

FEDERAL AWARD IDENTIFICATION NUMBER: TX-2024-054-00
FEDERAL AWARD DATE TO City: 06/10/2024
NAME OF AWARDFING FEDERAL AGENCY: FEDERAL TRANSIT ADMINISTRATION
ASSISTANCE LISTING NUMBER: 20.507
CFDA TITLE: 49 USC 5307 - Urbanized Area Formula
SUBRECIPIENT NAME: TEXAS STATE UNIVERSITY
SUBRECIPIENT DUNS NUMBER: 074602368
SUBAWARD AMOUNT: \$3,067,702
SUBAWARD PERIOD OF PERFORMANCE: START 01/11/2023 END 01/10/2025
SUBAWARD OF FEDERAL FUNDS (Y/N): YES
INDIRECT COST RATE: N/A

**SUBRECIPIENT FUNDING AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY**

This Sub-Recipient Funding Agreement (“Agreement”) is hereby made and entered into by and between the City of San Marcos, a Texas home rule municipality (the “City”), and Texas State University (the “Sub-Recipient”), collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, City acts as the direct recipient for the Federal Transit Administration (“FTA”), with regard to certain Formula Grant Funds that are identified on the Award Summary; and

WHEREAS, the FTA allows City to make sub-awards of the Formula Grant Funds it receives provided that a Sub-Recipient receiving a sub-award agrees to and is capable of performing the responsibilities for the Formula Grant Funds as a pass-through recipient that are required to be performed by City as the recipient; and

WHEREAS, the Sub-Recipient has submitted a project proposal (the “Project”) for financial assistance as described on Exhibit A, a copy of which is attached hereto and incorporated herein for all purposes, and based on representations made, the Sub-Recipient is eligible to receive such funds; and

WHEREAS, to the extent required, the Project is included in an approved locally developed, coordinated public transit-human services transportation plan; and

WHEREAS, the Sub-Recipient has executed and has agreed to adhere to the federal fiscal year certifications and assurances for the FTA assistance programs as required at the start of each fiscal year grant period for consideration for state and/or federal grants; and

WHEREAS, City has agreed to provide the Sub-Recipient with a sub-award of a portion of the Formula Grant Funds as a Sub-Recipient.

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM AND COMPLIANCE

1.1 The initial term of this Agreement shall begin on 08/20/2024 and shall remain in effect until project is closed out, gone through a FTA Triennial review, and meet all federal requirements with no deficiencies unless terminated or otherwise modified in a written amendment, signed by both Parties. Any cost incurred before or after the Agreement period shall be ineligible for reimbursement. Any project funds not utilized by the termination date of this Agreement shall be automatically released from this Agreement and may be redistributed by City for its own purposes, including but not limited to, making additional sub-awards. The Parties understand and acknowledge that the term of this Agreement is dependent upon approval by the Transportation Improvement Program (“TIP”) and the Statewide Transportation Improvement Program (“STIP”) per federal, State, and City requirements. This Agreement may be extended upon the Parties’ mutual written agreement.

1.2 As a sub-recipient of Section 5307 funds (collectively, the “Federal Funding” or “Federal Funds”), the Sub-Recipient understands and agrees that receipt of such Federal Funding is contingent and conditioned on its compliance with all City and Federal requirements and that these requirements necessarily encompass all applicable Federal statutes, regulations, the terms and conditions of the Federal award as well as those set out in the FTA Master Agreement, as amended from time to time. The terms and conditions of the FTA Master Agreement are hereby incorporated herein and made a part hereof for all purposes as if fully set out. City will provide copies of any amendments to the FTA Master Agreement to Sub-Recipient when available to City. Any conflict between this Agreement and the FTA Master Agreement shall be resolved in favor of the FTA Master Agreement. Any violation of a Federal requirement by the Sub-Recipient can result in an enforcement action undertaken by FTA and termination of this Agreement by City and/or FTA.

1.3 The Sub-Recipient shall not represent itself as an agent or employee of City and has no authority to bind City in contract or otherwise.

1.4 The Sub-Recipient agrees to maintain sufficient legal, financial, technical, and managerial capacity to: (1) plan, manage and complete the Project and provide for the use of the Project services; (2) comply with the terms of this Agreement, the Approved Project Budget, and the Project schedule; and (3) comply with all applicable Federal laws, regulations and requirements, including but not limited to, FTA’s Master Agreement, and the annual Certifications and Assurances to FTA. Sub-Recipient shall notify City as soon as possible but not more than thirty (30) days after the occurrence of any change in conditions (including its legal, technical financial or managerial capacity), any change in local law, or any other event that may significantly affect the Sub-Recipient’s ability to perform the Project in accordance with the terms of this Agreement. The Sub-Recipient shall provide immediate written notification to City and FTA of any current or prospective major dispute, breach, default, or litigation that may affect City’s or

Federal Government's interest in the Project or the Federal Government's administration or enforcement of Federal laws or regulations and shall also inform City and FTA in writing before naming the Federal Government as a party to litigation. The Sub-Recipient agrees and understands that the FTA retains a right to concur in any compromise or settlement of any claim involving the Project.

The Parties agree and understand that any given term under this Agreement cannot be extended past the time-period of the Grant Award from which the funding is originating.

II. PROJECT DESCRIPTION

Sub-Recipient has submitted and shall be responsible for implementing and completing the project as described in Exhibit A, a copy of which is attached hereto and incorporated herein for all purposes.

III. FUNDING

3.1 (a) To the extent City receives Section 5307 funds for the Project, City shall reimburse Sub-Recipient for its eligible expenses as designated in the Budget as described on Exhibit B, a copy of which is attached hereto and incorporated herein for all purposes, for the entire Grant Award for this Project, subject to the requirements set out in Article 1 and other provisions of this Agreement. City shall transfer the FTA Funds for the Project to Sub-Recipient on a reimbursement basis only.

(b) Sub-Recipient understands that the Federal Funds to be provided under this Agreement are contingent upon FTA's approval of the grant application and are subject to the Federal lapsing requirements, as defined or explained in FTA Circular 9030.1E (Urbanized Area Formula Program). City assumes no responsibility for funding any portion of the Project. This Agreement and the obligations of the City under it are subject to City's receipt of Federal Funds adequate to carry out the provisions of this Agreement. City may cancel the Project and associated work if both Parties determine that there will be a lack of adequate funding available for the Project. In such event, the Parties shall notify the other in writing within forty-five (45) days in advance of the date that such cancellation is effective, and the cancellation shall be treated as a termination for convenience as provided herein. Neither City nor Sub-Recipient is responsible for providing any funding to substitute for the Federal funds in the event a grant is withdrawn, local funding is not available, or not otherwise provided for any reason. The Parties understand and acknowledge that funding from federal sources is required to be spent down according to the terms and conditions promulgated by the relevant federal funding agency. The Parties understand and acknowledge that such terms and conditions may be changed, from time to time, by the relevant federal funding agency. At no time does this Agreement require either Party to violate any of those terms and conditions promulgated by the federal funding agency.

(c) This is a one-time Grant Award of Federal Funds by City to the Sub-Recipient and does not imply or obligate City to any future funding commitment beyond

the schedule outlined in Exhibit B. Nothing in this Agreement limits or prohibits Sub-Recipient's right to seek and apply for additional local, State, or federal funding from whatever source.

(d) Sub-Recipient shall provide the full amount required for the Project in the form of local match for the Federal Funds being provided in subsection (a). Sub-Recipient agrees to provide sufficient funds, together with the Federal assistance, that will assure payment of the actual cost of each Project activity covered by the FTA Grant Award. No local match funds provided shall be derived from receipts from use of Project facilities or equipment or other Federal funds. Sub-Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs. Sub-Recipient also agrees to provide the proportionate amount of the local share promptly as it incurs Project costs or as Project costs become due. No refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal Funds is made to the Federal Government. The Parties agree that Sub-Recipient has the right to braid Federal Funds under this Agreement, as permitted by FTA regulations.

