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March 5, 2010

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Ms. Cheryl L. Hershey
U.S. DOT, Federal Transit Administration
5th Floor – East Bldg. TCR
1200 New Jersey Ave. S.E.
Washington D.C. 20590

Re: Title VI Compliance Review

Dear Ms. Hershey:

This letter responds to your letter of February 3, 2010 initiating a Title VI review of MTC in connection with a complaint against the San Francisco Bay Area Rapid Transit District (BART) by Public Advocates on behalf of Urban Habitat, Transform and Genesis, alleging violations of Title VI related to the Oakland Airport Connector project. Your letter states that MTC, as a recipient, is responsible for ensuring its sub-recipients (including BART) comply with Title VI, the DOT Title VI regulations, and FTA Circular 4702.1A. You add that MTC is responsible for documenting a process that ensures that all MTC sub-recipients are in compliance with the reporting requirements of FTA C 4702.1A. Your letter concludes with a request for (1) a list of all MTC sub-recipients and (2) MTC's procedures for monitoring Title VI compliance of its sub-recipients.

I would like to assure you that MTC takes its Title VI and Environmental Justice responsibilities very seriously, in deed as well as word. MTC's Transportation 2035 Plan (http://www.mtc.ca.gov/planning/2035_plan), the long range plan adopted by the Commission in April 2009, is rooted in "the Three Es" of Economy, Environment and Equity. MTC's commitment to Equity – production of equitable opportunities for all Bay Area residents to share in the benefits of a well-maintained, efficient, regional transportation system – is reflected in the dual goals of equitable access and livable communities. A summary of other MTC programs supporting MTC's commitment to equity in transportation is enclosed as Appendix A.

1. List of MTC Sub-recipients

For the vast majority of FTA grants and grant funds for which MTC is designated recipient, federal funds are distributed to transit operators who are direct recipients, and who assume all responsibilities set forth in the accompanying grant agreement, including Title VI. According to the FTA Supplemental Agreement entered into by MTC, FTA and each grant recipient for the Urbanized Area Formula Program (5307), ARRA Transit Capital Assistance (the funding source at issue for the Oakland Airport Connector), ARRA Surface Transportation Program, and Congestion Mitigation and Air Quality funds that are transferred to FTA, MTC as designated recipient is relieved of the responsibility of ensuring compliance with

FTA grant requirements, which are fully assumed by the grant recipient. Appendix B is the current text of the Supplemental Agreement, dated October 1, 2009. Transit operators are also direct recipients (and not sub-recipients) for FTA Fixed Guideway Modernization grants (5309 FG) and ARRA Fixed Guideway Infrastructure Investments. A list of all transit operators that receive FTA grants as direct recipients within MTC's geographical area and the various categories of FTA grants received by each is enclosed as Appendix C.

For JARC and New Freedom grants, MTC is the designated recipient and the transit operators and other eligible entities are sub-recipients. Appendix D lists JARC or New Freedom sub-recipients for which MTC is designated recipient. These FTA fund sources constitute about 1% of all Federal transit funds that MTC administered in FY 2008-09.


2. MTC Title VI Monitoring Procedures for Sub-recipients

As noted above, transit operators are sub-recipients only for JARC and New Freedom grants. The section of FTA Circular 4702.1A that addresses Title VI responsibilities for designated recipients of JARC and New Freedom grants is Chapter VI, specifically VI(2) and (4). Chapter VI(3) requires State DOTs and administering agencies to monitor their sub-recipients' compliance with Title VI, documenting its process for ensuring that all sub-recipients are complying with the general reporting requirements of the circular and, at the request of FTA, to request sub-recipients to verify that their level and quality of service is provided on an equitable basis. Because MTC is not a State DOT or State administering agency, and designated recipients are not referred to in VI(3), MTC concluded that the omission was intentional and that these monitoring requirements do not apply to MTC. We do, however, require sub-recipients (including those that are not transit operators) to certify their compliance with Title VI and other applicable FTA requirements. And as to the sub-recipients of JARC and New Freedom funds who are not transit operators, they are all either community non-profit organizations providing transportation for community services, or public agencies providing similar transportation for community services. A copy of the 2009-10 grant certifications for the New Freedom program is enclosed as Appendix E.

