

# Intergovernmental Agreement

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**Metro Contract No. 928129**

## **City of Portland CarpoolMatchNW Maintenance 2007 - 2008**

THIS 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 "City" or "the City".

### **RECITALS**

1. Metro is the recipient of Federal Transit Administration (FTA) Congestion Mitigation/Air Quality funds (CMAQ).
2. Metro has made CMAQ funds available for transportation projects and programs that reduce transportation-related emissions to meet and maintain regional air quality standards.
3. Metro wishes to enter into this agreement with the City utilizing these federal funds for the maintenance of CarpoolMatchNW.org, the Portland regional ridematching website and database.
4. By authority granted in ORS Chapter 190.110 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 the duty or authority to perform.
5. The parties desire to enter into this agreement for their mutual benefit.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

### **TERM OF AGREEMENT; PROJECT DESCRIPTION & COSTS**

1. This agreement is subject to a financial assistance agreement between Metro and the Federal Transit Administration (FTA). The City shall 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, 2006 FTA Master Agreement [FTA MA 13] between Metro and the FTA; (2) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; (3) OMB Circular A-87, Cost Principles Applicable to Grants and Contracts with State and Local Governments; and (4) FTA Circular 5010.1C.
2. The beginning date of this agreement is July 1, 2007. The termination date of this agreement is June 30, 2008. Costs incurred after July 1, 2007, which are deemed allowable

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costs for this project, will be reimbursed once all parties have signed this agreement and Metro has been presented with the appropriate invoice and documentation.

3. The project is described in the attached Exhibit A, which is incorporated by this reference as if set forth in full.
4. The maximum amount of FTA funds to be dispersed to the City shall not exceed **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)**.
5. Qualified costs are project costs, incurred by the City and personal services contractor(s) during the term of this agreement that are eligible for federal funds.

### REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE CITY

1. The City shall perform the work and provide the deliverables and services described in Exhibit A, for which the City is identified as being responsible for.
2. The City shall perform the work identified in Exhibit A as the City's responsibility under this agreement as an independent contractor. The City shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform any work identified in Exhibit A as the City's responsibility 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.
3. The City shall be responsible for any non-qualifying costs associated with the work described in Exhibit A and any costs above the maximum amount allowed by this contract. The City agrees to fulfill contract obligations regardless of these non-qualifying costs.
4. The City shall present cost reports, reimbursement requests, progress reports, and deliverables to Metro's Project Manager no less than once a month. The City shall not submit requests for payments that exceed **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000)** for the total project, unless otherwise authorized to do so by future amendments to this agreement. Invoices shall display 100 percent of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect costs that are appropriate for this project. Documentation for other direct (non-labor) charges must be received by Metro before payment will be made, and may include copies of receipts for expenditures or system-generated accounting reports documenting the actual expense. Timesheets may be periodically requested to document labor costs. The City shall follow OMB Circular A-87 for determining the allowability of costs.
5. The City agrees to cooperate with Metro, and at the request of Metro, agrees to:
  - a. Meet with the Metro's Project Manager; and
  - b. Present information about the project to Metro's Project Manager.

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6. The City 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 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.
7. The City shall not enter into any subcontracts to accomplish work described in Exhibit A, unless written approval is first obtained from Metro. For any subcontracts, the City shall follow DBE guidelines outlined in Exhibit B.
8. If the City engages a personal services contractor(s) to accomplish any work described in Exhibit A, City shall:
  - a. Provide Metro's Project Manager with the opportunity to participate in the personal services contractor selection;
  - b. Select personal services contractor(s) in accord with Metro procedures and advise Metro of the City's recommendation;
  - c. Provide Metro's Project Manager with the opportunity to review and approve personal services contractor's work, billings and progress reports; and
  - d. Provide a project manager to:
    - i. be the City's principal contact person for Metro's Project Manager and the personal services contractor for the project;
    - ii. monitor and coordinate the work of the personal services contractor;
    - iii. review and approve bills and deliverables (work products) produced and submitted by the personal services contractor; and
    - iv. advise Metro's Project Manager regarding payments to the personal services contractor and submit monthly DBE reports for subcontracts as required in Exhibit B
9. All project work products of City that result from this agreement are the joint work products of the City and Metro. The City and Metro intend that such work products be deemed "work made for hire" of which the City and Metro shall be deemed the author. If, for any reason, the work products are not deemed "work made for hire," the City hereby irrevocably assigns to Metro all of its rights, title, and interest in and to any and all of the work products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The City shall execute such further documents and instruments as Metro may reasonably request in order to fully vest such rights in Metro.