The Project Budget is attached hereto as Exhibit B. The Project Budget includes the total Project cost and Sub-Recipient's funding commitment, which may include alternative funding sources, including but not limited to Transportation Development Credits ("TDCs"). Prior to or concurrent with the City's release of funds to or for the benefit of Sub-Recipient, Sub-Recipient will provide a local match in an amount, manner, or form as described in Attachment B ("Project Budget"). The local match is intended to demonstrate Sub-Recipient's commitment to and sharing of risks with the City associated with implementation of the Project.

TDCs may be used in lieu of the Sub-Recipient's local match. If the Project Budget includes the use of TDCs in lieu of a local match, Sub-Recipient will place an amount equal to the TDCs in an escrow account for the benefit of the City. A percentage of the escrowed funds shall be released to Sub-Recipient each year during the life of the Project according to the amortization schedule or method established under FTA Circular 5010.1D.

Sub-Recipient shall incur obligations and make disbursements of Project Funds only in accordance with and as authorized in the approved Project Budget. If Sub-Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, Sub-Recipient shall report this to City on or before the sixtieth (60th) day prior to the date of termination set out under this Agreement.

(e) Sub-Recipient shall expend Federal Funds only for eligible Project costs, as set forth in FTA's Master Agreement and applicable FTA Circulars. To be eligible for Federal participation, the costs must comply with all the following requirements:

(1) be in conformance with the Project Description, the approved Project Budget and all other terms of this Agreement;

- (2) be required to accomplish the Project;
- (3) be reasonable for the goods or services purchased;
- (4) be the actual eligible costs to the Sub-Recipient;
- (5) be incurred for work performed after the effective date of this Agreement, or as allowed by FTA pre-award authority;
- (6) be satisfactorily documented;
- (7) be eligible for Federal participation under Federal laws, regulations or directives;
- (8) be treated consistently in accordance with accounting principles and procedures as required by Part 2 CFR 200; and
- (9) be in compliance with Department of Transportation's regulations pertaining to allowable costs (49 C.F.R. §18.22(b) or §19.27), which specify the applicability of Office of Management and Budget (OMB) Circulars.

(f) Sub-Recipient shall submit a reimbursement request, as incurred, for actual and eligible Project costs incurred and paid by Sub-Recipient consistent with the Project scope of work within 30 days of final payment by Sub-Recipient of all such costs. Failure to comply with submission deadlines shall be considered a material breach of this Agreement and may result in delay or denial of payment. All payments made by City are subject to audit.

(g) Reimbursement

(1) Unless otherwise agreed to by both Parties, the request for reimbursement shall include supporting documentation and the amount expended by Sub-Recipient during the period covered by the request. Requests for reimbursement must be consistent with the approved Project Budget, must be for eligible costs (as described and defined herein), and must indicate the actual Project costs incurred. Each request for reimbursement shall report the total of Project expenditures and specify the amount of funds to be reimbursed.

(2) Requests for reimbursement and required accompanying information shall be addressed or emailed to:

Transit Manager:
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Email: acogdill@sanmarcostx.gov

With a copy to:

City Accounting Manager
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Email: jgarcia@sanmarcostx.gov

The City may change the designees and address for deliver above by providing written notice of such change to Sub-Recipient.

(3) City will make payment within forty-five (45) days of the receipt of an undisputed request for reimbursement subject to the appropriation and availability of Federal Funds for this grant. If Federal Funds are not available to City for this grant, City, at its sole discretion, may defer payment to Sub-Recipient until the Federal Funds become available or the Parties may terminate this Agreement by mutual written agreement.

(4) City may withhold monthly payments until all reports and/or supporting documentation required by this Agreement are submitted by the Sub-Recipient in accordance with the time period specified.

(4) Sub-Recipient is responsible for all cost overruns incurred as a result of this Project. Under no circumstance shall the total amount of funds that City reimburses Sub-Recipient for exceed the amount of Federal Funds available as specified in Exhibit B of this Agreement.

(5) Because this Agreement provides for reimbursement of costs that have already been incurred, Sub-Recipient shall be responsible for paying all suppliers and vendors, if any, prior to submitting a request for reimbursement.

3.2 (a) Sub-Recipient understands and agrees that payment for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation by the Sub-Recipient of the terms of this Agreement. Sub-Recipient agrees that Project closeout will not alter the Sub-Recipient's responsibility to return any funds due the Federal Government as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds provided for the Project on the basis of a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have.

(b) Sub-Recipient understands that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

(c) Sub-Recipient shall reimburse City for any expenditures not in compliance with this Agreement or any FTA requirement, or otherwise disallowed by FTA.

In addition to any reimbursement request, on or before the twenty fifth (25th) of each month, Sub-Recipient shall submit, in a form acceptable to City, any and all data City deems necessary to comply with the 49 U.S.C. Sections 5307 grant requirements including but not limited to Quarterly Financial and Milestone reporting and National Transit Database (“NTD”) obligations. Sub-Recipient agrees to and shall fully cooperate with City in securing the required information for any and all required reporting periods that may include but not necessarily be limited to monthly and annual reporting. Sub-Recipient shall self-report to the National Transit Database the annual NTD report with NTD ID# 60269 (Full Report).

IV. AMENDMENTS

All amendments to this Agreement must be in writing and be executed by both Sub-Recipient and City. A Party desiring an amendment must notify the other Party in writing before any changes to the Agreement are made by describing the revision and explaining the need.

V. SUBCONTRACTORS

5.1 To the extent Sub-Recipient uses subcontractors for the Project, Sub-Recipient shall include all applicable Federal requirements in those contract terms, including any necessary provisions requiring such subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

5.2 Sub-Recipient understands that it is the policy of the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R. 26, shall have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 C.F.R. 26 and City’s DBE program apply to this contract as follows:

(a) If Sub-Recipient makes use of any subcontractor, it will strive to meet the annual DBE goal by offering DBEs, as defined in 49 C.F.R. 26, Subpart A, the opportunity to compete fairly for contracts and subcontracts. If subcontractors are used, DBE participation shall be reported monthly.

(b) Sub-Recipient and any subcontractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.

(c) The requirements in this Section 5.2 shall be included in any subcontract.

(d) Failure to carry out the requirements set forth above shall constitute a material breach of this Agreement.

5.3 Sub-Recipient shall be solely responsible for the performance of all subcontractors and the fulfillment of all requirements of this Agreement. City has privity of contract with and will

recognize only the Sub-Recipient.

5.4 Sub-Recipient shall assure that each of its subcontractors fully and properly perform their work under the subcontract.

5.5 Sub-Recipient agrees that this section does not operate to relieve it of any duty or liability under this Agreement, nor does it create any duty or liability on the part of City to any subcontractor. Sub-Recipient shall have sole responsibility for promptly settling any disputes between subcontractors and between Sub-Recipient and any subcontractor. Upon request of City, Sub-Recipient shall provide City with information regarding the status of any disputes involving any of its subcontractors.

5.6 Sub-Recipient shall pay its subcontractors on a timely basis, for and on account of work performed by such subcontractors, in accordance with the terms of the respective subcontracts and in accordance with applicable State and Federal law. Upon written request of City, Sub-Recipient shall provide City with information regarding the current status of payments to subcontractors, including the reasons for any non-payment.

VI. ACCOUNTING AND AUDIT REQUIREMENTS

6.1 In compliance with applicable Federal laws, regulations, and directives Subrecipient agrees as follows:

(a) Sub-Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. Sub-Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to City and FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.

(b) Funds Received or Made Available for the Project -- Sub-Recipient agrees to deposit in a financial institution and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with applicable Federal laws, regulations, and directives.

(c) Documentation of Project Costs and Program Income -- Sub-Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Sub-Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. Sub-Recipient also agrees to maintain accurate records of all program income derived from Project implementation. With regard to Project Income, Sub-Recipient agrees to adhere to the terms and conditions set out in Article VIII of this Agreement.

(d) Reports to City -- Sub-Recipient shall provide for control and accountability

for all Federal and Project Funds consistent with any applicable grant requirements. Sub-Recipient shall report its cash disbursements and balances to City on a quarterly basis and in compliance with Federal requirements.