As noted, Chapter VI applies only to sub-recipients for JARC and New Freedom funds. Transit operators who receive JARC and New Freedom funding are already under the direct scrutiny of FTA for purposes of Title VI compliance, as direct recipients of FTA funds they receive from other programs. Since FTA is already monitoring these agencies for compliance with Chapter V and other Title VI requirements under other, much larger funding programs, any activities MTC would undertake to monitor their Title VI compliance for the relatively small amounts of JARC and New Freedom funding would appear to be unnecessary and duplicative.

Consistent with MTC's ongoing commitment to equitable opportunities for all Bay Area residents to share in the benefits of a well-maintained, efficient, regional transportation system, we stand ready to work with FTA to further discuss our compliance activities under FTA Circular 4702.1A and to augment those activities as appropriate and consistent with federal law.

Sincerely,



Steve Heminger
Executive Director

Letter to Federal Transit Administration

March 5, 2010

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SH: MJM

Enclosures (5)

Appendix A: Summary of MTC Programs Supporting Equity in Transportation

Appendix B: FTA Supplemental Agreement (Attachment to FTA G-16, October 1, 2009)

Appendix C: FTA Grant Recipients in MTC Region

Appendix D: JARC and New Freedom MTC Sub-Recipients

Appendix E: Federal Fiscal Year 2010 Certifications and Assurances for Federal Transit
Administration Assistance Programs

cc: MTC Commissioners

Francis Chin, MTC General Counsel

Dorval Carter, FTA Chief Counsel

Appendix A

Summary of MTC Programs Supporting Equity in Transportation

During the past ten years, the Metropolitan Transportation Commission has undertaken several major efforts to assure that MTC's planning and programming activities are nondiscriminatory and involve a wide range of stakeholders. This commitment to Title VI is reflected in the varied work products described in this Appendix and further detailed on MTC's website using the links provided.

Regional Transportation Plan Equity Analysis

1. Equity Analyses on MTC's Regional Transportation Plans
2. A New Approach: Developing a Snapshot Analysis Framework

Assessing the Needs of Low-Income Residents and Communities

3. Regional Welfare to Work Plan Provided Basis for Development of Lifeline Transportation Network
4. Lifeline Transportation Network Report/ Program and Low-Income Flexible Transportation (LIFT) Program
5. Community-Based Transportation Planning (CBTP) Program

Special Studies/Data Collection

6. *Transportation Spending by Low-Income California Households Report*
7. 2006 Transit Passenger Demographic Survey
8. *Bay Area Housing and Transportation Affordability: A Closer Look*

Funding/Funding Policies

9. MTC's TOD Policy for Regional Transit Expansion Projects Bolsters Low-Income Housing
10. Station Area Planning Grants
11. Affordable TOD Fund

Public Involvement and Outreach

12. MTC's Federal Public Participation Plan

Summary of MTC Programs Supporting Equity in Transportation

Equity Analysis

1. Equity Analyses on MTC's Regional Transportation Plans

Since 1998, MTC has conducted an Equity Analysis (or Environmental Justice Analysis) of each of its four long-range Regional Transportation Plans. The purpose of the equity analysis is to measure at a regional, programmatic level the benefits and burdens associated with the transportation investment packages proposed in the regional transportation plans for the region's low-income and minority communities of concern. MTC has identified 44 communities of concern in the region where the population is at least 70 percent minority and 30 percent low-income. Low-income population is defined as being at or below 200 percent of the federal poverty level to account for the region's high cost of living.

The Transportation 2035 Equity Analysis, prepared in conjunction with MTC's current long-range plan, evaluated the Plan's proposed transportation investment packages in terms of spending per household by income, accessibility, affordability, and environmental effects (emissions).

The Analysis was built upon the methodology developed for analyses conducted for the past three regional transportation plans, including the Transportation 2030 Equity Analysis. That work was recognized as a best practice in the Peer Roundtable Report on environmental justice and Title VI, produced by the Transportation Planning Capacity Building Program (jointly sponsored by the Federal Highway Administration and the Federal Transit Administration). See www.planning.dot.gov/Peer/California/sacramento_2005.asp.

