



**METRO**

600 NE Grand Ave.  
Portland, OR 97232-2736  
(503) 797-1700

# Intergovernmental Grant Agreement

185075

**Metro Grant Agreement No. 930640**

**PROJECT: City of Portland Sunday Parkways Sponsorship Grant**

THIS INTERGOVERNMENTAL SPONSORSHIP AGREEMENT is made and entered into by and between Metro, an Oregon Metropolitan Service District organized under the laws of the State of Oregon and the Metro Charter, hereinafter referred to as "**Metro**," and the City of Portland, a municipal corporation of the State of Oregon, hereinafter referred to as "**the City**".

## **RECITALS**

Metro is the recipient of funding from the U.S. Federal Transit Administration ("FTA") under the Congestion Mitigation and Air Quality ("CMAQ") Improvement Program that FTA jointly administers with the Federal Highway Administration.

Metro has made CMAQ funds available for transportation projects and programs that reduce transportation-related emissions to meet and maintain regional air quality standards.

The Metro RTO Subcommittee of TPAC, through a competitive process, selected The City of Portland to receive partial funding for their Sunday Parkway Program. Therefore, Metro wishes to enter into this Agreement with the City utilizing these federal funds for the purpose of sponsoring the City of Portland Sunday Parkways program which will span the months of May through September, 2011.

Metro considers the City to be a subrecipient of federal funds. This Sponsorship Agreement is subject to a financial assistance Grant between Metro and FTA utilizing Federal Transit Formula Grant Funds, pursuant to CFDA No. 20.507

Pursuant to ORS 190.010, units of local government may enter into Agreements to perform any functions and activities that the parties to the Agreement, or their officers or agents have authority to perform.

In consideration for the mutual covenants and promises contained herein, the parties agree as follows:

## **ARTICLE I**

### **CMAQ SPONSORSHIP AWARD**

Metro agrees to pay the City a portion of the CMAQ funding it has received in an amount not to exceed **TWENTY THOUSAND AND NO/100<sup>TH</sup>S DOLLARS (\$20,000.00)** ("the Funds") for the Sunday Parkways



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Event(s) as set forth in the Scope of Work attached as Exhibit A and incorporated by this reference as if set forth in full.

## ARTICLE II

### TERM OF SPONSORSHIP AGREEMENT

This Sponsorship Agreement is effective as of the last date of signature affixed below (the "Effective Date") and continuing through and including December 30, 2011, unless earlier terminated by Metro as provided herein, or extended by mutual written agreement of Metro and the City

## ARTICLE III

### PAYMENT OF SPONSORSHIP FUNDS

The Funds made available to the City under this Agreement shall be paid to the City only to reimburse it for Qualified Costs for the work described in Exhibit A.

As used in this Agreement, "Qualified Costs" are project costs incurred by the City and its contractors during the term of this Agreement that are eligible for to be reimbursed with federal funds in accordance with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:

The terms and conditions applicable to a "recipient" set forth in the October 1, 2010 FTA Master Agreement [FTA MA 17] between Metro and the FTA attached as Exhibit B and incorporated by this reference.

49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local and Indian Tribal Governments; and

FTA Circular 5010.1D.



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The City acknowledges and agrees that Metro has the final and sole discretion to determine whether any project costs are Qualified Costs.

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## ARTICLE IV OBLIGATIONS OF THE CITY

The City shall perform the work and provide the deliverables and services described in the Scope of Work attached as Exhibit A, and shall perform such work identified as an independent contractor.

The City shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the Scope of Work and for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

The City shall be responsible for and bear one-hundred percent (100%) percent of any project costs that Metro determines are not Qualified Costs. The City also shall be responsible for and bear one-hundred percent (100%) of any Qualified Costs that exceed the maximum amount of the Sponsorship Funds.

The City shall not submit requests for payments that exceed **TWENTY THOUSAND AND NO/100<sup>TH</sup>S DOLLARS (\$20,000.00)** for the total project, unless otherwise authorized to do so by future amendments to this Agreement.