(e) Accounting -- Sub-Recipient shall establish and maintain proper accounting procedures and cash management records and documents in accordance with general accepted accounting principles.

Sub-Recipient will meet or exceed all applicable audit requirements outlined in Title 48, Code of Federal Regulations (C.F.R.), Federal Acquisition Regulations (FAR). Sub-Recipient will comply with all applicable provisions of 2 CFR Part 200, Sub-Recipient will perform, if applicable, and provide as promptly as possible, any financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*; 2 CFR Part 200, and the most recent applicable OMB Compliance Supplement provisions for the U.S. DOT. Sub-Recipient will provide City a copy of the audit reports and bring to City's attention any audit findings relevant to Sub-Recipient's use of 49 U.S.C. 5307 funds, along with a statement that clearly describes the expected action of Sub-Recipient to repay any disallowed costs, make financial adjustment, or take other action. City may impose conditions on further funding based on such audit findings.

6.2 During this Agreement and the retention period set out in Section 6.3, City will monitor and may conduct fiscal and/or program audits of Sub-Recipient and its contractors under the terms of this Agreement. Representatives of City and/or the Federal Government shall have access to Project facilities, records and financial statements at all reasonable times relevant to this Agreement for these purposes, including those within the possession of any subcontractors. Sub-Recipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as City and/or the Federal Government deem necessary.

6.3 Sub-Recipient agrees to maintain all documentation and materials relevant to this Agreement for a period starting from the day the grant agreement is signed by the Regional Administrator through the course of the Award, the accompanying grant agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed. In the event of litigation or settlement of claims arising from the performance of this Agreement, Sub-Recipient agrees to maintain same until all such litigation, appeals, claims or exceptions related thereto have been conclusively resolved.

VII. PROCUREMENT, PROPERTY AND EQUIPMENT STANDARDS

7.1 For any and all procurements associated with the Federal Funds under this Agreement (FTA Section 5307), Sub-Recipient shall meet or exceed all applicable procurement requirements that may include but not be limited to, 49 C.F.R. Part 18.36 inclusive of the standard for competitive procurements; methods of procurement; contracting with small and minority firms, women's business enterprise and labor surplus area firms; contract cost and price; awarding agency review; insurance and bonding. Sub-Recipient's procurement system must include, but not be limited to, the following procurement standards:

(a) Procurement procedures must promote full and open competition while

conforming to the applicable federal, State, and local laws and regulations.

(b) A contract administration system that ensures that the contractor performs in accordance with the terms, conditions, and specifications of their contracts.

(c) A written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts under this Agreement. No employee, officer, or agency of Sub-Recipient shall participate in selection or in the award or administration of a contract supported by state or federal funds if there is a conflict of interest, real or apparent.

(d) A process for review of proposed procurements to avoid purchase of unnecessary or duplicative services or items.

(e) Use of state and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency.

(f) A mechanism to make awards to only responsible contractors possessing the ability to perform successfully under the terms and conditions of this Agreement. The mechanism should provide assurances regarding the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) Records sufficient to detail the significant history of procurement, including rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(h) Mechanisms that use good administrative practices and sound business judgment to settle contractual and administrative issues arising out of procurements made in accordance with this Agreement.

(i) Protest procedures to handle and resolve disputes relating to procurements. The protest procedure should provide a way to promptly disclose information regarding a protest to City.

(j) The equipment and program provisions survive the contract duration, as federally required.

7.2 Sub-Recipient agrees and understands that City must consent to the award of all purchase orders for non-expendable personal property as defined in 49 C.F.R. §18.32 and §18.33 for the project funds assigned in the project budget. The acquisition of real property must comply with 49 C.F.R. §18.31. Equipment management standards must be met for any assets purchased using Federal Funds. Although not anticipated, to the extent Sub-Recipient uses any federal funding to purchase transit assets, Sub-Recipient agrees to and must adhere to the management standards under 49 U.S.C. 5326 and the related regulatory requirements.

7.3 Sub-Recipient's Equipment Management standards shall include, but not be limited

to the following:

(a) Equipment records, FAIN TX-2024-054-00 that include: a description of the equipment; a serial number or other identification number; the source of equipment; who holds title; the acquisition date and cost of the equipment; percentage of Federal participation in the cost of the equipment; the location, use and condition of the equipment; maintenance history for each vehicle; and ultimate disposition data including the date of disposal and sale price.

(b) Conducting a physical inventory of the equipment at least once every two (2) years and reconciling the inventory with equipment records described in the preceding paragraph.

(c) Developing a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.

(d) Developing and following procedures to keep the equipment maintained and in good condition. At a minimum, Sub-Recipient shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date the maintenance was performed. Maintenance records shall be provided to City upon request.

(e) Requesting disposition instructions from City, and if authorized to sell the equipment, using proper sales procedures to ensure the highest possible return.

7.4 Sub-Recipient shall comply with all applicable law including but not limited to FTA Circular 5010.1E, Award Management Requirements and Title 43, Texas Administrative Code §31.53 and §31.55, to protect the public investment in real property and equipment purchased in whole or in part with Federal or State Funds.

7.5 In the event project equipment is not used in the proper manner or is withdrawn from public transportation services, Sub-Recipient shall immediately notify City. Both Parties shall work together to reassign or dispose of said equipment.

7.6 All vehicles purchased under this Agreement shall comply with the Motor Vehicle Safety Standards established by the US Department of Transportation and State law.

7.7 Irrespective of coverage by insurance, unless otherwise approved in writing by City, in the event of loss or damage to project property, whether by casualty or fire, the fair market value will be the value of the property immediately before the casualty or fire.

7.8 Sub-Recipient shall notify City, in writing, immediately of theft, wreck, vandalism or other destruction of project-related facilities or equipment, which written notice shall conform with those standards specified on NTD S&S 40 and 50.

7.9 All titled assets shall list and record Sub-Recipient as the titled holder of said assets. To the extent said assets were purchased with or by the use of TDCs, the Parties understand

and acknowledge that TXDOT may also be listed as a titled owner of said assets. The Parties will work together with TXDOT to the extent TXDOT may have an interest in the disposition of said assets.

VIII. STANDARDS FOR FINANCIAL ADMINISTRATION AND PROGRAM INCOME

8.1 For purposes of this Agreement, Sub-Recipient agrees that its standards for financial administration will conform to the requirements of 49 C.F.R. Part 18, §18.20. Except for income from royalties and proceeds from the sale of real property or equipment, Sub-Recipient shall retain program income, if any, and apply such income to allowable capital or operating expenses. If federally funded, Program Income from royalties and proceeds from sale of real property or equipment shall be handled as specified in Federal Provisions.

8.2 Sub-Recipient shall comply with standards governing the receipt and application of program income as set forth in 49 C.F.R. §18.25, Program Income. Program income means gross income received by Sub-Recipient directly generated by a grant supported activity or earned only as a result of this Agreement.

8.3 Program income includes income from fees for services performed, from the use of rental or real services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under an agreement similar to this Agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in federal regulations, program income does not include interest on grant funds, rebates, credits discounts, refunds, etc., and interest earned on any of them. Any advertising revenue generated on or by Sub-Recipient-owned vehicles shall remain the property of Sub-Recipient and such amounts shall be used to fund Sub-Recipient's non-FTA funded transportation initiatives.

IX. COORDINATION

According to Title 43 of the Texas Administrative Code, §31.49, Sub-Recipient will at all times coordinate the provision of public transportation services with other transportation operators in the area, both public and private. Sub-Recipient will furnish City copies of any agreements resulting from such coordination. Agreements that authorize the payment of project funds to another entity are subject to the approval requirements described in Article V, Subcontracts.

X. LABOR PROTECTION PROVISIONS

10.1 Sub-Recipient agrees to follow and abide by any and all applicable labor provisions required by federal law or regulation and non-conflicting laws and Constitution of the State of Texas. If applicable, Sub-Recipient will comply with any of the labor protection provisions as listed below for the protection of employees in the mass passenger transportation industry in the area where the transportation services are provided under this Agreement:

(a) The transportation services shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger

transportation industry within the area where the transportation services are being provided.

