractor of written notice from Votran / Volusia County setting forth the nature of said breach or default, Votran / Volusia County shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Votran / Volusia County from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### **Waiver of Remedies for any Breach**

In the event that Votran / Volusia County elects to waive its remedies for any breach by Contractor

of any covenant, term or condition of this contract, such waiver by Votran / Volusia County shall not limit Votran / Volusia County remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### **Termination for Convenience (Professional or Transit Service Contracts)**

Votran / Volusia County, by written notice, may terminate this contract, in whole or in part, when it is in the Votran / Volusia County interest. If this contract is terminated, Votran / Volusia County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### **Termination for Default (Supplies and Service)**

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

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

### **Termination for Default (Transportation Services)**

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, Votran / Volusia County may terminate this contract for default. Votran / Volusia County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Votran / Volusia County goods, the Contractor shall, upon direction of Votran / Volusia County, protect and preserve the goods until surrendered to Votran / Volusia County or its agent. The Contractor and Votran / Volusia County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Votran / Volusia County.

### **Termination for Default (Construction)**

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Votran / Volusia County may terminate this contract for default. Votran / Volusia County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Votran / Volusia County may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Votran / Volusia County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Votran / Volusia County in completing the work.

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

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

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

### **Termination for Convenience or Default (Architect and Engineering)**

Votran / Volusia County may terminate this contract in whole or in part, for the Votran / Volusia County's convenience or because of the failure of the Contractor to fulfill the contract obligations. Votran / Volusia County shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Votran / Volusia County 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Votran / Volusia County has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

#### **Termination for Convenience or Default (Cost-Type Contracts)**

Votran / Volusia County may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Votran / Volusia County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by Votran / Volusia County. If the termination is for default, Votran / Volusia County may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Votran / Volusia County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Votran / Volusia County the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the

work performed up to the time of termination.

If, after serving a Notice of Termination for Default, Votran / Volusia County determines that the Contractor has an excusable reason for not performing, the Votran / Volusia County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **VIOLATION AND BREACH OF CONTRACT**

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)

#### **Applicability to Contracts**

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

#### **Flow Down**

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

#### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

#### **Rights and Remedies of the Votran / Volusia County**

The Votran / Volusia County shall have the following rights in the event that the Votran / Volusia County deems the Contractor guilty of a breach of any term under the Contract.

- The right to take over and complete the work or any part thereof as Votran / Volusia County for and at the expense of the Contractor, either directly or through other contractors;
- The right to cancel this Contract as to any or all of the work yet to be performed;
- The right to specific performance, an injunction or any other appropriate equitable remedy; and
- The right to money damages.

For purposes of this Contract, breach shall include [Votran / Volusia County to define].

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Votran / Volusia County, the Contractor expressly agrees that no default, act or omission of the Votran / Volusia County shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless Votran / Volusia County directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Votran / Volusia County will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before Votran / Volusia County takes action contemplated herein, the Votran / Volusia County will provide the Contractor with sixty (60) days written notice that Votran / Volusia County considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### **Disputes**

**Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Votran / Volusia County s [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise

furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Example 2:** Votran / Volusia County and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Votran / Volusia County and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Votran / Volusia County direction or decisions made thereof.

### **Performance during Dispute**

Unless otherwise directed by Votran / Volusia County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### **Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it

is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies**

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

### **Rights and Remedies**

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

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. § 55305

46 C.F.R. part 381

#### **Applicability to Contracts**

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

#### **Flow Down**

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

#### **Model Clause/Language**

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Cargo Preference - Use of United States-Flag Vessels**

The contractor agrees:

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

available at fair and reasonable rates for United States-Flag commercial vessels;

- B. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- C. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

