

RESOLUTION NO. 2700

A RESOLUTION of the Port Commission of the Port of Seattle authorizing the execution of a Grant Contract, Project No. WA-06-0009, Phase I, with the Department of Transportation of the United States of America, under the Urban Mass Transportation Act of 1964, as amended.

WHEREAS, the Port of Seattle has heretofore submitted a Grant Application to the Associate Administrator of the Department of Transportation dated May 4, 1977 for certain development work at Sea-Tac International Airport; and

WHEREAS, the Port of Seattle has heretofore authorized the design and construction of a prototype Vehicle Data Acquisition System for the Satellite Transit System cars; subject to the approval of the Associate Administrator of the Department of Transportation, United States of America, and to the sharing of costs by the United States incurred in accomplishing such as is provided in the Grant Contract set forth below; and

WHEREAS, there has been submitted to the Port of Seattle Urban Mass Transportation Demonstration Grant Contract, Project No. WA-06-0009, Phase I, dated September 19, 1977, by the Department of Transportation, United States of America, to aid the Port of Seattle in the development of the Sea-Tac International Airport:

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle:

1. That the Port of Seattle shall enter into the proposed Grant Contract for the purpose of obtaining Government aid in the development of Sea-Tac International Airport, and that such Contract is attached hereto, and by this reference incorporated herein.

2. That the President of the Port Commission be, and he is hereby, authorized and directed to execute said proposed Grant Contract in quintuplicate on behalf of the Port of Seattle, and that the Secretary of the Port Commission be, and he is hereby, authorized and directed to impress the official seal of the Port of Seattle thereon and to attest said execution.

3. That the proposed Grant Contract referred to herein and dated September 19, 1977 is attached hereto and made a part of this Resolution.

ADOPTED by the Port Commission of the Port of Seattle this 8th day of November, 1977 and duly authenticated by the signatures of the Commissioners voting in its favor and the Seal of the Commission.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION

WASHINGTON, D.C. 20590

Project No. WA-06-0009

URBAN MASS TRANSPORTATION DEMONSTRATION GRANT CONTRACT

BETWEEN THE

PORT OF SEATTLE

SEATTLE, WASHINGTON

AND THE

UNITED STATES OF AMERICA

URBAN MASS TRANSPORTATION  
DEMONSTRATION GRANT CONTRACT

PART I

Project No. WA-06-0009

THIS CONTRACT, effective on the date herein below specified, by and between the United States of America (herein called the "Government") and the Port of Seattle (herein called the "Public Body") WITNESSETH:

In consideration of the mutual covenants, promises, and representations herein, the parties hereto agree as follows:

Sec. 1. Purpose of Contract - The purpose of this Contract is to provide for the undertaking of an urban mass transportation demonstration project (herein called the "Project"), with Government financial assistance to the Public Body in the form of a demonstration grant (herein called the "Grant"), under Section 6 of the Urban Mass Transportation Act of 1964, as amended and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the Project will be undertaken and completed.

Sec. 2. The Project - The Public Body agrees to undertake, carry out, and complete Phase I of the Project described in its Application filed with, and approved by, the Government, and herewith incorporated by reference, and in accordance with the terms and conditions of this Contract. Phase I of the Project shall consist of Elements 1-6 of the Program description of the Program Plan submitted with the application. The purpose of this Project is to develop a vehicle data acquisition system for the Sea-Tac Satellite Transit System.

The Public Body will prepare and publish a comprehensive report on the results of the Project, the conclusions reached and the methods utilized.

Sec. 3. The Grant - In order to assist the Public Body in financing the cost of the Project, which cost is estimated to be Fifty-Two Thousand Dollars (\$52,000), the Government will make a Grant in an amount of 100% of the actual cost of the Project as determined by the Government, or in the amount of Fifty-Two Thousand Dollars (\$52,000) whichever is the lesser.

The obligation of the Government to make Federal Grant payments in any fiscal year shall not exceed the amount provided in the Project Budget for the fiscal year in which requisitions therefor are submitted.