(b) All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.

(c) Sub-Recipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the Project.

(d) In the event an employee is terminated or laid off as a result of this Project, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training is required by such employment or reemployment Sub-Recipient shall provide or provide for such training or retraining at no cost to the employee.

(e) Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the Project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits allowed for by applicable Federal, State or local law or regulation. An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the Project" as used herein shall include events occurring in anticipation of, during, and subsequent to the Project.

(f) In the event any provision of these conditions is held to be invalid or otherwise unenforceable, Sub-Recipient and the employees or their representatives may, to the extent applicable, invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.

(g) Sub-Recipient agrees that any controversy respecting the Project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.

(h) Sub-Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph.

(i) Sub-Recipient agrees and understands that the funding received under this Agreement is subject to the labor protection requirements of this section (49 U.S.C. § 5333(b)). Sub-Recipient agrees that it is bound by and will comply with the terms of this

section and protections the Department of Labor applies to the certification of these funds and the terms of the Department of Labor's certification letter. Sub-Recipient will post, in a prominent and accessible place, a notice stating that Sub-Recipient is a recipient of federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). The notice shall also specify the terms and conditions set forth herein for the protection of employees.

10.2 The Parties acknowledge that to the best of their knowledge and interpretation of this Agreement, the Project currently does not implicate the Federal Department of Labor (DOL) requirements of the Davis-Bacon Act. However, the Parties agree that to the extent the Agreement is found to so implicate or that any future amendment to the Agreement implicates such DOL requirements, the contractual requirements mandated under the DOL regulations at 29 C.F.R. Section 5.5 are hereby incorporated into and made a part of this Agreement.

XI. MONITORING AND AUDITS

11.1 In addition to any other provision herein contained, City will monitor the progress of the Project authorized in this Agreement using appropriate and necessary inspections, including but not limited to periodic reports, physical inspection of Project facilities, telephone conversations, letters, and conferences.

11.2 In addition to any other provision herein contained, including the terms and conditions set out under Article VI, City will monitor and conduct financial and/or program audits of Sub-Recipient to verify compliance with the terms of this Agreement. Representatives of City or the Federal government shall have access to project facilities and audit the books and records relating to the Project at all reasonable times. In the event any deficiencies are identified, Sub-Recipient shall be informed in a sufficiently detailed writing of said deficiencies and permitted the opportunity to cure said deficiencies in a timely manner.

XII. REPORTS

12.1 In addition to any other requirement contained in this Agreement, with the more specific provision controlling over these general terms, Sub-Recipient agrees to the following:

(a) Reports -- Sub-Recipient shall, at a minimum, submit the following reports to City for the duration of the Project:

- (1) Monthly Requests for Reimbursement
- (2) Quarterly Milestone Progress Report
- (3) Annual FTA Certifications and Assurances as required by FTA;
- (4) The Subrecipient's annual financial report as it relates to this Agreement; and

(5) Any other reports or documents that may be requested by City or FTA for this Agreement.

(b) Report Deadlines –Quarterly reports shall be submitted to City within twenty-five (25) days of the end of a Quarter.

(c) Submittal -- Reports required to be submitted to City shall be addressed to:

Transit Manager:
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Email: acogdill@sanmarcostx.gov

With a copy to:

Accounting Manager
630 East Hopkins Street
San Marcos, Texas 78666
Email: jgarcia@sanmarcostx.gov

(d) Reviews -- Sub-Recipient shall cooperate in and comply with any and all management reviews, triennial reviews, financial audits, and compliance reviews that City or FTA may undertake with regard to the Project.

12.2 Sub-Recipient shall promptly notify City, in writing, any time the transportation services being funded under this Agreement will be negatively impacted, including problems, delays or adverse conditions that will materially affect Sub-Recipient's ability to purchase buses identified and/or provide transportation services contracted for under this Agreement. This disclosure shall be accompanied by a statement of the action taken or contemplated by Sub-Recipient.

12.3 With regard to reports, Sub-Recipient agrees to submit to City all reports required by Federal laws, regulations, and directives, this Agreement, and any other reports City or FTA may specify. All reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to City or FTA must be prepared and submitted in electronic and or typewritten hard copy formats as City or FTA may specify. As part of the audit requirements under Article VI of this Agreement, during the course of the Project and for four (4) years thereafter from the date of transmission of the final expenditure report, Sub-Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.

12.4 Sub-Recipient agrees to permit the U.S. Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, upon request to examine and inspect all Project records, documents, and papers, including contracts, related to the

Project as required by 49 U.S.C. § 5325(9).

XIII. DISPUTES

13.1 (a) General Requirement -- Any dispute arising under or related to this Agreement which is not disposed of by agreement between City and the Sub-Recipient shall be decided in accordance with the provisions of this Section, provided that, by mutual agreement, the matter may be taken immediately to any higher step in the dispute resolution process or to litigation. Pending final resolution of a dispute, Sub-Recipient shall proceed diligently with the performance of the Agreement, provided that the action of Sub-Recipient in proceeding with such performance shall not prejudice its position in the dispute resolution process.

(b) Notice of Dispute -- All disputes shall be initiated through a written dispute notice submitted by either Party to the other Party within ten (10) business days after the date the dispute first arises. Within fifteen (15) business days after delivery of the dispute notice, the receiving Party shall submit a written response to the other Party. The dispute notice and written response shall include: (1) a statement of the Party's position and a summary of the arguments supporting that position; (2) any evidence supporting the Party's position; and (3) the name of the person who will represent that Party and any other person who will participate in negotiations and/or dispute resolution.

(c) Negotiation -- Following a dispute notice and response under subsection (b), the Parties shall first attempt in good faith to promptly resolve the dispute by discussion and negotiation between persons who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. The Parties shall meet at a mutually acceptable time and place within fifteen (15) business days after delivery of the dispute response, and thereafter as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information by one Party to the other shall be honored.

(d) Second Level Review -- (1) If the dispute is not resolved within forty-five (45) business days after delivery of the dispute notice, either Party may submit the dispute (together with the dispute notice, the response, and any minutes from the subsection (c) process) to a two (2) person panel consisting of a member of the executive management team of City and an individual in a comparable executive position with the Sub-Recipient. These two individuals shall meet within thirty (30) days after the date of the submittal and shall attempt to reach a fair and equitable resolution of the dispute. (3) If the two-person panel resolves the dispute, they shall issue a written decision that shall be administratively final and conclusive. If the panel is unable to resolve the dispute, either Party may proceed to mediation under subsection (e).

(e) Mediation -- Any dispute which is not resolved by the Parties through the operation of the preceding provisions of this Section may be submitted by either party to mediation in accordance with the requirements of the Governmental Dispute Resolution Act, Chapter 2260, Texas Government Code. The mediator shall be mutually agreeable to and selected by both Parties and each Party shall pay half the cost of the mediator. If not

resolved by mediation, either Party may pursue its case in a court of competent jurisdiction.

(f) Pending final resolution of a dispute under this Section, Sub-Recipient shall proceed diligently with the performance of its obligations under the Agreement (including those matters giving rise to the dispute); provided that the action of the Sub-Recipient in proceeding with such performance shall not prejudice its position in the dispute resolution process.

13.2 This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed by any Party and shall be cumulative. Venue for any proceedings at law or in equity shall be in a state court having jurisdiction in Hays County, Texas, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

XIV. ROLLING STOCK

The Parties understand and acknowledge that Sub-Recipient purchasing revenue service rolling stock with Federal Funds must ensure that pre-award and post-delivery audits are complete before the Sub-Recipient enters into a formal contract for the purchase of such rolling stock and after rolling stock is delivered to Sub-Recipient. Sub-Recipient agrees to perform such required pre-award and post-delivery audits and shall verify that the following certifications are on file with the Direct Recipient:

(a) For Federal Funds involving capital expenditures related to rolling stock, Sub-Recipient shall obtain the following certifications:

(1) **Pre-Award and Post-Delivery Buy America Certification.** This certification states that the subrecipient maintains either a (i) FTA letter granting a waiver to the rolling stock to be purchased from Buy America requirements, or (ii) had an independent audit. The independent audit would ensure that the rolling stock purchase meets Buy America requirements. The subrecipient must maintain records that component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Pre-Award Purchaser's Requirements Certification.** This certification is kept on file by the recipient and states that (i) the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and (ii) the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

(3) **Post-Delivery Purchaser's Requirement Certification.** This certification is kept on file by the recipient and states that a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on

the manufacture of such rolling stock. After reviewing the report and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications. The inspector's report includes the following:

- (i) Provide accurate records of all vehicle construction activities; and
- (ii) Address how the construction and operation of the vehicles fulfills the contract specifications.