The *Transportation 2035 Equity Analysis Report* identified the following steps to continue to evaluate transportation equity in the region's transportation planning process:

1. *Promote Involvement in Activity-Based Model Development*
MTC will work with stakeholders in the development of MTC's next-generation activity-based travel model.
2. *Develop a Regional Mobility Snapshot Analysis*
MTC will undertake a neighborhood-level assessment to analyze in greater detail how and whether mobility is improving in communities of concern. (See item #2)
3. *Monitor and Evaluate the Lifeline Transportation Program*
MTC will continue to monitor and evaluate the Lifeline Transportation Program to ensure it meets its goals of improving mobility for the region's low-income population.
4. *Complete Remaining Community Based Transportation Plans*
MTC has fully funded locally based transportation needs assessments for 43 communities of concern.
5. *Support the Bay Area Air Quality Management District's CARE Program*
The Community Air Risk Evaluation (CARE) Program seeks to identify significant sources of toxic air contaminant (TAC) emissions (including on-road mobile sources from vehicles) and prioritize use of resources to reduce TACs in the most highly impacted areas.

6. *Further Evaluate Housing and Transportation Affordability in the Region*

MTC will conduct a more detailed study of housing and transportation affordability in the region. (See item #8)

A full copy of the Equity Analysis can be found at www.mtc.ca.gov/planning/2035_plan/equity.htm.

2. A New Approach: Developing a Snapshot Analysis Framework

The *Transportation 2035 Equity Analysis Report* recommended development of a Snapshot Analysis to drill down on priority equity-related indicators. Staff is working with an Equity Analysis Subcommittee composed of members of MTC's Minority Citizens Advisory Committee (MCAC) to identify high-priority questions that should be answered through the Snapshot Analysis. A final set of priority metrics will be developed in 2010 with recommendations for how to incorporate them into MTC's planning efforts, including development of the next regional transportation plan and Equity Analysis, the next update of the regional Coordinated Public Transit-Human Services Transportation Plan, and MTC's Transit Sustainability Project.

A November 2009 update on the snapshot analysis to MTC's Planning Committee can be found here: <http://apps.mtc.ca.gov/events/agendaView.akt?p=1389>.

Assessing the Needs of Low-Income Residents and Communities

3. Regional Welfare to Work Plan Provided Basis for Development of Lifeline Transportation Network

As part of its efforts to work with Bay Area counties and local transit operators to identify the mobility needs of low-income individuals making the transition from welfare to work, MTC formed a regional welfare to work transportation working group and sponsored development of welfare to work transportation plans in all nine Bay Area counties. The Regional Welfare to Work Plan was adopted in July 2001.

To accelerate the implementation of local projects identified through the county plans, MTC designed the Low-Income Flexible Transportation (LIFT) program with a \$5 million allocation of Congestion Management and Air Quality (CMAQ) funds. Looking for opportunities to leverage this federal funding, MTC required that local project partners match the LIFT funds to create a \$10 million program of projects. The LIFT Program is further described below.

4. Lifeline Transportation Network Report/ Program and Low-Income Flexible Transportation (LIFT) Program

In December 2001, the Commission adopted the *Lifeline Transportation Network Report* as a blueprint element of the regional transportation plan. The purpose of the project was to identify transit routes serving low-income communities in the nine-county Bay Area, assess whether there are gaps in the network preventing full access by persons living in those communities, and to recommend investment strategies for addressing the gaps.

Prior to the creation of the Lifeline Transportation Program, MTC created the Low-Income Flexible Transportation (LIFT) Program, using federal Congestion Mitigation and Air Quality (CMAQ) and Job Access and Reverse Commute (JARC) funds to fill transportation gaps identified through county and regional welfare-to-work plans, and MTC-sponsored Community Based Transportation Planning efforts (described below). MTC's LIFT Program received a 2004 **Transportation Planning Excellence Award** from the Federal Highway Administration and the Federal Transit Administration. (See www.fhwa.dot.gov/planning/tpea/planenv.htm for more information.)

