

## INTERGOVERNMENTAL AGREEMENT

### Streetcar System Plan

This Intergovernmental Agreement (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, Oregon, hereinafter referred to as the "City."

#### RECITALS

1. Metro is the recipient of Federal Transit Administration (FTA) Section 5339 Alternative Analysis funds (Earmarks E2006-ALTA-012 and E2007-ALTA-013) that are being used to continue advancement of streetcar technical methods and a streetcar regional system plan, for project development activities for the Portland Streetcar Loop (formerly referred to as the Eastside Streetcar Project), and for alternatives analysis for the Lake Oswego to Portland Transit Corridor projects. Metro wishes to enter into this Agreement with the City, utilizing these federal funds.
2. The Streetcar System Plan Study, hereinafter referred to as "SSP Study" or "Study," is a study to evaluate transit corridors within the City for compatibility with modern streetcar technology and associated economic development. Portland Office of Transportation, hereinafter referred to, as "PDOT," is the local lead agency for the SSP Study; other participating agencies include TriMet, Metro, and the Oregon Department of Transportation (ODOT).
3. The objective of the SSP Study is to evaluate transit corridors to develop a preferred network of streetcar corridors for future implementation. The SSP Study is subject to the planning guidance and requirements of FTA.
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, STUDY DESCRIPTION, AND 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, 2007 FTA Master Agreement 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 term of this Agreement is from July 1, 2007 through December 31, 2008. *Costs incurred after July 1, 2007, which are deemed allowable costs for the SSP Study, will be*

*reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice(s) and documentation.*

3. The SSP Study is described in the attached Exhibit A, which is incorporated herein by this reference.
4. The maximum amount of FTA funds to be dispersed to the City shall not exceed TWO HUNDRED THOUSAND AND NO/100THS DOLLARS (\$200,000.00).
5. The City shall be responsible for one hundred percent (100%) of the matching funds required and such matching funds shall equal FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00).
6. Qualified costs are direct Study costs that are eligible for federal funds and have been incurred by the City and personal services contractor(s) during the term of this Agreement.

### **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.
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 Agreement. 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 TWO HUNDRED THOUSAND AND NO/100THS DOLLARS (\$200,000.00), unless otherwise authorized to do so by future amendments to this Agreement. Invoices shall display one hundred percent (100%) of the total Study costs incurred during the period of the invoice and shall identify any required match amounts. 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 the Study. 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. Participate in Study-related events.
6. 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 City's performance. City acknowledges and agrees that Metro, FTA, the U.S. Secretary of Transportation, the Comptroller of the United States or their authorized representative(s) 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. City also acknowledges and agrees that it 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.
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 accordance with FTA procurement regulations and Metro procedures and advise Metro of the City's recommendation;
  - c. Provide Metro's Project Manager with the opportunity to review and approve each 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 Study;
    - 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 by submitting a *Subcontracts Paid – Monthly Report* to Metro each month (sample report included in Exhibit A).
9. All City work products that result from this Agreement are the joint work products of the City and Metro. For purposes of any requirements regarding federal funds, 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.

10. The City shall ensure that any work products produced pursuant to this Agreement include the following statement:

*This Study is partially funded by the US Department of Transportation, Federal Transit Administration.*

11. As applicable, the City shall submit two hard copies of all final work products produced in accordance with this Agreement to Metro's Project Manager
12. The City shall submit to Metro's Project Manager all payment claims within thirty (30) days after the termination date of this Agreement.
13. Within thirty (30) days after the termination date of this Agreement, the City shall provide Metro's Project Manager with a completion report. The report must contain:
  - a. A summary of qualified costs incurred for the SSP study, including reimbursable costs and match amounts;
  - b. The intended location of records which may be subject to audit;
  - c. A list of final deliverables; and
  - d. Final payment requests to Metro's Project 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**