For any expenses reimbursed by this Sponsorship Agreement the City shall also comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:

- (1) The terms and conditions applicable to a "recipient" set forth in the October 1, 2010 FTA Master Agreement [FTA MA 17] between Metro and the FTA;
- (2) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and
- (3) FTA Circular 5010.1D.



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The City shall document the expenditures for which reimbursement is sought under this Agreement and shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the City's performance.

The City acknowledges and agrees that Metro, FTA, the U.S. Secretary of Transportation, and Comptroller of the United States or their authorized representative shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

The City also acknowledges and agrees that the City shall retain such documents for a period of six (6) years, or such longer period as may be required by applicable law, after termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Copies of applicable records shall be made available upon request.

Without limitation, the City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections V and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS.659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

All employers, including the City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. The City shall ensure that each of its subcontractors complies with these requirements.

## **ARTICLE V LIABILITY AND INDEMNITY**

The City is an independent contractor and assumes full responsibility for the performance of the Project Scope and the content of its work and performance of City's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Agreement.

The City agrees to indemnify and defend Metro and hold Metro, its agents and employees harmless from



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any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Sponsorship Agreement. The City is solely responsible for paying subcontractors, suppliers and employees. Nothing in this Sponsorship Agreement shall create any contractual relationship between any subcontractor, supplier or employee and Metro.

## **ARTICLE VII OBLIGATIONS OF METRO**

Metro certifies, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure as set forth herein.

## **ARTICLE VIII GENERAL PROVISIONS AND MISCELLANEOUS TERMS**

The City shall ensure that any work products produced pursuant to this Agreement include the following statement: "This project is partially funded by the Federal Transit Administration and Metro's Regional Travel Options program."

This Agreement may be terminated by mutual written consent of all parties. Metro may terminate this Agreement effective upon delivery of written notice to the City, or at such later date as may be established by Metro under, but not limited to, any of the following conditions:

- a. Failing to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or failing to perform any of the provisions of this Agreement and the City does not correct any such failure within ten (10) days of receipt of written notice, or the date specified by Metro in such written notice.
- b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or Metro is prohibited from paying for such work from the planned funding source.
- c. If Metro fails to receive appropriations, limitations or other expenditure authority sufficient to allow Metro, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- d. Any termination of this Agreement shall not prejudice any right or obligations accrued to the



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parties prior to termination.

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The City, as a recipient of funds pursuant to this Agreement with Metro, shall assume sole liability for breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon breach of any such conditions that requires Metro to return funds to any funding source, hold harmless and indemnify Metro for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the City, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the City and Metro that arise from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Portland, Oregon. In no event shall this section be construed as a waiver by either of the parties of any form of defense or immunity from any Claim or from the jurisdiction of any court.

Metro's liability to the City under this agreement shall be limited to payment of the Sponsorship Funds, provided that City has fully and completely complied with all terms and conditions of this Sponsorship Agreement. In no event shall Metro be liable for and City specifically releases Metro from any liability for any special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Sponsorship Agreement or for any failure of performance related to the Scope of Work or this Sponsorship Agreement, regardless of how, and whether or not arising from Metro's sole, joint or concurrent negligence.

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement



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shall not constitute a waiver by either party of that or any other provision

The City shall not assign any rights or obligations under or arising from this Agreement without prior written consent from Metro.

If any clause, sentence or any other portion of the terms and conditions of this Sponsorship Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have set their hands and their seals as of the day and year hereinafter written.