(4) **Manufacturer's Federal Motor Vehicle Safety Standard Self-Certification.** If federal motor vehicle standards do not apply, the recipient must provide a certification from the manufacturer stating such. If the standards do apply, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

(5) **Distracted Driving.** In accordance with section 34(b)(3)(iii) of the FTA Master Agreement:

- (i) *Safety.* The Sub-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 Sub-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 Sub-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.

XV. TERMINATION

15.1 Termination for Cause.

(a) City reserves the right, with ninety (90) days advance written notice of default to Sub-Recipient, to terminate this Agreement and withhold all payments of funds in the event of any of the following circumstances:

- (1) Sub-Recipient has breached or failed to perform any term or condition of this Agreement;
- (2) Sub-Recipient has violated the terms of FTA's Master Agreement or other Federal requirement; or
- (3) Sub-Recipient fails to make progress in the performance of the

project so as to endanger its performance.

Termination of any financial assistance for the Project will not invalidate obligations properly incurred by Sub-Recipient by the termination date, to the extent such obligations cannot be cancelled. If Sub-Recipient has failed to make adequate progress, failed to make appropriate use of the funds, or failed to comply with the terms of this Agreement, Sub-Recipient will implement and comply with any remedy required by FTA.

(b) Sub-Recipient shall have the opportunity to cure a default within a period of sixty (60) days (or such longer period as City may authorize in writing) after receipt of written notice from City specifying the occurrence of such default.

(c) Except as otherwise provided, settlement of claims under this termination clause shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

(d) If a determination is made, either pursuant to a dispute resolution process or by a court of competent jurisdiction, that City's termination of this Agreement for default was improper or otherwise contrary to this Agreement, then that termination will automatically convert to a Termination by Convenience under Section 14.2, unless the Parties otherwise agree.

(e) The rights and remedies of the Parties under this section are not exclusive and are in addition to any other rights and remedies they may have under this Agreement or applicable law.

15.2 This Agreement may be terminated by mutual agreement of the Parties. Such termination shall be effective in accordance with a written agreement by the Parties.

15.3 Neither Party shall be in default for failure in performance of this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of the Party. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

15.4 The remedies of City under this Article are in addition to remedies and obligations of Sub-Recipient under Article III, and Sub-Recipient shall not be relieved of any obligation to reimburse City pursuant to the requirements of Article III.

XV. OPEN MEETINGS AND PUBLIC INFORMATION

Both Parties will comply with Texas Government Code, Chapters 551 and 552, regarding open meetings and public access to information. Each Party is responsible for reviewing and responding to records requests made under Texas Government Code, Chapters 551 and 552.

XVI. INDEMNIFICATION AND INSURANCE

16.1 THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF EITHER OF THE PARTIES TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON STATE PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS, AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"). ANY TERMS AND CONDITIONS IN THIS AGREEMENT RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON EITHER PARTY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

16.2 To the extent permitted by the laws and Constitution of the State of Texas, SUB-RECIPIENT covenants and agrees to FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND City, employees, officers, director and representatives, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, personal or bodily injury, death and property damage, made upon City, caused by Sub-Recipient's willfully negligent activities under this Agreement, including any acts or omissions of SUB-RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor and their respective officers, agents, employees, directors and representatives while exercising or performance the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, IN THE EVENT SUB-RECIPIENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EITHER PARTY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Each Party shall promptly advise the other in writing of any claim or demand made known to said Party related to or arising out of activities under this Agreement.

16.3 Sub-Recipient acknowledges that it is not an agent, servant or employee of City and that it is responsible for its own acts and deeds and for those of its agents, employees or volunteers during the performance of this Agreement.

16.4 With regard to insurance, City understands and acknowledges that Sub-Recipient is an agency of the State of Texas and has only such authority to obtain insurance from third parties as is granted to Sub-Recipient by state law or as may be reasonably implied by such law. Sub-Recipient shall have no obligation under this Agreement to obtain policies of insurance and shall have the right, in Sub-Recipient's sole discretion, to determine whether Sub-Recipient will maintain policies of insurance, operate programs of self-insurance, or utilize any other program of risk-protection in connection with Sub-Recipient's operations.

16.5 Insurance:

(a) Sub-Recipient understands and agrees that, to the extent permitted by the laws and Constitution of the State of Texas, any and all directors, employees, agents, representatives of Sub-Recipient while engaged in the performance of any work for Sub-Recipient or any work related to this Agreement shall be considered directors, employees, agents, representatives of Sub-Recipient under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law.

(b) On or before the Commencement date of this Agreement, Sub-Recipient shall furnish all original completed Certificates of Insurance and applicable endorsements to City which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed directly to City. Certificates shall be provided for capital rolling stock once the vehicles purchased pursuant to this Agreement are delivered to Sub-Recipient and received from the manufacturer and all paperwork has been transmitted to Sub-Recipient.

(c) City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal of the term thereof and to modify insurance coverage and their limits when deemed reasonably necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance, will City allow modification whereupon City may incur increased risk.

(d) Sub-Recipient is self-insured under Texas Law. The Texas statutes providing for this self-insurance are found in Chapter 104 of the Texas Civil Practice and Remedies Code and Chapter 2259 of the Texas Government Code.

(e) Employees of Sub-Recipient are covered by the Worker Compensation Act for Texas State employees. The Texas statutes providing for this insurance are found in Chapter 501 of the Texas Labor Code.

(f) For operational and maintenance projects and to the extent applicable, Sub-Recipient's financial integrity is of interest to City, therefore, subject to Sub-Recipient's right to maintain reasonable deductibles, Sub-Recipient shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Sub-Recipient's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-VII or better by A.M. Best Company or otherwise acceptable to City, in the types and amounts with limits of liability not less than the following:

(1) Workers' Compensation Insurance: Sub-Recipient is self-insured

under Texas Law. The Texas statutes providing for this self-insurance are found in Chapter 104 of the Texas Civil Practice and Remedies Code and Chapter 2259 of the Texas Government Code

(2) Employer's Liability Insurance: Coverage is required for employer's liability with limits of liability not less than: \$1,000,000 Each Accident

(3) Commercial General Liability Insurance (Broad Form): Coverage is required for general liability, including coverage for the following where exposure exists:

- (i) Premises/Operations
- (ii) Independent Contractors
- (iii) Personal Injury
- (iv) Contractual Liability
- (v) Broad Form Property Damage

\$2,000,000 General Aggregate

\$1,000,000 Personal Injury per occurrence

\$1,000,000 Each Occurrence

\$1,000,000 Fire Damage to Rented Premises

(4) Commercial Automobile Liability Insurance: Coverage is required for automobile liability, covering all owned/leased, hired and non-owned motor vehicles: \$1,000,000 Combined Single Limit

To the extent Sub-Recipient performs its obligations under this Agreement through the use of sub-contractors, such sub-contractors may provide the above-referenced insurance at a minimum.

16.6 City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Upon such request by City, Sub-Recipient shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

16.7 Sub-Recipient agrees that with respect to the above required insurance, all

insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

(a) Name City, its officers, and employees as additional insureds by endorsement as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers compensation;

(b) Sub-Recipient's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising pursuant to matters under this Agreement;

16.8 Sub-Recipient shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) day notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following address and identified as "*Insurance for Sub-Recipient Agreement*":

Amy Cogdill

Transit Manager
630 East Hopkins Street
San Marcos, Texas 78666

16.9 If Sub-Recipient fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, City may determine Sub-Recipient to be in default of this Agreement.