1. Subject to the limitations described in Paragraph 4 of *Term of Agreement, Study Description, and Costs*, and in Paragraph 4 of *Representations, Warranties, and Covenants of the City*, Metro shall reimburse the City for qualified costs for work described in Exhibit A, in accordance with OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.
2. Metro shall make any required interim payments within thirty (30) days of receipt of the properly documented invoice and Metro's Project Manager's approval of the progress reports described in Paragraph 4 of the *Representations, Warranties, and Covenants of the City*. Subject to the 10 percent (10%) withholding described in Paragraph 3 below, the amount of the interim payment for a deliverable will be the qualified costs requested. In no event shall the total due to the City exceed the amount authorized under this Agreement.
3. Metro reserves the right to withhold payment equal to 10 percent (10%) of the total contract amount until all work required hereunder (and under any personal services contract(s) related to the SSP Study) is completed and accepted by Metro's Project 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 a SSP Study Project 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 Study is obtained from an agreement between Metro and the FTA utilizing Section 5339 Alternative Analysis funds, CFDA No. 20.522, Grant No. OR-39-0002-00/01.
2. Budget modifications and major adjustments from the work described in Exhibit A must be processed as an amendment to this Agreement and any personal services contract(s) issued hereunder.
3. This Agreement may be terminated by mutual written consent of the parties. Metro may also 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. The City's failure to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or the City's failure to perform any of the provisions of this Agreement and the City's failure to 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.

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

4. As federal funds are involved in this Agreement, Exhibit B is attached hereto and by this reference made a part of this Agreement and is hereby certified to by 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 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 in Paragraph 7 below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Paragraph. 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 the transmitting machine generates receipt of the transmission. To be effective against Metro, such facsimile transmission must be confirmed by telephone notice to Metro's Project 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 – Ross Roberts  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Phone: (503) 797-1866  
Fax: (503) 797-1930

City – Patrick Sweeney  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, Oregon 97204  
Phone: (503) 823-5611  
Fax: (503) 823-7609

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 Paragraph 8 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 the 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**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

By: \_\_\_\_\_  
City Auditor Date

Approved as to form:

By: \_\_\_\_\_  
Office of City Attorney Date

**General Overview**

The Portland Streetcar System Plan analyzes potential transit corridors within the city of Portland, evaluates those corridors for suitability with streetcar technology, and organizes the most promising future streetcar corridors into an interconnected system integrated with the existing and planned transportation and land use network.

Subject to the limitations described in the Agreement in Paragraph 4 of *Term of Agreement, Study Description, and Costs*, and in Paragraph 4 of *Representations, Warranties, and Covenants of the City*, activities that are eligible for reimbursement through this Agreement are described below.

**Task 1: Project Start-Up and Project Management**Objectives for this Task

- Finalize Scope of Work, Budget, and Schedule for this project.
- Review Metro expectations for project management.
- Review and coordinate schedules with Public Involvement (PI) team.
- Collaborate with PDOT, Development Oriented Transit Team (DOTT), System Advisory Committee (SAC) and PI Team to achieve objectives.

Approach - Unless otherwise indicated, the City will undertake the following tasks:

1. Organize start-up meeting with Metro staff to refine scope of work, schedule, and budget, discuss project management expectations, and coordinate with the PI team.

City Deliverables:

1. Provide consultant with copies of Preliminary PTI.
2. Assist with coordination of SSP public involvement team and SSP technical team communication and combined team meetings.
3. Assist with coordination Public Involvement and Technical team for initial set of public meetings.
4. City Council/Planning Commission Briefing/Meeting.
5. Organize and hold a start-up meeting.
6. Develop Final Scope/Schedule/Budget.
7. Coordinate PI strategy with PI team.

**Task 2: Project Methodology and Initial Set of Public Meetings**Objectives for this Task

- Develop draft SSP goals and objectives.
- Develop Federal Alternatives Analysis strategy.
- Develop strategy for evaluating transit supportive land uses.
- Develop strategy to evaluate economic development potential.
- Develop "Green Streetcar Corridor" implementation strategy.
- Develop streetcar technology assessment with conditions for successful implementation of streetcars.
- Develop draft SSP corridor criteria and analysis methodology.
- Convene (3) public meetings to provide citizens with an opportunity to learn about the PTI and SSP.
- Collaborate with PDOT, DOTT, SAC and PI team to achieve objectives.