MTC's Lifeline Transportation Program is one funding source available to implement projects and recommendations that emerge as solutions to transportation gaps from the Community Based Transportation Plans. In 2005, MTC expanded its existing financial commitment to improving mobility for the region's low-income residents by launching the Lifeline Transportation Program, which significantly increased the amount of regional funding for which projects identified in Community Based Transportation Plans are eligible to compete. More than \$18 million in federal and state funds were programmed in the first three-year cycle of funding, and about half of the 39 projects funded were derived directly from completed Community Based Transportation Plans. The second three-year cycle, currently being programmed, has made nearly \$56 million in state and federal funding available for projects targeted to low-income populations and communities of concern. These funds are intended to support a variety of transportation projects to fill identified gaps, including fixed-route transit, shuttles, demand-response services, auto loan programs, and mobility management.

County Congestion Management Agencies (CMAs), which oversee the Community Based Transportation Planning program locally, also have administrative and fiscal oversight for their respective counties' Lifeline Transportation Program funds. Funds are allocated to each county based on the county's share of the region's low-income population.

A 2006 **Transportation Planning Excellence Award** received by MTC for its Transportation 2030 Plan references the Lifeline Transportation Program as well as MTC's Transit Oriented Development Policy for Regional Transit Extensions. (For more information see www.fhwa.dot.gov/planning/tpea/awards2006.htm.)

5. Community-Based Transportation Planning (CBTP) Program

MTC's Community-based Transportation Planning (CBTP) program evolved out of work done for the 2001 Regional Transportation Plan that identified transit needs in low-income communities throughout the San Francisco Bay Area and recommended community-based transportation planning as a first step in addressing these gaps. MTC allocated funds for local planning efforts in low-income communities throughout the region as a way to involve minority and low-income residents in the transportation decision-making process.

Each community-based planning process is a collaborative effort that involves the participation of residents, community-based organizations providing services within low-income and minority neighborhoods, local transit operators, county congestion management agencies, and MTC.

The outcome of each planning process is a transportation plan that contains community-prioritized transportation needs, as well as solutions to address them. Solutions could include fixed-route transit service, or other transportation services such as community shuttles, auto-oriented solutions or bicycle options. Recommendations outlined in the plans are forwarded to transit policy boards and other local agencies for consideration and subsequent incorporation into their planning, funding and implementation decisions.

MTC has identified 43 low-income communities of concern throughout the nine-county Bay Area designated for Community-Based Transportation Planning. Following a pilot phase, in 2006, MTC approved \$1,285,000 to complete a total of 25 plans, twenty-four of which have been completed, and the last of which is expected to be completed in 2010. In 2008, MTC approved an additional \$1,080,000 in funding to complete the remaining 18 plans.

For more information visit www.mtc.ca.gov/planning/cbtp/.

Special Studies/Data Collection

6. *Transportation Spending by Low-Income California Households Report*

MTC's Regional Welfare to Work Transportation Plan and the Lifeline Transportation Network Report identified the cost of transportation as a barrier preventing low-income persons from reaching essential destinations. In response to these findings, in June 2003, MTC entered into a contract with the Public Policy Institute of California to conduct research on the topic of transportation affordability based on an earlier literature search and feedback from a research advisory committee.

The Public Policy Institute of California (PPIC), a private operating foundation providing research support for a variety of primarily statewide public policy issues, studied travel patterns and transportation costs for low-income persons of employable age for work and training purposes.

The final report, *Transportation Spending by Low-Income California Households: Lessons for the San Francisco Bay Area* was published under the auspices of PPIC in July 2004. On September 15, 2004, MTC convened a Town Hall meeting for the purposes of reviewing the project results with interested stakeholders, and to allow for a structured dialogue on the report's findings from a variety of perspectives (e.g. transit operator, social service agency, community-based organization).

The full report is available through the PPIC at www.ppic.org/content/pubs/report/R_704LRR.pdf.

7. 2006 Transit Passenger Demographic Survey

In the fall of 2006, MTC initiated a Transit Passenger Demographic Survey of the region's fixed route transit riders in order to gather statistically valid data about the users of the regional transit system. Specifically, MTC wanted to better understand the demographic characteristics (age, gender, income, household size, and ethnicity) of transit passengers who use the fixed-route

services provided by thirteen major transit providers and seven additional smaller operators within our region. This survey included the collection of data on a variety of transit modes (such as bus, ferry, and train) during both peak and off-peak times, from a diverse cross section of transit users, including those who do not speak English.