16.10 Nothing herein contained shall be construed as limiting in any way the extent to which Sub-Recipient may be held responsible for payments of damages to persons or property under this Agreement.

16.11 It is understood and agreed that the insurance required herein is in addition to and separate from any other obligation contained in this Agreement.

16.12 To the extent applicable, the insurance terms and conditions, as outlined in Article XVI, may be satisfied by and through a Sub-Recipient's self-insurance program. Self-insurance certificates showing the equivalent in coverage must be provided to City on or prior to the date this Agreement is signed by Sub-Recipient.

XVII. COMPLIANCE WITH LAWS

Sub-Recipient shall comply with all applicable federal, State, and local laws, statutes, ordinances, rules, regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. When required, Sub-Recipient shall furnish City with satisfactory proof of compliance therewith.

XVIII. NON-COLLUSION

Sub-Recipient warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. If Sub-Recipient breaches or violates this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the amount in Section 3.1 of this Agreement, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

XIX. CIVIL RIGHTS

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

19.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this agreement:

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

(b) Age Discrimination. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and federal transit law at 49 U.S.C. §5332, Sub-Recipient agrees to refrain from discrimination against present and prospective employees for reason of age. In

addition, SUB- RECIPIENT agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended (42 U.S.C. §12112), Sub-Recipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. 1630, pertaining to employment of persons with disabilities. In addition, SUB-RECIPIENT agrees to comply with any implementing requirements FTA may issue.

19.3. Third Party Contractor and Subcontractor Assurances. As required by 49 C.F.R. § 26.13(a) and section 12(e)(4)(ii) of the FTA Master Agreement, Sub-Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a third party contractor:

(a) Sub-Recipient, each third party contractor, and each third party subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;

(b) Sub-Recipient, each third party contractor, and each third party subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;

(c) Failure by the Sub-Recipient and any of its third party contractors or third party subcontractors to carry out the requirements of this section 19.3 is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and

(d) The following remedies, or such other remedy as the City deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Sub-Recipient, third party contractor, or third party subcontractor from future bidding as non-responsible.

XX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

Sub-Recipient agrees that no otherwise qualified person with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under this Agreement. Sub-Recipient shall ensure compliance with applicable regulations set forth at 49 C.F.R. 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and the Americans with Disabilities Act.

XXI. SPECIAL PROVISIONS

21.1 Sub-Recipient certifies that it is not suspended or debarred from receiving federal

funds and there are no pending proceedings for suspension or debarment. Further, Sub- Recipient represents that it is not named on any list of suspended or debarred entities as shown on any list maintained by the U.S. government (Debarment List) and has not been on any such list for the last three years. Sub-Recipient may not subcontract with any entity that is suspended or debarred from receiving federal fund as listed on any Debarment List or has been on any such list in the last three years. Sub-Recipient must verify that such entity (and its principals as defined in 2 CFR 180.995) is not suspended or debarred from receiving federal funds (nor are there pending proceedings to do so) and that such entity or its principals are not named on any Disbarment List, that such entity (or its principals) has not been on any such list for the last three years, and Sub-Recipient shall maintain documentation of verification of compliance. The verification may be accomplished by (1) checking the System for Award Management (SAM) maintained by the U.S. General Services Administration (GSA) and available at <https://portal/public/SAM/>, or (2) collecting a certification from the entity.

21.2 Sub-Recipient has obtained a Data Universal Numbering System (DUNS) number as set forth in 2 CFR 25 and provided such number to City.

21.3 Sub-Recipient shall at all times comply with applicable FTA and other federal regulations, policies and directive as they may be amended or promulgated from time to time during the term of this Agreement. Failure to do so may result in the termination of this Agreement.

21.4 All FTA and other federally mandated terms shall be deemed to control in the event of a conflict with any provisions contained in this Agreement. Notwithstanding any other provision in this Agreement, Sub-Recipient shall not perform any act, fail to conform, or refuse to comply with any requests necessary for City to comply with federal laws and regulations, as may be amended from time to time.

21.5 Sub-Recipient shall specifically comply with the federal contracting requirements as set forth in the Federal Transit Administration Master Agreement (Master Agreement) which is part of this Agreement and which may be amended from time to time.

21.6 (a) This Agreement incorporates by reference the following:

- (1) The Approved Project Description (Exhibit A); and
- (2) The Approved Project Budget (Exhibit B);

(b) This Agreement together with Exhibit A and Exhibit B along with the Federal Fiscal Year Certifications and Assurances for Federal Transit Administration Assistance Programs and the FTA Master Agreement represents the entire agreement between the Parties concerning the subject matter herein and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations.

(c) The Parties agree and understand that a statutory or regulatory reference made in this Agreement means and refers to the then current statutory or regulatory

provision as it is or has been amended from time-to-time. Furthermore, the cited references are included only to the extent they are applicable to this use of the grant funds and/or this Agreement.

XXII. SUCCESSORS AND ASSIGNS

Sub-Recipient binds itself, its successors, assigns, executors and administrators in respect to all covenants of this Agreement. Sub-Recipient shall not sign, sublet or transfer their interest in this Agreement without the written consent of City.

XXIII. LEGAL CONSTRUCTION

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. All Exhibits referenced herein are incorporated herein for all purposes. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. Facsimile signatures shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature made by an electronic scanner.

XXIV. AWARD SUMMARY AND RECITALS

The Award Summary and the Recitals as noted in this Agreement are true and correct and are hereby incorporated into this Agreement and are made a part of this Agreement for all purposes.

XXV.SIGNATORY WARRANTY

The undersigned signatory for Sub-Recipient hereby represents that he or she is an officer of the organization for whom he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the organization and bind the organizations to the terms and conditions herein stated.

[SIGNATURES ON NEXT PAGE]

EXECUTED by the Parties in duplicate counterparts, both having equal force and effective as of the date signed by the last of the two Parties to sign.

TEXAS STATE UNIVERSITY:

CITY OF SAN MARCOS:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
Project Description

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DOT

FTA

U.S. Department of Transportation

Federal Transit Administration

Award

Federal Award Identification Number (FAIN)	TX-2024-054-00
Temporary Application Number	7362-2024-3
Award Name	FY2022 Section 5307 Capital Project (Rolling Stock) for Texas State University
Award Status	Obligated / Ready for Execution
Award Budget Number	0

Period of Performance Start Date	7/8/2024		
Original Period of Performance End Date	9/30/2025		
Current Period of Performance End Date	9/30/2025	Revision #: 0	Approved?: Yes

Budget Period Start Date	7/8/2024
Budget Period End Date	9/30/2025

Part 1: Recipient Information

Name: CITY OF SAN MARCOS				
Recipient ID	Recipient OST Type	Recipient Alias	UEI	DUNS
7362	City	City of San Marcos	LRPGLNZT4WR3	069462869
Location Type	Address	City	State	Zip
Headquarters	630 E HOPKINS ST	SAN MARCOS	TX	78666
Physical Address	630 E HOPKINS ST	SAN MARCOS	TX	78666
Mailing Address	FINANCE DEPARTMENT	SAN MARCOS	TX	78666

Union Information

There are no union contacts for this application

Part 2: Award Information

Title: FY2022 Section 5307 Capital Project (Rolling Stock) for Texas State University
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FAIN	Award Status	Award Type	Application Cost Center	Date Created	Last Updated Date	From TEAM?
TX-2024-054-00	Obligated / Ready for Execution	Grant	Region 6	4/9/2024	4/9/2024	No

Award Executive Summary

This application is to request /FY2022 Section 5307 apportioned funds by TxDOT in the amount of FY 22 (\$4,397,245) to the City of San Marcos on behalf of our subrecipient, Texas State University (NTD 60269/subrecipient).

This grant application includes a portion of the FY 22 apportionment (\$3,067,702). The balance of (\$1,329,543) will be used on a projected programmed at a later date.