Approach - Unless otherwise indicated, the City will undertake the following tasks:

1. Draft Goals and Objectives for the project

## Exhibit A (continued)

- 1.1. Coordinate with PI team to interview 10 key project stakeholders and City staff about the SSP. Summarize interviews and identify key themes.
- 1.2. Coordinate with PI team to develop draft Goals and Objectives based on interviews, develop consensus around goals and objectives with DOTT and SAC.
2. Federal Alternatives Analysis Strategy
  - 2.1. Convene a meeting with PDOT, TriMet and Metro representatives to discuss the Small Starts AA process. Brainstorm ways to make the process less time consuming and less expensive than the New Starts AA process. Integrate best ideas into project workscope.
3. Transit Supportive Land Use Strategy
  - 3.1. Develop a strategy to evaluate transit supportive land uses for streetcar corridors. Utilize transit supportive land use data developed for the PTI. Integrate into project workscope.
4. Economic Development Potential Evaluation Strategy
  - 4.1. Use methodology consistent with the Portland Streetcar Loop Study economic development potential evaluation or other methodology as appropriate to determine economic development potential of streetcar corridors.
5. Green Streetcar Corridor Implementation Strategy
  - 5.1. Assess and summarize City of Portland, Metro and TriMet sustainable development and infrastructure-related policies, development incentives (including LEED incentive programs), regulations and standards applicable to the City Primary Transit Index (PTI).
  - 5.2. Evaluate and report on how well (or not) the existing streetcar alignment attracts or facilitates the implementation of district-scale or corridor-wide green infrastructure and sustainable development (could use LEED ND or other methodology as a benchmark). Include percentage of new buildings along streetcar corridors that are LEED Certified and percent of housing that is affordable. Summarize evaluation with technical memo.
  - 5.3. Organize and convene first "eco-charrette" with DOTT and representatives from the PSI Board and Streetcar CAC. The intent of the first charrette is to brainstorm the idea of a "green streetcar corridor" and how it can be integrated into the Streetcar System Plan corridor evaluation. The intent of the second eco-charrette is to develop methodology of how the SSP implementation strategy can directly help to achieve a "green streetcar corridor" or provide leverage towards achieving that outcome. Report results of the workshops into a summary technical memorandum.
6. Streetcar Technology Assessment and Conditions for Successful Implementation of Streetcars
  - 6.1. Evaluate current bus and streetcar transit technologies and optimal operational characteristics appropriate for a City streetcar network.
  - 6.2. Develop draft recommendations of urban form appropriate for streetcar corridors in different Portland neighborhoods and appropriate Urban Form Recommendations. Graphically depict relationship of streetcar to neighborhood building patterns and scale.
  - 6.3. Evaluate what types of transit networks/systems work best with streetcar technology.
7. Draft SSP Corridor Criteria and Analysis Methodology
  - 7.1. Develop criteria to evaluate PTI corridors. Criteria is not limited to but should consider the following:
    - 7.1.1. Physical and Geometric Issues: Gradient, street/intersection geometry, overhead clearance, proximity to utilities and infrastructure, fatal flaws.
    - 7.1.2. Land Use Issues: Proximity to transit supportive land uses, ridership generators and attractors, transportation and land use regulations, zoning, FAR, development initiatives, urban renewal areas, streetcar corridor urban design, redevelopment and parking management issues within established neighborhoods, population, employment, retail employment density, affordable housing.
    - 7.1.3. Economic development issues: Development feasibility, building to land ratios, FAR evaluation, development subsidy evaluation, incentives, existing development agreements, parking costs, etc.