46 U.S.C. § 55305

46 C.F.R. part 381



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **RECYCLED PRODUCTS**

42 U.S.C. § 6962

40 C.F.R. part 247

2 C.F.R. part § 200.322

#### **Applicability to Contracts**

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

#### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

#### **Model Clause/Language**

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

## **Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

**SEE MASTER AGREEMENT**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

42 U.S.C. § 6962

40 C.F.R. part 247

2 C.F.R. part § 200.322



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **FLY AMERICA**

49 U.S.C. § 40118

41 C.F.R. part 301-10

48 C.F.R. part 47.4

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

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

#### **Model Clause/Language**

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

## **Fly America Requirements**

*Definitions.* As used in this clause—

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### **Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]*

---

(End of statement)

The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

---

(End of Clause)

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

49 U.S.C. § 40118

41 C.F.R. part 301-10

48 C.F.R. part 47.4



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **LOBBYING RESTRICTIONS**

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J)

49 C.F.R. part 20

#### **Applicability to Contracts**

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

#### **Flow Down**

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

#### **Model Clause/Language**

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

#### **Lobbying Restrictions**

The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, 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 section 1352, title 31, U.S. Code. 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.

---

Signature of Contractor's Authorized Official

---

Name and Title of Contractor's Authorized Official

---

Date

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

31 U.S.C. § 1352  
2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS EQUIPMENT**

**2 C.F.R. 200.216**  
**F.A.R. 52.204-24**

##### **Background and Applicability**

Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and VerDate

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisitions by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations, which implement or supplement the FAR.

In order to combat the national security and intellectual property threats that face the United States, section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 ([Pub. L. 115-232](#)) prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The statute goes into effect August 13, 2020.

“Covered telecommunications equipment or services,” as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**SEE MASTER AGREEMENT**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **BUY AMERICA REQUIREMENTS**

49 U.S.C. 5323(j)

49 C.F.R. part 661

#### **Applicability to Contracts**

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: [The Federal Transit Administration's Buy America website](#).

#### **Flow Down**

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

#### **Model Clause/Language**

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

#### **Buy America**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that

Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

*In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.*

***Certificate of Compliance with Buy America Requirements***

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Certificate of Non-Compliance with Buy America Requirements***

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:*

***Certificate of Compliance with Buy America Rolling Stock Requirements***

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Certificate of Non-Compliance with Buy America Rolling Stock Requirements***

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

49 U.S.C. 5323(j)

49 C.F.R. part 661



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)

#### **Applicability to Contracts**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251– 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **Flow Down**

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

#### **Model Clause/Language**

Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **The Contractor agrees:**

- It will not use any violating facilities;
- It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- It will report violations of use of prohibited facilities to FTA; and
- It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

SEE MASTER AGREEMENT

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Federal Tax Liabilities and Recent Felony Convictions**

#### **Background and Applicability**

- (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—
  - (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- (ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

#### **Flow Down**

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

**SEE MASTER AGREEMENT**

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **Special DOL EEO Clause for Construction Projects**

#### **Background and Applicability**

Applies to all contracts over \$10,000 total value if 49 CFR Part 18 or 19 indicate that DOL EEOC regulations at 41 CFR Chapter 60 apply.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in

furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**Flow Down**

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Contract Work Hours and Safety Standards Act**

40 U.S.C. §§ 3701 – 3708; 29 CFR Part 5

Applies to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers

#### **Background and Applicability**

The Contractor shall comply with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 - 3708., as supplemented by DOL regulations at 29 C.F.R. Part 5.

All contracts awarded by the recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Copeland Anti-Kickback Act (Sections 1 & 2)**

18 US Code 874; 40 USC 3145; 29 CFR 3 and 5

Applies to all construction contracts, Section 1, and all prime construction, alteration, or repair contracts over \$2,000, Section 2

#### **Background and Applicability**

Section 1. The Contractor shall not induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works that are financed in whole or in part by the United States, to give up any part of the compensation to which he or she is otherwise entitled.

Section 2. The Contractor shall submit a weekly statement of compliance to VOTRAN with respect to the wages paid each employee performing covered work during the preceding week.

#### **Flow Down**

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **Bonding**

#### **Background and Applicability**

Applies to all construction or facility improvement contracts or subcontracts exceeding Simplified Acquisition Threshold, currently \$250,000.