## CITY OF PORTLAND

## METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

Written: \_\_\_\_\_

Written: \_\_\_\_\_

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

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

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

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

By: \_\_\_\_\_

LaVonne Griffin-Valade  
City Auditor

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

APPROVED AS TO FORM:

By: \_\_\_\_\_

Mark Moline  
Deputy City Attorney

Date: 12/1/2011

**Exhibit A****Scope of Work**

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**Deliverables:****Events:**

Five Sunday Parkway events shall be held by The City:

May 22, 2011 – East Portland

June 26, 2011 – North Portland

July 24, 2011 – Northwest/Downtown Portland

August 28, 2011 – Southeast Portland

September 25, 2011 – Northeast Portland

1. **Metro recognition.** The City will make Metro the exclusive sponsor of a major park activity area at each of the five events. Metro's name will be embedded in the park activity area title and the Metro logo will appear on all maps in association with the park activity area. Metro name and logo will be included in all event newsletters, website, season-wide collateral, single-event collateral, and on signs around the sponsored park activity area. The City will provide Metro with the opportunity to distribute information at park activity area information booth or in a separate booth at each of the five events. A disc golf activity area will be one of the offerings at the Metro sponsored park.
2. **Final report.** The city will provide Metro with a final report that documents the events, including estimates of the number of participants and volunteers; route maps; a summary of media coverage generated by the events; and documentation of Metro recognition and placements of the Metro logo, including copies of all collateral materials, such as brochures, postcards, flyers, event maps and signs, and online information.



## **Exhibit B – Federal Clauses    Contracts - \$20,00 up to \$100,000**

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2010 FTA Master Agreement [FTA MA 17]** including, but not limited to, the following:

- A. Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA. *[FTA Master Agreement §2.c (1)]*

- B. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project. *[FTA Master Agreement §2.f]*
- C. Debarment and Suspension. The Recipient agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Recipient agrees to review the "Excluded Parties Listing System" at <http://epls.gov/> and to include a similar term or condition in each lower tiered covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subrecipient, lessee, third part contractor, and other participant at a lower tier of the Project, will review the "Excluded Parties Listing System" at

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<http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions. *[FTA Master Agreement §3.b]*

**D. Lobbying Restrictions.** The Recipient agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352. *[FTA Master Agreement §3.d]*

**E. False or Fraudulent Statements or Claims.** The Recipient acknowledges and agrees that:

(1) **Civil Fraud.** The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) **Criminal Fraud.** If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate. *[FTA Master Agreement §3.f]*

**F. Access to Records of Recipients and Subrecipients.** The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g). *[FTA Master Agreement §8.e]*

**G. Right of the Federal Government to Terminate.** Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or

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Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project. *[FTA Master Agreement §11]*

- H. Civil Rights. The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:
- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
  - b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," May 13, 2007, and any other applicable Federal directives that may be issued.
  - c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:
    - (1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
    - (2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.,

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which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contract, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have

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the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970,

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as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, and DOT Order 5620.3, "Department of Transportation Actions To Address Environment Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. *[FTA Master Agreement §12]*

l. Fly America. The Recipient agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143. *[FTA Master Agreement §14(c)]*

J. Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" is focused on Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts. *[FTA Master Agreement §15(a)]*

K. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. *[FTA Master Agreement §15(t)]*

L. Patent Rights.

## **Exhibit B – Federal Clauses      Contracts - \$20,00 up to \$100,000**

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or any other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education or individual.). [FTA Master Agreement §17(a-b)]

### **M. Rights in Data and Copyrights.**

a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b (1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of

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the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership with Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly and specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent FTA determines otherwise in writing, The Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and 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 Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

h. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of



## **Exhibit B – Federal Clauses      Contracts - \$20,00 up to \$100,000**

Information Act (or another Federal law or regulation providing access to such records). *[FTA Master Agreement §18]*

- N. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans", 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Recipient agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600 and any revisions thereto.

(3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. *[FTA Master Agreement §25(b)]*

- O. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water as provided by the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Recipient agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. *[FTA Master Agreement §25(c)]*

- P. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy standards and policies of State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. As applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, in compliance with FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C. *[FTA Master Agreement §26]*

## Exhibit B - Attachment A      Debarment Certification

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

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

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_