The City forever waives any and all rights relating to the work products, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications. Metro hereby grants to the City a royalty free, non-exclusive license to reproduce any work products for distribution upon request to members of the public.

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10. 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.”

11. The City shall submit two hard copies of all final products produced in accordance with this agreement to Metro’s Program Manager, unless otherwise specified in Exhibit A.
12. The City shall submit to the Program Manager all payment claims within 30 days after the termination date of this agreement.
13. Within 30 days after the termination date of this agreement, the City shall provide Metro with a completion report. The report must contain:
- A summary of qualified costs incurred for the project, including reimbursable costs and matching amount;
  - The intended location of records (which may be subject to audit);
  - A list of final deliverables; and,
  - Final payment requests to Metro’s Program Manager for reimbursement.
14. Without limiting the generality of the foregoing, 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.
15. 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.

### **METRO COVENANTS**

- Metro shall reimburse the City for qualified costs for work described in Exhibit A, in accordance with OMB Circular A-87, Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- Metro shall make any required interim payments within 30 days of receipt of the invoice, proper documentation, and Program Manager’s approval of the progress reports described in paragraph 13 of the City’s Representations, Warranties, and Covenants for deliverables identified as being the City’s responsibility in the approved statement of work, described in Exhibit A. Subject to the 10 percent withholding described in paragraph 3 below, the amount of the interim payment for a deliverable will be the qualified costs requested minus any matching amounts. In no event shall the total due to the City under this paragraph exceed the City’s allotted amount authorized under this agreement.

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3. Metro reserves the right to withhold payment equal to 10 percent of the total project amount until all work required hereunder (and under any personal services contract(s) related to the project) is completed and accepted by the Program Manager.
4. Metro certifies that, at the time this agreement is executed, sufficient funds are authorized and available for expenditure as set forth herein.
5. Metro will assign an Program Manager for this agreement who will be Metro's principal contact person regarding administration of this agreement.

### GENERAL PROVISIONS

1. Metro considers the City to be a subrecipient of federal funds. Funding for this project is obtained from an agreement between Metro and the FTA, utilizing Federal Transit Formula Grant Funds, CFDA No. 20.507
2. Budget modifications and major adjustments from the work described in Exhibit A must be processed as an amendment to this agreement and personal services contract(s).
3. 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 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.

Any termination of this agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

4. As federal funds are involved in this agreement, Exhibits B are attached hereto and by this reference made a part of this agreement and are hereby certified to by the City's representatives.
5. 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

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of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

6. Except as otherwise expressly provided in this agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the City or to Metro at the address or number set forth on the signature page of this agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Metro, such facsimile transmission must be confirmed by telephone notice to Metro's Program Manager. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
7. All communications between the parties regarding this agreement shall be directed to the parties' respective Project Managers as indicated below:

Metro – Dan Kaempff  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Phone: (503) 813-7559  
Fax: (503) 797-1930

City – Dan Bower  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland OR 97204-1914  
Phone: (503) 823-5667  
Fax: (503) 823-9194

8. 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 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.
9. 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 shall not constitute a waiver by either party of that or any other provision.

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**



## Exhibit A – Scope of Work

This scope of work documents the agreement between Metro and City of Portland to provide ongoing technical services. The purpose of the scope of work is to ensure that the proper elements and commitments are in place to provide ongoing maintenance and support to the CGIS developed, hosted and maintained portions of the CarpoolMatchNW.org application, and to enable equitable cost sharing among the participating agencies in the CarpoolMatchNW.org project.

CarpoolMatchNW.org is an online tool that gives customers in Oregon and Washington unlimited access to carpools/vanpools without jurisdictional boundaries. This project was designed to remove barriers to carpooling. Therefore, it is essential that the technology does not create a new barrier. Changing travel behavior is a difficult task, and if the customer does not have a good experience with the website, we will lose an opportunity. It is essential to the customer that the site is reliable, available, and performs well.

Two City of Portland agencies, Bureau of Technology Services (BTS) and Office of Transportation (PDOT) collaborated to develop functionality to support the business objectives of the CarpoolMatchNW project. Additional collaboration between BTS, PDOT and RTSE/Captus consulting services was required to integrate the asp and ColdFusion portions of the site. These needs included the development of Internet mapping, geocoding, and data acquisition functionality.

The following cost centers will be used for ongoing maintenance activities.

**A. Maintenance and Operation** – The cost for these services is derived based on the estimated time required for maintenance and operation activities. This time estimation forms the basis of the fixed fee cost for annual maintenance and operation. The hourly cost for BTS services is \$88.25 per hour.