This grant application is to purchase Five (5) revenue vehicles that includes

1-Partial funding of one (1) 40-ft low-floor clean diesel buses at \$522,603.62 per bus for a total of \$446,827.84 (5307 -\$357,462.27 and local \$89,365.57)

2- Four (4) 60-ft low-floor clean diesel articulated buses at \$846,950.18 per bus, for a total of \$3,387,800.72. (5307- \$2,710,240.58 and \$677,560.14)

A local match of \$766,927 is provided by Texas State University.

This application will modernize the transit fleet, replace outdated vehicles, enhance operational capacity, and improve accessibility and reliability for the growing community. The new replacement vehicles will be put into the Texas State University public transportation service. Texas State University will use the 40 vehicles to replace a vehicle in its current fleet under RVI ID 354119 in Texas State's NTD profile.

The vehicle fleet modernization promotes environmental sustainability to improved safety and productivity. These funds will be used to reimburse the subrecipient once all documentation is provided on eligible projects fitting the scope of the application.

The split letter for FY 22 has been included in the Application documents.

There is no federal interest in the buses being replaced.

There will be 1% expended on security related items on transportation related items, such as camera system which is already provided by the City of San Marcos EMS, Fire Department, Police and they will continue to provide safety and security support to the transit systems.

Frequency of Milestone Progress Reports (MPR)

Annual

Frequency of Federal Financial Reports (FFR)

Annual

Does this application include funds for research and/or development activities?

This award does not include research and development activities.

Pre-Award Authority

This award is using Pre-Award Authority.

Does this application include suballocation funds?

Recipient organization is suballocated these apportioned funds and can apply for and receive these funds directly.

Will this Grant be using Lapsing Funds?

No, this Grant does not use Lapsing Funds.

Will indirect costs be applied to this application?

This award does not include an indirect cost rate.

Indirect Rate Details: N/A

Requires E.O. 12372 Review

No, this application does not require E.O. 12372 Review.

Delinquent Federal Debt

No, my organization does not have delinquent federal debt.

Award Description

Purpose

The purpose of acquiring buses is to maintain a state of good repair of the current fleet and enhance the efficiency and effectiveness of the public transportation system by replacing aging vehicles with modern buses, optimizing operational capacity, and increasing accessibility and reliability for the community.

These vehicles will be put into public transportation service by a subrecipient, Texas State University.

Activities to be performed:

Texas State University (NTD 60269) will purchase 5 revenue vehicles: one (1) 40-ft low-floor clean diesel buses at \$522,603.62 per bus and four (4) 60-ft low floor clean diesel articulated buses at \$846,950.18 per bus.

Expected outcomes:

The expected outcomes are to provide enhanced public transit service to the San Marcos Urbanized Area and maintain a state of good repair for the fleet that is operating public transportation.

Intended beneficiaries:

San Marcos Urbanized Area (UZA)

Subrecipient Activities:

Texas State University is a subrecipient of the City of San Marcos. Texas State University is the purchaser of these 5 vehicles.

The City of San Marcos will monitor the subrecipient and approve reimbursements on eligible expenses defined in this scope.

Award Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
Amy	Cogdill	Transit Manager	acogdill@sanmarcostx.gov	(512) 393-8487
	abel.ayala@dot.gov	Program Management Specialist		
	kwasi.bosompem@dot.gov	Community Planner		

Award Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (2013 and forward)	5307-2A	20507	\$3,067,702
Local			\$766,927
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$3,834,629

Award Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
TX-2024-054-01-00	111-00 (111-A1) BUS - ROLLING STOCK	\$3,067,702.00	\$766,927.00	\$3,834,629.00	5
TX-2024-054-01-00	11.12.01 BUY REPLACEMENT 40-FT BUS	\$357,462.00	\$89,366.00	\$446,828.00	1
TX-2024-054-01-00	11.13.06 BUY ARTIC BUS FOR EXPANSION	\$2,710,240.00	\$677,561.00	\$3,387,801.00	4

Discretionary Allocations

This application does not contain discretionary allocations.

Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name	Scope Number	Scope Suffix	UZA Code	Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
TX-90-Y558	TX-2024-054-01-00	BUS - ROLLING STOCK	111-00 (111)	A1	480000	Texas	2022.2J.90.91.2	00	Urbanized Area Formula Grants	\$3,067,702	\$3,067,702

Part 3: Project Information

Project Title: Revenue vehicle procurement

Project Number	Temporary Project Number	Date Created	Start Date	End Date
TX-2024-054-01-00	7362-2024-3-P1	4/9/2024	1/11/2023	1/10/2025

Project Description

Project Description

Texas State University is the subrecipient of the City of San Marcos. Texas State University (NTD 60269) will purchase 5 revenue vehicles: one (1) 40-ft low-floor clean diesel buses and four (4) 60-ft low floor clean diesel articulated buses.

Texas State University will use the 40' vehicle to replace a vehicle in its current's fleet under RVI ID 354119 in Texas State's NTD profile.

Project Benefits

Replacing aging vehicles and adding articulated buses will lead to increased safety and maintain a state of good repair. The vehicles will also increase reliability, improve frequency, and expand coverage. Low-floor designs will ensure greater accessibility for all passengers, including those with disabilities or mobility challenges. New vehicles will meet the growing demands of the community, offering a more efficient and accessible public transportation system.

Additional Information

None provided.

Location Description

All proposed projects will stay inside and improve public transportation for the San Marcos UZA.

Project Location (Urbanized Areas)

UZA Code	Area Name
482010	San Marcos, TX
480000	Texas

Congressional District Information

District	State
35	Texas
21	Texas

Program Plan Information

STIP/TIP

Date: 6/2/2023

Description: CAMPOS SAN MARCOS TSU APPROVED STIP INFORMATION

UPWP

Date: 2/14/2022

Description: Not Provided

Long Range Plan

Date: 8/11/2020

Description: Not Provided

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (2013 and forward)	5307-2A	20507	\$3,067,702
Local			\$766,927
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$3,834,629

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
TX-2024-054-01-00	111-00 (111-A1) BUS - ROLLING STOCK	\$3,067,702.00	\$766,927.00	\$3,834,629.00	5
TX-2024-054-01-00	11.12.01 BUY REPLACEMENT 40-FT BUS	\$357,462.00	\$89,366.00	\$446,828.00	1
TX-2024-054-01-00	11.13.06 BUY ARTIC BUS FOR EXPANSION	\$2,710,240.00	\$677,561.00	\$3,387,801.00	4

Project Budget Activity Line Items

Budget Activity Line Item: 11.13.06 - BUY ARTIC BUS FOR EXPANSION

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
BUS - ROLLING STOCK (111-00)	11.13.06	BUY ARTIC BUS FOR EXPANSION	BUY EXPANSION - CAPITAL BUS	4

Extended Budget Description

Extended Budget Description

Texas State University is a subrecipient of the City of San Marcos. Texas State University (NTD 60269/ subrecipient) will purchase four (4) 60-ft low floor clean diesel articulated buses at \$846,950.18 per bus. Texas State University will put these vehicles into public transportation service.

The new buses are 60ft large Altoona buses with at least 12 years of service or an accumulation of at least 500,000 miles.

Will 3rd Party contractors be used to fulfill this activity line item?

Yes, 3rd Party Contractors will be used for this line item.

Propulsion	Fuel Type	Vehicle Condition	Vehicle Size (ft.)
N/A	Diesel Fuel	New	60

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (2013 and forward)	5307-2A	20507	\$2,710,240
Local			\$677,561
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$3,387,801

Milestone Name	Est. Completion Date	Description
Contract Award Date	1/11/2023	
Initial Delivery Date	5/1/2024	
Final Delivery Date	7/1/2024	
Contract Completion Date	1/10/2025	

Budget Activity Line Item: 11.12.01 - BUY REPLACEMENT 40-FT BUS

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
BUS - ROLLING STOCK (111-00)	11.12.01	BUY REPLACEMENT 40-FT BUS	BUY REPLACEMENTS - CAPITAL BUS	1

Extended Budget Description

Extended Budget Description

Texas State University is a subrecipient of the City of San Marcos. Texas State University (NTD 60269/ subrecipient) to purchase one (1) 40-ft low-floor clean diesel buses at \$522,603.62 per bus to replace aging 40-ft high-floor vehicle with lower capacity.