If the Public Body receives any funds (other than the Grant funds under this Contract) directly, or indirectly from the Government, or any agency or instrumentality thereof, to aid in financing the Project, the amount of the funds so received shall be considered to reduce the actual cost of the Project upon which the amount of the Grant is determined.

Sec. 4. Disposition of Nonexpendable Property - Upon the completion or termination of the Project, the Public Body agrees to retain all nonexpendable real or personal property acquired or constructed with Project funds in use for the authorized purpose of the Grant Program, or, if there is no longer a need for the property to accomplish the purpose of the Grant Program, to dispose of such nonexpendable real or personal property in accordance with UMTA procedures.

Sec. 5. Minority Business Enterprise - In connection with the performance of this Contract, the Public Body will provide for the maximum utilization of minority business enterprises and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for contract and subcontract work under this Contract.

Sec. 6 . The Grant Contract - This Contract consists of this Part I entitled Urban Mass Transportation Demonstration Grant Contract and Form UMTA F 5, dated 4/27/77, entitled Urban Mass Transportation Grant Contract, Part II, Terms and Conditions. The Project Description and the latest approved Project Budget are incorporated herein by reference. Amendments to any of these documents shall require a formal amendment to this Contract, except that reallocations of funds among budget items or fiscal years which do not increase the total amount of the Federal Grant shall only require prior authorization from UMTA and the issuance of a new Project Budget.

#### Sec. 7. Offer and Acceptance

(a) Execution of Contract - This Contract may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

(b) Offer - When dated and signed by the Government, this instrument shall constitute an offer which should be accepted by the Public Body by execution within sixty (60)

days of such date. The Government may withdraw any offer not accepted within the above sixty-day period. Upon acceptance of the offer the effective date of the Contract shall be the date on which this offer was executed by the Government.

The Government has duly executed this offer this 19th day of September, 1977.

BY [Signature]

TITLE: ASSOCIATE ADMINISTRATOR

(c) Acceptance - The Public Body does hereby ratify and adopt all statements, representations, warranties, covenants, and supporting materials submitted by it, and does hereby accept the Government's offer and agrees to all of the terms and conditions hereof.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

SEAL

PORT OF SEATTLE  
Seattle, Washington

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

(d) Certificate of Public Body's Attorney

I, \_\_\_\_\_, acting as Attorney for the Public Body do hereby certify that I have examined this grant contract and the proceedings taken by the Public Body relating hereto, and find that the acceptance of the Government's offer by the Public Body has been duly authorized by the Public Body's action dated \_\_\_\_\_ (a copy of which has been submitted to UMTA) and that the execution of this Contract is in all respects due and proper and in accordance

with applicable State and local law and further that, in my opinion, said grant contract constitutes a legal and binding obligation of the Public Body in accordance with the terms thereof. I further certify that to the best of my knowledge there is no legislation or litigation pending or threatened which might affect the performance of the Project in accordance with the terms of this Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
TITLE  
\_\_\_\_\_