## Exhibit A (continued)

- 7.1.4. Transit Issues: transit operations, transit demand, cost effectiveness, relationship to other transit services, capital costs, etc.
- 7.1.5. Traffic/Transportation Issues: Motor vehicle traffic/local circulation network impacts, impacts to designated bike routes, safety, pedestrian accessibility.
- 7.2. Organize criteria into a phased process:
  - 7.2.1. Develop Phase 1 screening criteria for the PTI that will identify "Candidate" streetcar corridors. Candidate corridors are defined as corridors where physical and infrastructure limitations would not feasibly prohibit streetcar operations.
  - 7.2.2. Develop Phase 2 screening criteria that will identify "Potential" streetcar corridors from list of "Candidate" corridors.
  - 7.2.3. Develop Phase 3 screening criteria that will identify "Recommended" streetcar corridors from list of "Potential" corridors.

### City Deliverables:

1. Facilitate information sharing with allied bureau/agency staff.
2. Assist with meeting organization.
3. Review draft technical memorandums and summarize revisions/comments.
4. Assist with coordination of Public Involvement and Technical team activities.
5. Assist with meeting organization for DOTT and SAC meetings.
6. City Council/Planning Commission Briefing/Meeting.
7. Methodology Report documenting the evaluation process and includes the following:
  - Draft Goals and Objectives: Coordinate Public Involvement and technical analysis work products and present comprehensive project goals and objectives to SAC and DOTT.
  - Transit Supportive Land Use Strategy: Prepare draft Transit Supportive Land Use Strategy technical memo. Incorporate final methodology into corridor analysis.
  - Economic Development Potential Strategy: Prepare draft Economic Development Potential Strategy technical memo. Incorporate final methodology into corridor analysis.
  - Green Streetcar Corridor Implementation Strategy: Organize and convene first eco-charrette, brainstorm integration of green streetcar corridor methodology into the project. Summary technical memorandum.
  - SSP Corridor Criteria and Analysis Methodology: Technical memorandum summarizing Corridor criteria and phased evaluation methodology.
  - Federal Alternatives Analysis Strategy: Convene AA workshop. Prepare draft Federal Alternatives Analysis Strategy technical memo. Incorporate final methodology into corridor analysis.
  - Transit Technology and Implementation Assessment: Technical Memorandum on Transit Technology and Implementation Assessment, summary PPT for presentation purposes and materials for inclusion in Public Involvement informational packets.
8. Meetings with the DOTT and SAC as necessary.

### **Task 3: Streetcar Corridor Analysis and Identification Process**

#### Objectives for this Task

- Evaluate PTI in a phased process to identify corridors appropriate for streetcar technology and infrastructure investments
- Organize corridors appropriate for streetcars into tiers with the top tier being the corridors closest to "project ready" for an Alternatives Analysis process
- Convene (3) public meetings to provide citizens with an opportunity to learn about and provide input on the SSP Corridor Analysis and Identification Process
- Collaborate with PDOT, DOTT, SAC and PI team to achieve objectives

## Exhibit A (continued)

Approach - Unless otherwise indicated, the City will undertake the following tasks:

1. Through the Phase 1 Screening process, analyze the City PTI to identify "Candidate" streetcar corridors.
2. Through the Phase 2 Screening: Analyze "Candidate" corridors, identify "Potential" corridors. Develop strategy and plan for "Potential" corridor public workshops that engage stakeholders in the streetcar system planning effort.
3. Through the Phase 3 Screening process, analyze "Potential" corridors; identify "Recommended" corridors. Convene a panel of local and regional real estate development and financing experts in a workshop setting to discuss and evaluate the feasibility and economic development potential of "Recommended" corridors.
4. Transit modeling, using Metro RTP Data: City shall work with Metro and TriMet to model and evaluate selected streetcar corridors. Line segment information should be incorporated where appropriate into the phased screening process.