FTA requires bonds for All construction contracts exceeding the simplified acquisition threshold must use bonds for financing unless FTA determines that other arrangements adequately protect the Federal interest under 2 CFR 200.326. Otherwise, the minimum bonding requirements include:

(a) Bid Guarantee. A bid guarantee equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.

(b) Performance Bond. A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.

(c) Payment Bond. A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

1 Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million. 2 \$1 Million or More but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

3 \$5 Million or More. Two and one-half million dollars if the contract price is more than \$5 million. (d) Acceptable Sureties. Consistent with 2 CFR 200.304, where construction bonds must be obtained to protect the Federal interest, bonds must be obtained from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <https://fiscal.treasury.gov/surety-bonds/listcertified-companies.html> <https://fiscal.treasury.gov/surety-bonds/circular570.html>.

(e) Reduced Bonding. FTA will accept a local bonding policy that conforms to the minimums described in this section. FTA may approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements for a specific class of projects, or for a particular project, must submit its policy and rationale to the Regional Administrator for the FTA region administering the project. The decision to approve a less stringent bonding policy is in FTA's discretion.

(f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. In some situations, bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. However, requiring excessive bonding may be restrictive of competition and inconsistent with 2 CFR 200.319, and make the recipient's procurement ineligible for FTA assistance. Consequently, if the recipient's bonding policy far exceeds those described in this subsection, the recipient should document the rationale for its bonding requirements in its procurement file and may find it useful to confer with the FTA regional office for the region administering the project before undertaking its procurement.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Seismic Safety**

42 U.S.C. 7701 et seq., 49 CFR Part 41, Executive Order 12699

Applies to any contract for construction of or addition to a building

#### **Background and Applicability**

The recipient must include seismic safety provisions in its contracts for the construction of new buildings or additions to existing buildings as required by DOT regulations, "Seismic Safety," 49 CFR Part 41, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 et seq.

#### **Flow Down**

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

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **ADA Access**

49 U.S.C. § 5301(d); 49 CFR part 27; 28 CFR Part 36

Applies to all contracts

### **Background and Applicability**

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractors also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with 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 persons with disabilities; and with 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. In addition, the Contractor agrees to comply with all applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the

Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 CFR Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 CFR Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing

**Flow Down**

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.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Veteran's Employment Preference**

#### **Background and Applicability**

Applies to all construction contracts.

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that contractors working on a capital project funded with FTA assistance:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **Flow Down**

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



### **FTA THIRD PARTY CONTRACT CLAUSES**

#### **Davis-Bacon Act**

Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000.

#### **Background and Applicability**

The successful bidder shall comply and assure compliance with the requirements of 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a through 276a(7), and implementing U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Standards Act)," 29 C.F.R. Part 5. In addition to other requirements that may apply:

- a. The successful bidder shall pay wages to laborers and mechanics performing third party contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. VOTRAN agrees to furnish the bidder a copy of the current prevailing wage determination issued by the U.S. DOL for third-party contract work under the project upon request, and agrees to refrain from awarding any affected third-party contract until the third-party contractor agrees to the required wage determination.
- b. VOTRAN shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.

#### **Flow Down**

The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	



**COUNTY of VOLUSIA**  
**TRANSIT SERVICES DIVISION**  
**d/b/a**  
**VOTRAN**



## **FTA THIRD PARTY CONTRACT CLAUSES**

### **ADA Access**

49 U.S.C. § 5301  
29 U.S.C. § 794  
42 U.S.C. § 12101  
FTA C 4220.1F at Appendix D-3

### **Applicability to Contracts**

The ADA Access requirements apply to all contracts.

### **Flow Down**

This section applies to subcontractors at all tiers.

### **Model Clauses/Language**

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto: (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37; (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35; (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36; (6) U.S. GSA regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19; (7) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630; (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F; and (9) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and (10) Any implementing requirements FTA may issue.

VENDOR	
DATE	
PRINT NAME	
SIGNATURE	