## TABLE OF CONTENTS

Section 101.	Definitions . . . . .	1
Section 102.	Accomplishment of the Project . . . . .	2
	(a) General Requirements . . . . .	2
	(b) Pursuant to Federal, State and Local Law . . . . .	2
	(c) Funds of the Public Body . . . . .	2
	(d) Submission of Proceedings, Contract and Other Documents . . . . .	2
	(e) Changed Conditions Affecting Performance . . . . .	3
	(f) No Government Obligations to Third Party . . . . .	3
	(g) Land Acquisition Policy . . . . .	3
Section 103.	The Project Budget . . . . .	3
Section 104.	Accounting Records . . . . .	3
	(a) Project Accounts . . . . .	3
	(b) Funds Received or Made Available for the Project . . . . .	3
	(c) Allowable Costs . . . . .	4
	(d) Documentation of Project Costs . . . . .	4
	(e) Checks, Orders and Vouchers . . . . .	4
	(f) Audit and Inspection . . . . .	5
Section 105.	Requisitions and Payments . . . . .	5
	(a) Request for Payment by the Public Body . . . . .	5
	(b) Payment by the Government . . . . .	5
	(c) Disallowed Costs . . . . .	6
Section 106.	Right of Government to Terminate . . . . .	6
Section 107.	Project Settlement and Close-Out. . . . .	7
Section 108.	Contracts of the Public Body . . . . .	7
Section 109.	Restrictions, Prohibitions, Controls, and Labor Provisions . . . . .	7
	(a) Equal Employment Opportunity . . . . .	7
	(b) Construction Contracts - Nondiscrimination . . . . .	8
	(c) Title VI - Civil Rights Act of 1964 . . . . .	10
	(d) Competitive Bidding . . . . .	11
	(e) Prohibited Interests . . . . .	11
	(f) Interest of Members of or Delegates to Congress . . . . .	12
	(g) Labor Provisions - Construction . . . . .	12
Section 110.	Construction Contracts . . . . .	21
	(a) Changes in Construction Contracts . . . . .	21
	(b) Contract Security . . . . .	21
	(c) Insurance During Construction . . . . .	21
	(d) Signs . . . . .	21
	(e) Liquidated Damages Provision . . . . .	21
	(f) Provisions of Construction Contracts . . . . .	21
	(g) Actual Work by Contractor . . . . .	22
	(h) Force Account . . . . .	22

Section 111.	Miscellaneous Provisions . . . . .	22
	(a) Air Pollution . . . . .	22
	(b) How Contract Affected by Provisions Being Held Invalid . . . . .	22
	(c) Bonus or Commission . . . . .	22
	(d) State or Territorial Law . . . . .	22
	(e) Use of Public Lands . . . . .	23
Section 112.	Patent Rights . . . . .	23
Section 113.	Rights In Data . . . . .	25

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION  
WASHINGTON, D. C. 20590



URBAN MASS TRANSPORTATION GRANT CONTRACT

PART II

TERMS AND CONDITIONS

DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION

GRANT CONTRACT  
PART II - - TERMS AND CONDITIONS

Constituting part of the GRANT CONTRACT providing for Federal financial assistance under the provisions of the Urban Mass Transportation Act of 1964, as amended.

Section 101. Definitions. As used in this Grant Contract:

"Application" means the written application for Federal financial assistance for the Project, together with all explanatory, supporting, or supplementary documents, heretofore filed with UMTA by or on behalf of the Public Body, which has been accepted and approved by UMTA.

"Approval, Authorization, Concurrence, Waiver" An approval, authorization, concurrence, or waiver is a conscious, written act by an authorized official of the Government granting permission to the Public Body to perform an act pursuant to this contract which could not be performed without such permission. An approval, authorization, concurrence, or waiver permitting the performance of a specific act shall not constitute permission to perform similar acts unless such broad permission is clearly stated. Oral permission or interpretations shall have no legal force or effect.

"External Operating Manual" is the most recent UMTA manual of that title, which presents information about the UMTA programs, application processing procedures, and guidance for administering approved projects.

"Government" means the United States of America, or its cognizant Agency, the Department of Transportation (DOT) or its Agency, the Urban Mass Transportation Administration, used hereafter interchangeably.

"Mass Transportation Service" Mass Transportation service is general or special transportation service provided to the public (but not school bus, charter or sightseeing service) on a regular and continuing basis in the urban area described in the application. Project equipment

and facilities may be used for incidental charter or sightseeing service when not needed for mass transportation service operations. Project facilities or equipment may not be used for the provision of service under contract either for the exclusive use of students going to and from school or for which an individual fare is not charged.

"Project Description" is the most recently dated statement, signed by UMTA, setting forth all of the activities to be performed by the Public Body with regard to its urban transportation program pursuant to this contract which are not otherwise specifically provided for in this contract.