City Deliverables:

1. Assist with coordination of Public Involvement and Technical team communication and combined team meetings.
2. Assist with meeting organization for DOTT and SAC meetings.
3. Assist with coordination of Public Involvement and Technical teams for SSP public workshops.
4. City Council/Planning Commission Briefings/Meetings.
5. Technical memorandum summarizing results of Tasks 3.1.
6. Technical memorandum summarizing results of Tasks 3.2, (3) Public workshops.
7. Technical memorandum summarizing results of Tasks 3.3, expert panel review of recommended corridors and summary.
8. (3-4) meetings with the DOTT to review Task 3 products.
9. (3) meetings with the SAC to review Task 2 products.

### **Task 4: Recommended Corridor Implementation Strategy and Streetcar System Plan**

Objectives for this Task

- With assistance from TriMet and Metro, develop travel forecasts to model ridership patterns and evaluate the impact of corridor development patterns and potential economic development for the "Recommended" streetcar corridors.
- Implement Alternatives Analysis strategy from Task 2.
- Develop "green streetcar corridor" implementation strategy.
- Develop minimum operable segment analysis, ridership estimates, operating plans and costs including impacts on displaced frequent service bus lines, estimated capital costs, and potential funding options and strategies for the "Recommended" streetcar corridors.
- Update Preliminary Primary Transit Index (PTI) map and report to Final Primary Transit Index (PTI) map and report.
- Create a comprehensive Streetcar System Plan with strategic recommendations.
- Collaborate with PDOT, DOTT, SAC and PI consultant to achieve objectives.

Approach - Unless otherwise indicated, the City will undertake the following tasks:

1. For each "Recommended Streetcar Corridor":
  - 1.1. Work with TriMet and Metro to analyze and model streetcar ridership patterns and economic development potential.
  - 1.2. At a minimum, analyze:
    - 1.2.1. Minimum Operable Segment Analysis
    - 1.2.2. Operating Plans and Operating Costs
    - 1.2.3. Ridership Estimates
    - 1.2.4. Capital Costs

## Exhibit A (continued)

- 1.2.5. Streetcar System Safety
  - 1.2.6. Maintenance and Storage Facilities and Potential Sites
  - 1.2.7. Community Interest
  - 1.2.8. Development Potential
  - 1.2.9. Potential Funding Options/Financing Opportunities
2. Organize and convene the second "eco-workshop" with the technical team and DOTT. The intent of the second eco-workshop is to develop methodology of how the SSP implementation strategy can directly help to achieve a "green streetcar corridor" or provide leverage towards achieving that outcome. Report results of the workshops into a summary technical memorandum.
  3. Based on the latest Metro RTP data, update the preliminary PTI map and report to Final PTI map and report.
  4. Organize and develop the Streetcar System Plan document to streamline (as feasible) the Alternatives Analysis process for Portland's next streetcar alignment.
  5. Develop recommended "Next Steps" that help to optimize leveraging the Streetcar System Plan to achieve multiple City objectives.
  6. Summarize results of Tasks 1-4 into the DRAFT PDOT Streetcar System Plan.
  7. Develop strategy and plan for DRAFT SSP public workshops that build consensus around SSP plan and recommendations. Develop summary technical presentation and participate in three public workshops.
  8. Prepare SSP for Planning Commission and City Council Review Process.

### City Deliverables:

1. Assist with coordination of Public Involvement and Technical team communication and team meetings.
2. Assist with meeting organization for DOTT and SAC meetings.
3. Assist with coordination of Public Involvement and Technical teams for SSP public workshops.
4. City Council/Planning Commission Briefings/Meetings.
5. Second eco-charrette, summary of results.
6. Final Plan and report revised based on public and agency review.
7. (3) public workshops.
8. (2) meetings with the DOTT.
9. (1) meeting with the SAC.
10. Presentations to Planning Commission and City Council Hearings.
  - Participate in Planning Commission hearings on the proposed plan
  - Participate in City Council hearings on the proposed plan