Data from this survey has provided a complete and updated — geographic and modally consistent — regional picture of transit passenger demographics that has been used to conduct the programmatic financial analysis of MTC’s long-range investments in the *Transportation 2035 Equity Analysis Report*.

For more information on the demographic survey visit MTC’s Web site at:
www.mtc.ca.gov/maps_and_data/datamart/survey/2006_transit.htm.

8. *Bay Area Housing and Transportation Affordability: A Closer Look*

A second follow-up action recommended in the *Transportation 2035 Equity Analysis Report* was a more detailed study of Bay Area housing and transportation affordability. To better understand the tradeoffs Bay Area households are making between housing and transportation affordability, MTC contracted the Center for Neighborhood Technology to develop a more detailed affordability analysis focusing on the region’s low- and moderately low-income households by location.

This final report, *Bay Area Housing and Transportation Affordability: A Closer Look*, illustrates how location affects the affordability of both housing and transportation in the region, and highlights the limited locational choices lower-income households in particular face in finding affordable neighborhoods.

This work has been incorporated into the Snapshot Analysis framework and sets the foundation for MTC’s participation in the creation of the Affordable TOD Loan Fund, described below. The full report is available at this location on MTC’s Web site:
www.mtc.ca.gov/planning/smart_growth/Transpo_Housing_Affordability-ExecSumm.pdf.

Funding/Funding Policies

9. MTC’s TOD Policy for Regional Transit Expansion Projects Bolsters Low-Income Housing

MTC’s Transit-Oriented Development (TOD) Policy, adopted in July 2005, seeks to improve the cost-effectiveness of regional investments in new transit expansions, easing the Bay Area’s chronic housing shortage, creating vibrant new communities, and helping preserve regional open space. The policy ensures that transportation agencies, local jurisdictions, members of the public and the private sector work together to create development patterns that will yield the transit ridership necessary for a successful transit expansion as a condition of project approval. A key element of this relates to housing supply near transit stations. The TOD Policy includes a bonus for below-market housing units of 50 percent (applied toward meeting the development threshold in a given corridor, i.e. one planned below-market housing unit counts for 1.5 housing units for purposes of meeting the corridor threshold). Below-market housing for purposes of this policy is housing that is

affordable to 60 percent of the area median income for rental units, and 100 percent of area median income for owner-occupied units.

For more information visit MTC's Web site at www.mtc.ca.gov/planning/smart_growth/.

10. Station Area Planning Grants

As outlined in MTC's Transit-Oriented Development Policy, future transit extensions in the Bay Area must be matched by supportive local land use plans and policies. To assist cities in meeting these goals, MTC has launched a Station Area Planning grant program to fund city-sponsored planning efforts for the areas around future stations. Subsequently, this program has been expanded to include communities with existing transit service that seek to intensify land uses in those areas. These station-area plans are intended to address the range of transit-supportive features that are necessary to support high levels of transit ridership.

MTC developed a Station Area Planning Manual for use by local jurisdictions applying for planning grant funds from MTC. The manual highlights essential planning elements as well as the variety of placetypes which jurisdictions can plan for, from regional city centers to transit neighborhoods — and everywhere in between. It also includes a section on the need to create opportunities for affordable and accessible living. Cities are urged to set affordable housing goals, to consider appropriate inclusionary housing requirements, to provide a range of housing options, to minimize displacement of existing residents, and to ensure developments are fully accessible for residents with disabilities and “visitable” by visitors with disabilities.

For more information visit MTC's Web site at www.mtc.ca.gov/planning/smart_growth/#stations.

11. Affordable TOD Fund

The region estimates a need to produce housing for an additional 2 million residents by 2035, with over 50 percent of the demand for Transit Oriented Development (TOD), or over 200,000 households, coming from households earning less than \$75,000 per year. In order to help meet this demand, MTC is partnering with non-profit entities focused on sustainability and equity in housing and transportation, and community foundations, to establish a land acquisition and land banking financing fund (the Affordable TOD Fund) to maximize the production of affordable housing near transit stations.

At a time when lending, especially for affordable housing, is almost non-existent, this fund can serve a critical role to preserve sites for affordable TOD while the credit markets and bond institutions recover to support affordable housing construction in the years ahead.

MTC has reserved up to \$10 million in regional funds to serve as a catalyst for such a fund to be established.