## Section 102. Accomplishment of the Project.

- (a) General Requirements. The Public Body shall commence, carry on, and complete the Project with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions hereof, the Application, and all applicable laws.
- (b) Pursuant to Federal, State, and Local Law. In performance of its obligations pursuant to this contract, the Public Body and its contractors shall comply with all applicable provisions of Federal, State, and local law. All limits or standards set forth in this contract to be observed in the performance of the Project are minimum requirements, and shall not affect the application of more restrictive State or local standards to the performance of the project. Provided, however, in its procurement actions pursuant to the project, the Public Body shall not give any preference to or discriminate against goods and services produced or manufactured in any country, State, or other geographical area.
- (c) Funds of the Public Body. The Public Body shall initiate and prosecute to completion all proceedings necessary to enable the Public Body to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs.
- (d) Submission of Proceedings, Contract and Other Documents. The Public Body shall submit to the Government such data, reports, records, contract and other documents relating to the Project as the Government may require. The Public Body shall retain intact, for three years following project close-out, all project documents, financial records, and supporting documents.

- (e) Changed Conditions Affecting Performance. The Public Body shall immediately notify UMTA of any change in conditions or local law, or of any other event, which may significantly affect its ability to perform the project in accordance with the provisions of this contract.
- (f) No Government Obligations to Third Parties. The Government shall not be subject to any obligations or liabilities by contractors of the Public Body or their subcontractors or any other person not a party to this contract in connection with the performance of this Project pursuant to the provisions of this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.
- (g) Land Acquisition Policy. Any acquisition of land for use in connection with the Project must conform to the policies and procedures set forth in the External Operating Manual and the Land Acquisition and Relocation Assistance Procedures Manual.

Section 103. The Project Budget. A project Budget shall be prepared and maintained by the Public Body. The Public Body shall carry out the Project and shall incur obligations against and make disbursements of Project Funds only in conformity with the latest approved budget for the Project. The budget may be revised from time to time in accordance with the External Operating Manual or other written guidance from UMTA.

Section 104. Accounting Records.

- (a) Project Accounts. The Public Body shall establish and maintain as a separate set of accounts, or as an integral part of its current accounting scheme, accounts for the Project as described in the External Operating Manual unless UMTA specifically authorizes the use of some other accounting procedures.
- (b) Funds Received or Made Available for the Project. The Public Body shall appropriately record in the Project Account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all Grant payments received by it from the Government pursuant to this Contract and all other funds provided for, accruing to, or otherwise received on account of the Project, which Government payments and other funds are herein collectively referred to as "Project Funds." The Public Body shall require the depositories of Project Funds to secure continuously and fully all Project Funds in excess of the amounts insured under Federal plans, or under State plans which have been approved for the deposit of

Project Funds by DOT, by the deposit or setting aside of collateral of the types and in the manner as described by State law for the security of public funds, or approved by UMTA.

(c) Allowable Costs. Expenditures made by the Public Body shall be reimbursable as allowable costs to the extent they meet all of the requirements set forth below. They must:

(1) be made in conformance with the Project Description and the Project Budget and all other provisions of this contract;

(2) be necessary in order to accomplish the Project;

(3) be reasonable in amount for the goods or services purchased;

(4) be actual net costs to the Public Body (i.e., the price paid minus any refunds, rebates, or other items of value received by the Public Body which have the effect of reducing the cost actually incurred;)

(5) be incurred (and be for work performed) after the date of this contract, unless specific authorization from UMTA to the contrary is received;

(6) be in conformance with the standards for allowability of costs set forth in Federal Management Circular 74-4 and the External Operating Manual;

(7) be satisfactorily documented; and

(8) be treated uniformly and consistently under accounting principles and procedures approved or prescribed by UMTA for the Public Body; and those approved or prescribed by the Public Body for its contractors.

(d) Documentation of Project Costs. All costs, charged to the Project, including any approved services contributed by the Public Body or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

(e) Checks, Orders, and Vouchers. Any check or order drawn by the Public Body with respect to any item which is or will be chargeable against the Project Account will be drawn only in accordance with a properly signed voucher then on file in the office of the Public Body stating

in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

- (f) Audit and Inspection. The Public Body shall permit, and shall require its contractors to permit, the Government to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts of the Public Body and its contractors with regard to the project. UMTA also may require the Public Body to furnish at any time prior to close-out of the Project, audit reports prepared according to generally accepted accounting principles.