**Summary: Consultant and Local Match Budget and Schedule for City of Portland Streetcar System Plan**

Activities	Consultant	Local Match	Subtotal
<b>Task 1</b> Project Start-Up and Project Management	\$ 25,000	\$ 6,250	\$ 31,250
<b>Task 2</b> Project Methodology and Initial Set of Public Meetings	\$ 50,000	\$ 12,500	\$ 62,500
<b>Task 3</b> Streetcar Corridor Analysis and Identification Process	\$ 75,000	\$ 18,750	\$ 93,750
<b>Task 4</b> Recommended Corridor Implementation Strategy and Streetcar System Plan	\$ 50,000	\$ 12,500	\$ 62,500
Subtotal:		\$ 200,000	\$ 50,000
		<b>Total:</b>	<b>\$ 250,000</b>

**Subcontracts Paid – Monthly Report**

Month: \_\_\_\_\_

**Project:** Streetcar System Plan  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contract Number:** 928291  
**Contract Amount:** \$200,000  
**Contract Award Date:** July 1, 2007

**Prime Contractor:** City of Portland - PDOT  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, OR 97204

**Project Grant #:** OR-39-0002-00/01  
**DBE Coordinator Review:** \_\_\_\_\_  
 (Initial and Date)

Subcontractor	DBE/ Non DBE	Committed DBE Amount	Amount Paid This Period	Paid to Date	Percent of Work Completed to Date	Percent of Amount Paid to Date

This certification is made under Federal and State laws concerning false statements. The undersigned firm understands also that supporting documentation or the payment is subject to audit, and it will be retained for a minimum of three years from the project acceptance date.

*I declare under penalty of perjury, as set out in ORS 162.055 through 162.085, and other applicable State and Federal Laws that the statement made on this document are true and complete to the best of my knowledge.*

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

PLEASE SUBMIT TO PROJECT MANAGER WITH INVOICE

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2007 FTA Master Agreement [FTA MA 14]** 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 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 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, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity other than the Recipient, including any subrecipient, lessee, or third party contractor at any tier. *[FTA Master Agreement §2.f]*
- C. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, or third party contractor 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 subrecipients, lessees, and third party contractors will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any third subagreement, lease or third party contract. [U.S. DOT issued a new amendment to these regulations adopting the optional lower tier coverage for tiers lower than the first tier below a covered nonprocurement transaction. See, 71 Fed. Reg. 62394, October 25, 2006.] *[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, or third party contractor at any tier, 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 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 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.d]*

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 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]*

- H. Civil Rights. The Recipient agrees to comply with all applicable civil rights laws, regulations and 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 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 subrecipient, lessee, or third party contractor 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 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, or third party contractor 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 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, or third party contractor 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. § 2000e 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 Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, and third party contractor participating 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 subagreement, lease or third party contract, 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 as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, and third party contracts 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 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 set forth in 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 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.

(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.

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, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, 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;
- (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;
- (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, 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., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 et seq., and any amendments thereto.

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 Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

- 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.
- 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, except to the extent the Federal Government determines otherwise in writing. *[FTA Master Agreement §12]*
- l. 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 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 other procurement requirements of Federal laws in effect now or as subsequently enacted to the extent applicable; 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 subsequent amendments thereto, to the extent those regulations and amendments 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 revision to that circular, 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 specific third party contract work to be performed. *[FTA Master Agreement §15(a)]*
- K. 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)]*
- L. 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 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 and each third party contractor at any tier, 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 subagreement, third party contract, or third party subcontract, 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 (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, etc.). [FTA Master Agreement §17]

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," as used in this Section 18 does not include financial reports, cost analyses, or other 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 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 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 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 or third party contract 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, 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 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]*

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

(1) The Recipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans

of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. 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 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, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "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 "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(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 regulations and directives issued pursuant to 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 consistent with the provisions of 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 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]*

Q. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If

the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate. *[FTA Master Agreement §53]*

**CERTIFICATION REGARDING LOBBYING**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, City of Portland, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**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 \_\_\_\_\_