Visit the MTC Web site at <http://apps.mtc.ca.gov/events/agendaView.akt?p=1446> to read the February 2010 staff memorandums presented to MTC's Planning Committee on this item.

Public Involvement and Outreach

12. MTC's Federal Public Participation Plan

MTC in September 2007 adopted a public participation plan for involving the people of the nine-county Bay Region in its key transportation policy and financial decisions. The process started in January 2007 with a series of meetings, focus groups (including with members of MTC's Minority Citizens Advisory Committee and with LIFETIME, a support group for low-income single parents) and a Web survey to hear from a wide range of interests on their ideas for best practices for public participation. In May 2007, the Commission issued a draft MTC Public Participation Plan for public comment. In response to more than 70 comments received on the draft, MTC in July 2007 issued a Revised Draft Public Participation Plan for further review before final adoption.

The Plan is posted in English, Spanish and Chinese on MTC's Web site at this link:
http://www.mtc.ca.gov/get_involved/participation_plan.htm.

The U.S. Department of Transportation commended MTC in its 2007 Planning Certification Report for this effort, which:

- Provides specifics on when, how and where interested parties may stay informed of and get involved in MTC's key decisions
- Calls for use of plain language and more visuals (such as charts, icons or other graphic elements)
- Lists specific techniques that are used to involve the public, including low-income communities and communities of color
- Commits to developing a customized public involvement program for all major updates to the Bay Area's Regional Transportation Plan (RTP) that includes frequent and varied opportunities for the public to weigh in on key decisions
- Clarifies how MTC conducts its interagency and Tribal government consultations

With respect to Title VI, MTC uses a number of ways to inform communities of color, low-income communities and persons of limited English proficiency of planning efforts, and to afford residents in these historically underserved communities with opportunities to participate in the decision-making processes.

Every update of MTC's long-range transportation plan includes an extensive public outreach and involvement program. In conjunction with the Transportation 2035 Plan, the public involvement campaign was conducted in three phases and spanned some 24 months. Throughout 2007 and 2008, MTC reached out to its regional constituents by means of numerous public workshops and focus groups, two statistically valid telephone polls (conducted in English, Spanish and Chinese), interactive Web surveys, "person on the street" interviews, and via in-depth discussions with members of MTC's three advisory committees. All meeting notices offered language translation if requested.

An online survey offered in English, Spanish and Chinese mirrored the statistically valid telephone public opinion survey conducted fall 2007. The over 130 “person-on-the-street” interviews, conducted at public gathering places, were with members of the public who do not typically attend public meetings regarding transportation. Bilingual staff members facilitated participation from Spanish and Chinese-speaking residents. MTC also contracted with ten community-based organizations to conduct focus groups in low income communities and communities of color throughout the Bay Area. An additional 150 residents recruited by these community-based organizations participated in focus groups where translation was provided in Spanish, Cantonese or Vietnamese at several of the sessions.

Visit MTC’s Web site at www.mtc.ca.gov/planning/2035_plan/index.htm to review an Evaluation Report prepared on the Public Outreach and Involvement Program for the Transportation 2035 Plan as well as a report documenting the public involvement effort.

The Public Outreach and Involvement Program associated with MTC’s prior long-range plan, the Transportation Plan 2030 Plan, received a **2004 Transportation Planning Excellence Award** from the Federal Highway Administration and the Federal Transit Administration. (See <http://www.fhwa.dot.gov/planning/tpea/pubinvolv.htm> for more information.)

MTC is committed to ensuring access by all interested Bay Area residents to participate in the dialogue that informs key decisions, regardless of language barriers. This is done in a number of ways, including:

- Translation of certain documents — including news releases, brochures, fact sheets, etc. (documents have been translated into Spanish, Chinese and Vietnamese).
- Contracting with a language translations firm for on-call assistance (for example, hiring interpreters for public meetings or translating documents on a rush basis)
- Working with Spanish and Chinese media outlets and ethnic media to place stories, as appropriate.
- Routine use of language on printed or electronic announcements for public workshops on key planning efforts that alert interested individuals on how to request translation services.
- Providing financial assistance (in response to competitive requests for proposals) to nonprofits and community groups who work with low-income communities and communities of color for assistance involving residents in public meetings, focus groups, etc. (including the option to conduct a meeting in languages other than English, as well as simultaneous translation services).
- Including, as appropriate, limited-English speaking populations in random-digit telephone surveys or transit rider surveys by having bilingual staff available to conduct the survey.
- Training staff to recognize the needs of limited-English speaking populations when preparing for a round of public meetings, such as for the long-range transportation plan (including ways to assist people who are having trouble reading materials as well as those who do not speak English).