#### Section 105. Requisitions and Payments.

- (a) Requests for Payment by the Public Body. The Public Body may make requests for payment of the Federal share of allowable costs, and UMTA shall honor such requests in the manner set forth in this section. In order to receive Federal grant payments, the Grantee must:
- (1) completely execute and submit to UMTA (1) Form OMB No. 80-R0183 ("Request for Advance or Reimbursement") in accordance with the instructions contained therein, and (2) UMTA F 1340.6 ("UMTA Project Budget: Line Item Data Entry");
  - (2) submit to UMTA an explanation of the purposes for which costs have been incurred to date or are reasonably expected to be incurred within the requisition period (not more than 30 days after the date of submission);
  - (3) demonstrate or certify that it has supplied local funds adequate, when combined with the Federal payments, to cover all costs to be incurred to the end of the requisition period; and
  - (4) have submitted all financial and progress reports currently required by this contract.
- (b) Payment by the Government. Upon receipt of the requisition form and the accompanying information in satisfactory form, the Government shall process the requisition if the Public Body is complying with its

obligations pursuant to the contract, has satisfied UMTA of its need for the Federal funds requested during the requisition period, and is making adequate progress towards the timely completion of the Project. If all of these circumstances are found to exist, the Government shall reimburse apparent allowable costs incurred (or to be incurred during the requisition period) by the Public Body up to the maximum amount of the Federal grant payable through the fiscal year in which the requisition is submitted as stated in the Project Budget. However, reimbursement of any cost pursuant to this section shall not constitute a final determination by the Government of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this contract committed by the Public Body. The Government will make a final determination as to allowability only after final audit of the project has been conducted.

In the event that UMTA determines that the Public Body is not currently eligible to receive any or all of the Federal funds requested, it shall promptly notify the Public Body stating the reasons for such determination.

- (c) Disallowed Costs. In determining the amount of the Grant, UMTA will exclude all Project costs incurred by the Public Body prior to the date of this Contract, or prior to the date of the approved budget for the Project, whichever is earlier; costs incurred by the Public Body which are not provided for in the latest approved Budget for the Project; and costs attributable to goods or services received under a contract or other arrangement which has not been concurred in or approved in writing by UMTA. The above statement on disallowed costs is subject to any exceptions provided in the External Operating Manual or written guidance from UMTA.

Section 106. Right of Government to Terminate. Upon written notice to the Public Body, the Government reserves the right to suspend or terminate all or part of the financial assistance herein provided for when the Public Body is, or has been, in violation of the terms of this contract or when UMTA determines that the purposes of the Act would not be adequately served by continuation of Federal financial assistance to the Project. Any failure to make progress which significantly endangers substantial performance of the Project within a reasonable time shall be deemed to be a violation of the terms of this

contract. Termination of any part of the grant will not invalidate obligations properly incurred by the Public Body and concurred in by UMTA prior to the date of termination, to the extent they are noncancellable. The acceptance of a remittance by the Government of any or all Project Funds previously received by the Public Body or the closing out of Federal financial participation in the Project shall not constitute a waiver of any claim which the Government may otherwise have arising out of this Contract.

Section 107. Project Settlement and Close-out. Upon receipt of notice of successful completion of the Project or upon termination by UMTA, UMTA shall perform a final audit of the Project to determine the allowability of costs incurred, and shall make settlement of the Federal grant described in Part I of this contract. If UMTA has made payments to the Public Body in excess of the total amount of such Federal grant, the Public Body shall promptly remit such excess to UMTA. The project close-out occurs when UMTA notifies the Public Body and forwards the final grant payment or when an appropriate refund of Federal grant funds has been received from the Grantee and acknowledged by UMTA. Close-out shall be subject to any continuing obligations imposed on the Public Body by this contract or contained in the final notification or acknowledgement from UMTA. The Financial Status Report (OMB No. 80R0180) will also be submitted at this time and signed by the Chief Financial Officer and the Project Manager, as specified in the External Operating Manual (Change 2).