Texas State University will put these vehicles into public transportation service.

New vehicles are large 40' Altoona buses with At least 12 years of service or an accumulation of at least 500,000 miles.

There is no federal interest in any of the buses and the old vehicle that are being replaced is:

RVID 354119 – 1 bus with a 12-year of service, with 2 years of useful life left (including 2024). This first replacement will allow us to replace the entire fleet in a timely manner, as the fleet does not meet our operational needs. This fleet is fully locally funded and does not have any federal funding component. Mileage, as of end of January:• 212,451 – Vin: 1N9HJACLXEC084197

Will 3rd Party contractors be used to fulfill this activity line item?

Yes, 3rd Party Contractors will be used for this line item.

Propulsion	Fuel Type	Vehicle Condition	Vehicle Size (ft.)
N/A	Diesel Fuel	New	40

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (2013 and forward)	5307-2A	20507	\$357,462
Local			\$89,366
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$446,828

Milestone Name	Est. Completion Date	Description
Request for Proposals	1/11/2023	
Contract Award Date	5/1/2024	
Final Delivery Date	7/1/2024	
Contract Completion Date	1/10/2025	

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 07: Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
BUS - ROLLING STOCK (111-00)	11.12.01	BUY REPLACEMENT 40-FT BUS	1	\$357,462.00	\$446,828.00

Finding: Class II(c) - Categorical Exclusions (C-List)**Class Level Description**

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 07: Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
BUS - ROLLING STOCK (111-00)	11.13.06	BUY ARTIC BUS FOR EXPANSION	4	\$2,710,240.00	\$3,387,801.00

Part 4: Fleet Details

Fleet Type: Other

Fleet Comments

40 foot Commuter Bus configuration

		Current Value
I.	Active Fleet	
	A. Peak Requirement	4
	B. Spares	1
	C. Total (A+B)	5
	D. Spare Ratio (B/A)	25%
II.	Inactive Fleet	
	A. Other	0
	B. Pending Disposal	0
	C. Total (A+B)	0
III.	Total (I.C and II.C)	5

Fleet Type: Fixed Route

Fleet Comments

None provided.

		Current Value
I.	Active Fleet	
	A. Peak Requirement	6
	B. Spares	3
	C. Total (A+B)	9
	D. Spare Ratio (B/A)	50%
II.	Inactive Fleet	
	A. Other	0
	B. Pending Disposal	0
	C. Total (A+B)	0
III.	Total (I.C and II.C)	9

Fleet Type: Paratransit

Fleet Comments

None provided.

		Current Value
I.	Active Fleet	
	A. Peak Requirement	4

	B. Spares	1
	C. Total (A+B)	5
	D. Spare Ratio (B/A)	25%
II.	Inactive Fleet	
	A. Other	0
	B. Pending Disposal	0
	C. Total (A+B)	0
III.	Total (I.C and II.C)	5

Part 5: FTA Review Comments

Application Review Comments

Comment By Troy Thomas

Comment Type Application Details

Date 4/16/2024

Comment

- Recipient must not acquire telecommunications and video surveillance equipment for rolling stock from: Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or Dahua Technology Company. This prohibition includes rolling stock telecommunications and video surveillance equipment, commercial items and micro-purchases in accordance with Section 889 of the 2019 National Defense Authorization Act.
- Recipients must not procure rolling stock from certain transit vehicle manufacturers. Refer to 49 U.S.C. Section 5323(u) of federal public transportation law, which limits the use of FTA funds, and in some circumstances local funds, to procure rolling stock from certain transit vehicle manufacturers. Refer to <https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense> for additional guidance.
- 49 CFR Part 26.49(a) states 'If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, 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 this section.' FTA's current list of eligible TVMs can be found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>.
- 49 CFR Part 26.49(a)(4) states 'FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.' The Transit Vehicle Award Reporting Forms can be found on FTA's website at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. Please take a screenshot of the completed report before submission and retain locally to demonstrate compliance with this requirement during oversight activities such as Triennial Review and/or State Management Reviews.
- Recipient must comply with the statutory requirements in FTA Circular 4220.1F, 3rd Party Contracting Guidance, as they apply to acquiring rolling stock including 49 CFR Part 661, Buy America Requirements, 49 CFR 663, Pre-Award and Post-Delivery Audits, accessibility, minimum service life, spare ratios, air pollution and fuel economy, bus testing, in-state dealers, basis for contract award and five-year limitation.
- Recipient must comply with the Recipient's procurement policies and procedures as they apply to FTA-funded projects.

- The information provided above is intended as technical assistance and applies only to the project as described. Should the project scope change or new information on the project be provided, FTA may require a re-evaluation of the project information as it relates to federal compliance and require additional information. This confirmation is not an express or implied promise of project compliance with federal requirements.

Part 6: Agreement

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

**GRANT AGREEMENT
(FTA G-31)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(31), <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

Recipient Information

Recipient Name: CITY OF SAN MARCOS

Recipient ID: 7362

UEI: LRPGLNZT4WR3

DUNS: 069462869

Award Information

Federal Award Identification Number: TX-2024-054-00

Award Name: FY2022 Section 5307 Capital Project (Rolling Stock) for Texas State University

Award Start Date: 7/8/2024

Original Award End Date: 9/30/2025

Current Award End Date: 9/30/2025

Award Executive Summary: This application is to request /FY2022 Section 5307 apportioned funds by TxDOT in the amount of FY 22 (\$4,397,245) to the City of San Marcos on behalf of our subrecipient, Texas State University (NTD 60269/subrecipient).

This grant application includes a portion of the FY 22 apportionment (\$3,067,702). The balance of (\$1,329, 543) will be used on a projected programmed at a later date.

This grant application is to purchase Five (5) revenue vehicles that includes

1-Partial funding of one (1) 40-ft low-floor clean diesel buses at \$522,603.62 per bus for a total of \$446,827.84 (5307 -\$357,462.27 and local \$89,365.57)

2- Four (4) 60-ft low-floor clean diesel articulated buses at \$846,950.18 per bus, for a total of \$3,387,800.72. (5307- \$2,710,240.58 and \$677,560.14)

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This application will modernize the transit fleet, replace outdated vehicles, enhance operational capacity, and improve accessibility and reliability for the growing community. The new replacement vehicles will be put into the Texas State University public transportation service. Texas State University will use the 40 vehicles to replace a vehicle in its current fleet under RVI ID 354119 in Texas State's NTD profile.

The vehicle fleet modernization promotes environmental sustainability to improved safety and productivity. These funds will be used to reimburse the subrecipient once all documentation is provided on eligible projects fitting the scope of the application.

The split letter for FY 22 has been included in the Application documents.

There is no federal interest in the buses being replaced.

There will be 1% expended on security related items on transportation related items, such as camera system which is already provided by the City of San Marcos EMS, Fire Department, Police and they will continue to provide safety and security support to the transit systems.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is suballocated these apportioned funds and can apply for and receive these funds directly.

Pre-Award Authority: This award is using Pre-Award Authority.

Award Budget

Total Award Budget: \$3,834,629.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$3,067,702.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$766,927.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$3,067,702.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$766,927.00

Award Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (2013 and forward)	5307-2A	20507	\$3,067,702
Local			\$766,927
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$3,834,629

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

DOL Decision: DOL Concurs - Certified

DOL Review Date: 7/2/2024

DOL Certification Date: 7/2/2024

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:

Gail Lyssy

Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: gail.lyssy@dot.gov
Award Date: 7/8/2024

EXECUTION OF THE GRANT AGREEMENT

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
 - (a) Statements,
 - (b) Representations,
 - (c) Warranties,
 - (d) Covenants, and
 - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:

CITY OF SAN MARCOS

EXHIBIT B
Project Budget

INTENTIONALLY LEFT BLANK