Appendix B

FTA Supplemental Agreement (Attachment to FTA G-16, October 1, 2009)

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

**SUPPLEMENTAL AGREEMENT
(Attachment to FTA G-16, October 1, 2009)**

It is the practice of the Federal Transit Administration to enter into a formal agreement with the Designated Recipient for projects that the Designated Recipient does not carry out directly. Under this Grant Agreement, the Grant Recipient is not the Designated Recipient. Therefore, the Designated Recipient hereby agrees to permit the Grant Recipient under this Grant Agreement to receive and dispense the Federal assistance funds described in this Grant Agreement. The Designated Recipient further agrees that the Grant Recipient shall assume all responsibilities set forth in this Grant Agreement.

The Federal Government and the Grantee under this Grant Agreement hereby agree that the Designated Recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement and is a party to this Grant Agreement only to assign the right to receive and dispense Federal funds to the Grantee as described above.

Appendix C: FTA Grant Recipients in MTC Region

Includes programs for which MTC is designated or direct recipient. Earmarked/FTA discretionary programs, or with Caltrans as designated or direct recipient not included.

FTA I.D. #	OPERATOR	MTC Designated Recipient, Supplemental Agreement to FTA Grant			Operator Direct Recipient			
		5307 ¹	ARRA TCA	STP	CMAQ	ARRA STP	5309 FG ¹	ARRA FGII
1632	Alameda-Contra Costa Transit District	X	X					
1648	Fairfield Transit	X	X			X		
1655	Metropolitan Transportation Commission	X ²						
1668	Vallejo Transit	X	X			X		
1671	San Mateo County Transit District	X	X					
1674	Santa Clara Valley Transportation Authority	X	X			X		
1677	Santa Rosa City Bus	X	X			X		
1697	San Francisco Municipal Transportation Agency	X	X			X		
1701	Golden Gate Bridge, Highway and Transit District	X	X			X		
1957	San Francisco Bay Area Rapid Transit District	X	X			X		X
2584	Central Contra Costa Transit Authority	X	X					
2713	Petaluma Transit	X						
2765	Sonoma County Transit	X	X					
5001	Napa County Transportation & Planning Agency	X	X			X		
5296	Livermore-Amador Valley Transportation Authority	X	X					
5537	Peninsula Corridor Joint Powers Board	X	X			X		X
5601	Vacaville City Coach	X	X			X		
5617	Eastern Contra Costa Transit Authority	X	X					
5624	Western Contra Costa Transit Authority	X	X					
5651	Union City Transit	X	X					
5772	Benicia Breeze	X	X					
5859	San Joaquin Regional Rail Authority	X						X
6570	Water Emergency Transportation Authority	X						X
6536	Transbay Joint Powers Authority							

Notes:

- Operators that are eligible for 5307 and 5309 FG may not receive funds from each program every year, depending on capital needs.
- MTC programmed \$1M in 5307 to itself for Regional Transit Capital Inventory Project. In this case, MTC was both designated recipient and direct recipient. Funds were not passed through to any subrecipients.

Appendix E
**Federal Fiscal Year 2010 Certifications and Assurances for
Federal Transit Administration Assistance Programs**

Recipient is responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project.