Section 108. Contract of the Public Body. The Public Body shall not execute any lease, pledge, mortgage, lien, or other contract touching or affecting project facilities or equipment, nor shall it obligate itself in any other manner, with any third party with respect to the project, unless such lease, pledge, mortgage, lien, contract, or other obligation is expressly authorized in writing by DOT: nor shall the Public Body, by any act or omission of any kind, impair its continuing control over the use of project facilities or equipment during the useful life thereof as determined by DOT.

Section 109. Restrictions, Prohibitions, Controls, and Labor Provisions.

(a) Equal Employment Opportunity. In connection with the carrying out of the Project, the Public Body shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Public Body will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following:

employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Public Body shall insert the foregoing provision (modified only to show the particular contractual relationship) in all of its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials and construction contracts subject to the provisions of Section 109 (b) of this contract, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

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

'(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

'(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions shall be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-

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

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

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

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

- (c) Title VI - Civil Rights Act of 1964. The Public Body will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued

thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the Public Body pursuant thereto.

- (d) Competitive Bidding. The Public Body shall not award or substantially amend any contract in an amount greater than \$10,000 pursuant to the Project, except for professional service contracts, without formal advertising, free, open, and unrestricted competitive bidding, and award to the lowest responsive and responsible bidder; unless UMTA specifically approves some other form of procurement or award to another party upon being satisfied by the Public Body that such action will adequately protect the Government's interests in encouraging competition, optimizing efficient performance of the project and minimizing its cost. Provided, however, the Public Body may issue change orders for competitively bid equipment and construction contracts in an amount not exceeding \$100,000 at any one time which do not significantly alter the scope of the contract, without regard to the provisions of this section.
- (e) Prohibited Interests. Neither the Public Body nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with the Project or any property included or planned to be included in the Project, in which any member, officer, or employee of the Public Body or the locality during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the Public Body and such disclosure is entered upon the minutes of the Public Body, the Public Body with the prior approval of DOT, may waive the prohibition contained in this subsection: Provided, That any such present member, officer or employee shall not participate in any action by the Public Body or the locality relating to such contract, subcontract, or arrangement.

The Public Body shall insert in all contracts entered into in connection with the Project or in connection with any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the Public Body or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this subsection shall not be applicable to any agreement between the Public Body and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental agency.

(f) Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Grant Contract or to any benefit arising therefrom.

(g) Labor Provisions - Construction. The following provisions shall be applicable to all construction contracts let by the Public Body in carrying out the Project involving \$2,000 or more.

(1) Minimum wages. (i) All mechanics and laborers employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor applicable to the Project, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

(ii) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified conformably to the wage determination, and a report of the action taken shall be sent by DOT to the Secretary of Labor. In the event the interested parties

cannot agree on the proper classification or re-classification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(iii) The contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(iv) The contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in a section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act, or otherwise not listed in the wage determination decisions of the Secretary of Labor which are incorporated in this contract, only when the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the contractor should request the Secretary of Labor to make such findings before the making of the contract. In the case of unfunded plans and programs, the Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. DOT may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic,

including any apprentice or trainee, employed or working on the site of the work, all or part of the wages required by the contract, DOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and ~~basic records relating thereto~~ will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborers or mechanics include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(ii) The contractor will submit weekly a copy of all payrolls to the Public Body for transmission to DOT. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform to the work he performed. A submission of the "Weekly Statement of Compliance" which is required under this contract and the Cope-

land regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of DOT and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

#### (4) Apprentices and Trainees

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (B) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman's rate contained in the applicable wage determination.

(B) Trainees. Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(6) Contract termination; debarment. A breach of clauses (1) through (5) and (1) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

(7) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

(8) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (7), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (7), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (7).

(9) Withholding for liquidated damages. DOT may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in subparagraph (8).