The following activities are included in maintenance and operation costs:

Service	Hours Month
Administration and Support <ul style="list-style-type: none"> <li>• Perform backups and restores of systems and data</li> <li>• Develop and monitor the site and resources using 3<sup>rd</sup> party tools such as WebTrends and custom tools</li> <li>• Respond to customer support incidents</li> <li>• Ensure connectivity and compliance with BTS network configurations</li> </ul>	5
Hardware and Software maintenance <ul style="list-style-type: none"> <li>• Research feasibility and benefits of upcoming HW and SW to manage migration.</li> <li>• Install OS upgrades, service packs and patches as needed.</li> <li>• Install and configure hardware to ensure levels of service.</li> <li>• Install and configure software versions, upgrades and enhancements.</li> <li>• Manage and procure agreements to ensure compliance with</li> </ul>	4



## Exhibit A – Scope of Work

contracts and product licensing	
Ongoing enhancements of CGIS web infrastructure <ul style="list-style-type: none"> <li>• Enhance applications to maximize the value of existing hardware and software infrastructure</li> <li>• Migrate existing applications to new hardware and software infrastructure as needed</li> <li>• Map server enhancements</li> <li>• Data and template publication to multiple servers</li> <li>• Data and image caching</li> <li>• State management across multiple servers</li> <li>• Request management across multiple servers</li> </ul>	3
Monthly Hours	12

Maintenance and Operations support of initial CarpoolMatchNW.org ColdFusion Application and the One Trip Module developed during the 03-04 fiscal year.

Annual Hours - 12 hours month x 12 months per year = 144 hours per year  
 Cost for Services - \$88.25 per hour x 144 hours per year = \$12,708

**B. Fiscal Year 03-04 New Development Maintenance and Operation costs** – During 03-04 BTS worked with PDOT to develop the One Trip extension to CarpoolMatchNW.org.

The development costs for this project totaled \$10,307. According to BTS the rate model application maintenance is 20% of development costs. The maintenance costs of the One Trip extension will be prorated based on the deployment date of 1/1/2004.

**One Trip Annual Maintenance = 20% x \$10,307 = \$2,060**

**C. Fiscal Year 04-05 New Development Maintenance and Operation costs** – During 04-05 BTS worked with PDOT to develop several enhancements to the site including:

Project	Billable Hours
61454 Email Customizations	8 hours

**D. 04-05 Development maintenance rate = 20% x \$660 = \$132**

**Fiscal Year 05-06 New Development Maintenance and Operation costs** – During 05-06 BTS worked with PDOT to modify the Carpool site. All requested activities were changes to existing features rather than new feature development which would increase maintenance and support costs. No increases in costs will result from 05-06 activities.

**Fiscal Year 06-07 New Development Maintenance and Operation costs** – During 06-07 BTS worked with PDOT to modify and enhance the Carpool site. These enhancements to the Carpool code base and complexity increase the amount of maintenance required to support the site.

# Exhibit A – Scope of Work

Project	Billable Hours
62170 Carpool features for Metro	51 hours

**E. 06-07 Development maintenance rate = 20% x \$4360.50 =\$872**

**Other enhancements:** During the 06-07 BTS made investments in the enterprise CGIS and E-government infrastructure that is leveraged by CarpoolMatchNW. PDOT's partnership in the CGIS and E-government programs makes it possible to leverage these investments to support the business needs of the Carpool program. Through the use of a service-based architecture and leveraging shared infrastructure these enterprise investments improve the performance, stability, usability and quality of service for the Carpool site. These enterprise investments included:

- Upgraded web server load balancing technology to BIGIP F5 Load Balancers.
- Moved to new GISQL (Map Server) version with anti-aliasing to improve map quality.
- Added Applications Monitoring/Administrator position to ensure maximum performance and uptime.
- Migrated database to enterprise SAN for better performance and reliability.

**F. & G. - Data Maintenance & Acquisition** – The Carpool project requires the acquisition of 3<sup>rd</sup> party data sets and regularly scheduled data maintenance processes to facilitate up-to-date and accurate data. If new datasets are required for future yet to be determined functionality the additional costs of these data activities will be assessed on a case-by-case basis. The hourly cost for CGIS services is \$85.50 per hour. The following factors will impact these costs:

Cost of 3<sup>rd</sup> party data agreements  
 Frequency of data maintenance

**F. Data Acquisition Costs**

NavTech and GDT data are currently obtained by a quarterly subscription to the data services. The table below lists the annual costs of these data subscriptions.

Data Set	Annual Subscription Cost
NavTech	\$7,500
GDT	\$1,500
<b>Total Costs</b>	<b>\$9,000</b>

**G. Data Maintenance Costs**

Time required to extract, modify, append, project, quality control, test in development environment and deploy datasets to the production environment.