01. ASSURANCES REQUIRED FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

- (1) Execute and file the application for Federal assistance on behalf of the Applicant;
- (2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
- (3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

- (1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project;
- (2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions;
- (3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project;
- (4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits;
- (5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance; and
- (6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, et seq., and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq., and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF-424B and SF-424D, the Applicant assures that, with respect to itself or its project, the Applicant:

- (1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;
- (2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
- (3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
- (4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;
- (5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
 - (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
 - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;
 - (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
 - (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
 - (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq., relating to nondiscrimination on the basis of drug abuse;

- (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq. relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 et seq., relating to nondiscrimination in the sale, rental, or financing of housing; and
 - (i) Any other nondiscrimination statute(s) that may apply to the project;
- (6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 et seq., which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
- (a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
 - (b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
 - (c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
 - (d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
 - (e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;
 - (f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
 - (g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;
 - (h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

- (i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;
- (7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 et seq., the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 et seq., regarding labor standards for federally assisted projects;
- (8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;
- (10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;
- (11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;
- (12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;
- (13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;
- (14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:
 - (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;
 - (b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;
 - (c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;
 - (d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;
 - (e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;
 - (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

- (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;
 - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and
 - (i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);
 - (j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and
 - (k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties); 16 U.S.C. 470 note;
- (15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;
- (16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 et seq., and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;
- (17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 et seq., and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;
- (18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq., OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT; and
- (19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding \$100,000 until the Applicant provides this certification by selecting Category "02."

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding \$100,000:
- (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
 - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," Rev. 7-97; and
 - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

03. PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system fail to comply with Federal laws or regulations in accordance with applicable Federal directives.

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has expressly approved otherwise in writing.

04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

- A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;
- B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
- C. Paid just compensation under State or local law to the company for any franchise or property acquired.

05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(b), for a proposed capital project that will substantially affect a community, or the public transportation service of a community, the Applicant certifies that it has, or before submitting its application, it will have:

- A. Provided an adequate opportunity for public review and comment on the proposed project;
- B. After providing notice, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- C. Considered the economic, social, and environmental effects of the proposed project; and
- D. Determined that the proposed project is consistent with official plans for developing the community.

06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock for use in revenue service is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663, at 49 CFR 663.7, the Applicant certifies that it will

comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA-LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

Not Used.

08. BUS TESTING

Not Used.

09. CHARTER SERVICE AGREEMENT

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."

- A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.4, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands and agrees that:
- (1) The requirements of FTA regulations, "Charter Service," 49 CFR part 604, will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;
 - (2) The definitions of FTA regulations, "Charter Service," 49 CFR part 604, will apply to this Charter Service Agreement; and
 - (3) A pattern of violations of this Charter Service Agreement may require corrective measures and imposition of remedies, including barring the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has engaged in that pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

10. SCHOOL TRANSPORTATION AGREEMENT

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C. 133 or 142 for such projects until the Applicant enters into this School Transportation Agreement by selecting Category "10."

- A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands and agrees that:
- (1) The requirements of FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;
 - (2) The definitions of FTA regulations, "School Bus Operations," 49 CFR part 605 will apply to this School Transportation Agreement; and
 - (3) If there is a violation of this School Transportation Agreement, FTA will bar the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has violated this School Transportation Agreement from receiving Federal transit assistance in an amount FTA considers appropriate.

11. DEMAND RESPONSIVE SERVICE

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized under 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized under 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11."

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

If the Applicant is required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, to provide the following certification concerning its activities

to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

13. INTEREST AND OTHER FINANCING COSTS

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Paul S. Sarbanes Transit in Parks Program is required to provide the following certification. FTA may not provide Federal assistance to support interest or other financing costs until the Applicant provides this certification by selecting Category "13."

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest or other financing costs unless it is eligible to receive Federal assistance for those costs and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

- A. As provided in subsection 5307(c) of SAFETEA LU, 23 U.S.C. 512 note, apart from certain exceptions, "intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA LU]." To facilitate compliance with subsection 5307(c) of SAFETEA LU, 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS

Architecture Policy on Transit Projects,” at 66 FR 1455 et seq., January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing; and

- B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. URBANIZED AREA FORMULA PROGRAM

Not Used.

16. CLEAN FUELS GRANT PROGRAM

Not Used.

17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA GRANT PROGRAM AND PILOT PROGRAM

Not Used.

18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

Not Used.

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Not Used.

20. NEW FREEDOM PROGRAM

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA

may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."

- A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;
- C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;
- D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and

- E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and through participation by the public.

21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

Not Used.

22. TRIBAL TRANSIT PROGRAM

Not Used.

23. TIFIA PROJECTS

Not Used.

**24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE
TO STATE INFRASTRUCTURE BANKS**

Not Used.