(10) Final Labor Summary. The contractor and each subcontractor shall furnish to the Public Body, upon the

completion of the contract, a summary of all employment, indicating, for the completed project, the total hours worked and the total amount earned.

(11) Final Certificate. Upon completion of the contract, the contractor shall submit to the Public Body with the voucher for final payment for any work performed under the contract a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, contractor on

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(Contract No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title \_\_\_\_\_

(12) Notice to the Public Body of Labor Disputes. Whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Public Body.

(13) Disputes Clause. (i) All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to the Public Body for its referral to DOT for decision or, at the option of the Public Body, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor as the case may be, shall be final.

(ii) All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 13 of the Act shall be sent to UETA for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

(14) Convict Labor. In connection with the performance of work under this contract the contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

(15) Insertion in Subcontracts. The contractor shall insert in all construction subcontracts the clauses set forth in subsections (1) through (15) of this section so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may by appropriate instructions require.

Section 110. Construction Contracts.

- (a) Changes in Construction Contracts. Any change in a construction contract shall be submitted to DOT for prior approval unless the gross amount of the change is \$100,000 or less, the contract was originally awarded on a competitive basis, and the change does not change the scope of work or exceed the contract period. Construction contracts shall include a provision specifying that the above requirement will be met.
- (b) Contract Security. The Public Body shall follow the requirements of the External Operating Manual with regard to bid guarantees and bonding requirements (p. III C-16).
- (c) Insurance During Construction. The Public Body shall follow the insurance requirements normally required by their State and local governments.
- (d) Signs. The Public Body shall cause to be erected at the site of construction, and maintained during construction, signs satisfactory to DOT identifying the Project and indicating that the Government is participating in the development of the Project.
- (e) Liquidated Damages Provision. The Public Body shall include in all contracts for construction, a clause satisfactory to DOT providing for liquidated damages, where both (1) DOT may reasonably expect to suffer damages (increased costs on the grant project involved) from the late completion of the construction and (2) the extent or amount of such damages would be difficult or impossible to assess. The assessment for damages shall be at a specified rate per day for each day of overrun in contract time deducted from payments otherwise due the contractor. This rate, which must be satisfactory to DOT, must be specified in the contract.
- (f) Provisions of Construction Contracts. The terms and conditions of each competitively bid construction contract are subject to prior approval by DOT if the estimated cost will exceed \$25,000. In addition to the requirements of this Section 110, each construction contract shall contain, among others, provisions required by subsections (b), (c), (d), and (e) of Section 109 hereof.

- (g) Actual Work by Contractor. The Public Body shall require that a construction contractor perform, on the site and with his own staff, work equivalent to at least 10 percent of the total amount of construction work covered by his contract.
- (h) Force Account. If costs of construction performed by employees of the Public Body are estimated to exceed \$25,000, prior approval of DOT must be obtained or else such costs may not be included as eligible projects costs.

Section 111. Miscellaneous Provisions.

- (a) Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the Public Body obtains satisfactory assurances that they are (or will be) designed and equipped to limit air pollution as provided in the External Operating Manual and in accordance with all other applicable standards.
- (b) How Contract Affected by Provisions Held Invalid. If any provision of this Contract is held invalid, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- (c) Bonus or Commission. The Public Body warrants that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the Grant hereunder.
- (d) State or Territorial Law. Anything in the Grant Contract to the contrary notwithstanding, nothing in the Grant Contract shall require the Public Body to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State or territorial law: Provided, That if any of the provisions of the Grant Contract violate any applicable State or territorial law, or if compliance with the provisions of the Grant Contract would require the Public Body to violate any applicable State or territorial law, the Public Body will at once notify DOT in writing in order that appropriate changes and modifications may be made by DOT and the Public Body to the end that the Public Body may proceed as soon as possible with the Project.

- (e) Use of Public Lands. No publicly owned land from a park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials may be used for the project without the prior concurrence of DOT.

Section 112. Patent Rights.