Date Set	Update Frequency	Hours per update	Hours per year
NavTech	Quarterly	5	20

## Exhibit A – Scope of Work

GDT	Quarterly	5	20
Total Hours			40
<b>Total Cost</b>		<b>40 hours x \$88.25 per hour = \$3,530</b>	

### Total Costs

Note: Total costs do not include future enhancements as defined below

Cost Center	Annual Cost
A. Maintenance and Operation costs	\$12,708.00
B. 03-04 Development Maintenance and Support	\$2,060.00
C. 04-05 Development Maintenance and Support	\$132.00
D. 05-06 Development Maintenance and Support	\$0
E. 06-07 Development Maintenance and Support	\$872.00
F. Data Acquisition Costs	\$9,000.00
G. Data Maintenance Costs	\$3,530.00
<b>Total Costs</b>	<b>\$28,302.00</b>

**Future enhancements** - Costs associated with adding or enhancing additional functionality to existing applications will be assessed on a case-by-case basis. The current hourly cost for BTS Corporate Application services is \$88.25 per hour.

## Exhibit B - Federal Clauses

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The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2006 FTA Master Agreement [FTA MA 13]** 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, set forth Federal terms 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 FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Recipient may incur a violation of the terms of its Grant Agreement or Cooperative 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 Applicant 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 govern 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 designed, the text of which modifies or otherwise 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 and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements 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 performance of 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, third party contractor, 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, or third party contract, the Federal Government has no obligations or liabilities to such entity, including any subrecipient or third party contractor.

## Exhibit B - Federal Clauses

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*[FTA Master Agreement §2.f]*

C. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Recipient agrees to, and assures that its third party contractors and subrecipients will, review the Excluded Parties Listing System at <http://epls.arnet.gov/> before entering into any contracts. *[FTA Master Agreement §3.b]*

D. 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 its 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 understands that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government concerning the Project, 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]*

E. 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.d]*

F. 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 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. Any failure to

## Exhibit B - Federal Clauses

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make reasonable progress on the Project or violation of the Grant Agreement or 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, failing to make reasonable and appropriate use of Project property, or 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]*

G. Civil Rights. The Recipient agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient 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 third party contractor at any tier and each subrecipient 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 also agrees to comply with any applicable implementing Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient 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 subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees as follows:

(a) 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

## Exhibit B - Federal Clauses

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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, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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.

(b) If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

(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 third party contractor at any tier or subrecipient 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.*, 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. § 2000(e) note, and also with any Federal laws, regulations, and 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 DBEs in the Project and assures that each third party contractor at any tier of the Project and each subrecipient 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 will 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 third party contract, or subagreement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from

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U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

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 Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing regulations, which prohibit employment and other 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 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; 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; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Recipient agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 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;



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- (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. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
  - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
  - (9) 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 regulations.
- 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. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.
- i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply 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 with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.
- j. Environmental Justice. The Recipient agrees to comply 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, except to the extent that the Federal Government determines otherwise in writing.

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k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Federal Government determines otherwise in writing.

*[FTA Master Agreement §12]*

H. Fly America. The Recipient understands and 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 service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with 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)]*

I. Federal Standards. The Recipient agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions. The Recipient also agrees to comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Recipient understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed. *[FTA Master Agreement §15(a)]*

J. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, 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 to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, at as many tiers of the Project as required, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA. *[FTA Master Agreement §15(t)]*

K. Patent Rights.

a. General. If any invention, improvement, or discovery of the Recipient or any third party contractor or any subrecipient 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

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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 third party contractor at any tier of the Project and each subrecipient at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, 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 third party contract, third party subcontract, or subagreement as specified in 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 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of the Recipient, subrecipient, or third party contractor at any tier of the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, nonprofit organization, institution of higher education, individual, *etc.*).

*[FTA Master Agreement §17]*

### L. 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" does not include financial reports, cost analyses, or similar information used for Project administration.

b. Federal Restrictions. 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 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 Subsection 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

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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 third party contract or subagreement financed by 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, or a third party contractor 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, except to the extent that 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, or third party subcontractor, 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 funds for capital Projects.

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 this 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 developed without any Federal funding or support to 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

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support, 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 by subsequent 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 provisions of the Freedom of Information Act (or another Federal law providing access to such records).

*[FTA Master Agreement §18]*

### M. Energy Conservation.

The Recipient agrees to comply with any mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with 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. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C. *[FTA Master Agreement §26]*

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

- (1) The prospective participant certifies that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_