- (a) Whenever any invention, improvement, or discovery (whether or not patentable) is conceived or for the first time actually reduced to practice, by the Public Body or its employees, in the course of, in connection with, or under the terms of this contract, the Public Body shall immediately give the Administrator of the Urban Mass Transportation Administration, or his authorized representative written notice thereof; and the Administrator shall have the sole and exclusive power to determine whether or not and where a patent application shall be filed, and to determine the disposition of all rights in such invention, improvement, or discovery, including title to and rights under any patent application or patent that may issue thereon. The determination of the Administrator on all these matters shall be accepted as final, and the Public Body agrees that it will, and warrants that all of its employees who may be the inventors will, execute all documents and do all things necessary or proper to the effectuation of such determination.
- (b) Except as otherwise authorized in writing by the Administrator or his authorized representative, the Public Body shall obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will have no access to technical data.
- (c) Except as otherwise authorized in writing by the Administrator or his authorized representative, the Public Body will insert in each third-party contract having design, test, experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the third-party contractor and its employees.

- (d) If the Government obtains patent rights pursuant to this clause of this contract, the Public Body and the third-party contractor shall be offered license rights thereto on terms at least as favorable as those offered to any other party. However, in the event no effective steps have been taken by the Public Body or the third-party contractor or any other party within 3 years after issuance of a patent under which the Government acquires rights pursuant to this clause to bring the claimed invention to the point of practical application, the Government's obligation to offer a license pursuant to this clause shall terminate, and any license already granted to the Public Body or the Third-party contractor pursuant to this clause shall be revoked unless the Public Body or the third-party contractor can show cause as to why such license shall not be revoked.
- (e) In the event no inventions, improvements, or discoveries (whether or not patentable) are conceived, or for the first time actually reduced to practice by the Public Body, its employees, its third-party contractors, or their employees, in the course of, in connection with, or under the terms of this contract, the Public Body shall so certify to the Administrator or his authorized representative, no later than the date on which the final report of work done, is due.
- (f) If the Public Body or the third-party contractor is permitted to file patent applications pursuant to this clause of this contract, the following statement shall be included within the first paragraph of the specification of any such patent application or patent:
- "The invention described herein was made in the course of, or under, a grant from the Department of Transportation."
- (g) In the event the Public Body or the third-party contractor is permitted to acquire principal rights pursuant to this clause and fails to take effective steps within 3 years after issuance of a patent on any patent applications permitted to be filed pursuant to this clause, to bring the claimed invention to the point of practical application, the Administrator or his authorized representative may revoke such rights, or require the assignment of such rights, to the Government.

- (h) The Administrator or his authorized representative shall, before the expiration of three (3) years after final payment under this grant, have the right to examine any books, records, documents, and other supporting data of the Public Body which the Administrator or his authorized representative shall reasonably deem directly pertinent to the discovery or identification of inventions falling within the criteria set out in paragraph (a), or to compliance by the Public Body with the requirements of this clause. The Administrator or his authorized representative shall, during the period specified above, have the further right to require the Public Body to examine any books, records, documents, and other supporting data of the third-party contractor which the Public Body shall reasonably deem directly pertinent to the discovery or identification of inventions falling within the criteria set out in paragraph (a) or to compliance by the third-party contractor with the requirements of the patent rights clause of the third-party contract.

Section 113. Rights in Data.

- (a) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (b) All "subject data" first produced in the performance of this contract shall be the sole property of the Government. The Public Body agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Public Body shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of the Government until such time as the Government may have released such data to the Public.

- (c) The Public Body agrees to grant and does hereby grant to the Government and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (2) to authorize others so to do.
- (d) The Public Body shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Public Body of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract.
- (e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- (f) In the event that the project, which is the subject of this contract, is not completed, for any reason whatsoever, all data generated under that project shall become subject data as defined in the Rights in Data clause in this Contract and shall be delivered as the Government may direct. This clause shall be included in all third-party contracts under the project.
- (g) Paragraphs (c) and (d) above are not applicable to material furnished to the Public Body by the Government and incorporated in the work furnished under the contract: Provided, Such incorporated material is identified by the Public Body at the time of delivery of such work.