

AMENDMENT NO. 2

CONTRACT NO. 38140

FOR

Bicycle Transportation Alliance

Pursuant to Ordinance No. _____

This Contract was originally made and entered into in July, 2008 by and between the Bicycle Transportation Alliance, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City.

1. The term of this Contract is hereby extended until and through June 30, 2011.
2. The scope of work under the Contract is modified as follows:
 - A. Encouragement & Outreach
 - a. Coordinate, plan, and promote the Walk + Bike Day (2011)
 - b. Coordinate, plan, and promote the Walk + Bike Challenge (2011)
3. Additional compensation is necessary and shall not exceed a total of \$300,000 for FY10/11.
4. As components of this Contract will be funded by the City's allocation of the Energy Efficiency and Conservation Block Grant program, administered by the U.S. Department of Energy as part of the American Recovery and Reinvestment Act (ARRA) of 2009, the terms and conditions of the Contract must be modified to address ARRA requirements. The additional requirements applicable to this Agreement are attached as Attachment A, which shall be incorporated into the Contract by reference as if set forth in whole. The Contractor will comply with the requirements described in Attachment A.

All other terms and conditions of the Contract shall remain unchanged and in full force and effect.

CONTRACTOR SIGNATURE:

This contract amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same contract amendment.

The parties agree the City and Contractor may conduct this transaction by electronic means, including the use of electronic signatures.

Bicycle Transportation Alliance _____

By: _____

Date: _____

Name: _____

Title: _____

Address: _____

Telephone: _____

Contract No. 38140

Amendment/Change Order No. 2

Contract Title: SR2S SmartTrips Education and Encouragement Services- BTA

CITY OF PORTLAND SIGNATURES:

By: _____
Purchasing Agent

Date: _____

By: _____
Elected Official

Date: _____

Approved:

By: _____
Office of City Auditor

Date: _____

Approved as to Form:

APPROVED AS TO FORM

By: _____
Office of City Attorney
Anna Mengler
CITY ATTORNEY

Date: 2/19/10

Attachment A**NOTIFICATION OF REQUIREMENTS RELATED TO THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

Introduction: The City's funding for amending and extending the Contract will be derived in whole or in part from federal resources appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA" or the "Recovery Act"). The Recovery Act's stated purposes are to stimulate the economy and to create and retain jobs. The Recovery Act gives preference to activities that can be started and completed expeditiously.

Federal agencies continue to develop guidelines in implementing the Recovery Act. Existing guidelines indicate that contractors and first tier subcontractors will be required to provide data through electronic reporting. Recovery Act funds may be used with other funding as necessary to complete projects, but tracking and reporting must be separated to meet the reporting requirements of the Recovery Act and related federal agency guidelines. Contractor must develop and maintain separate records for Recovery Act funds and ensure those records comply with the requirements of the Recovery Act.

When receiving ARRA funding under this Contract, Contractor and any subcontractors must anticipate the need to comply with requirements of the Recovery Act. Various provisions under the Recovery Act will apply to projects with ARRA funding:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the inspector general.

Federal agencies have not fully developed implementing instructions under the Recovery Act, particularly concerning the specifics of the reporting requirements. Potential applicants, proposers, grantees, borrowers, contractors and their consultant(s) are advised to review and be familiar with the requirements of the Recovery Act, and to follow federal agency development of specific guidelines.

The information provided in this document is based upon a review of the Recovery Act, and generally applicable federal guidelines. There may be other statutory and/or legal requirements that may be applicable in the context of a specific project. This document is subject to subsequent modification as the federal agencies develop and provide further guidance on Recovery Act requirements.

Any inconsistencies between Recovery Act requirements with the requirements of this Contract should be referred to the City's project manager for reconciliation.

1. General Purposes and Principles: In accordance with the intent of the Recovery Act, funds provided under the ARRA must be spent expeditiously and effectively, with full transparency and accountability.

2. **Prohibition on Use of Funds:** None of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
3. **DUNS/CCR:** Under the Recovery Act, recipients such as the City, and first-tier sub-recipients such as the Contractor, must have a Dun and Bradstreet Numbering System (DUNS) number (www.dnb.com) and must maintain active and current profiles in the Central Contractor Registration (CCR). (www.ccr.gov). Contractor shall provide a DUNS number to the City within 45 days of the effective date of the amendment to this Contract. If Contractor is registered in the federal Central Contractor Registration database (<http://www.ccr.gov>), the Contractor shall provide the City with its CCR registration number and legal name as entered into CCR. If the Contractor is not currently registered, it must do so by within 30 days of March 15, 2010. In order to register in CCR, a valid Data Universal Numbering (DUNS) Number is required. The DUNS Number is assigned by Dun & Bradstreet, Inc. (D&B).
4. **Separate Tracking of ARRA Funds:** ARRA Funds and expenditures must be separately tracked by state and local governments, on forms required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Contractor shall separately account for and disclose the Recovery Act funds, consistent with the recipient reports required by the Recovery Act Section 1512(c).
 - A. **Segregated Accounting for Recovery Act funds:** Contractor must revise or make arrangements for its financial and accounting systems to segregate, track and maintain the Recovery Act funds separate and apart from other revenue sources. Contractor shall not commingle Recovery Act funds with any other funds, or use Recovery Act funds for a purpose other than that of making payments for costs allowable for Recovery Act projects. Contractor may use Recovery Act funds in conjunction with other funding as necessary to complete this Contract, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance.
 - B. **Invoicing:** When submitting any invoices or billings to the City, Contractor must clearly indicate which portions of the requested payment, if any, that is for work funded by the Recovery Act. Any subcontracts and other contracts for goods and services for performance of this Contract as an ARRA funded project must include references to this mandate.
5. **Records:**
 - A. **Access to records.** Except as agreed upon by the City, the Federal Government and the Contractor, all of Contractor's financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable in connection with the work under this Contract shall be available for inspection by the City and/or the Federal Government, and shall be delivered to the City and the Federal Government by the Contractor either as the City may from time to time direct during the progress of the work or, in any event, as the City shall direct upon completion or termination of this Contract and final audit of any work hereunder.
 - B. **Preservation of Records.** Except as otherwise provided in this Contract, Contractor's records relating to performance of work under this Contract shall be preserved and retained by the Contractor for a period of 6 years after the later of: termination of this Contract, receipt of

final payment under this Contract or otherwise disposed of in such manner as may be agreed upon in writing by the City and the Contractor.

C. Federal Access to Records: As required under Section 902 of the Recovery Act, the U.S. Comptroller General and any representatives may:

- (1) examine any records of the Contractor or any of its subcontractors that directly pertain to, and involve transactions relating to, this Contract or any related subcontract; and
- (2) interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.

Section 1515 of the Recovery Act separately grants authority to the US Inspector General and authorized representatives to:

- (1) examine any records of the Contractor, or any of its subcontractors or subgrantees, that pertain to, and involve transactions relating to, this Contract or any related subcontract; and
- (2) interview any officer or employee of the Contractor or any subcontractor regarding such transactions.

6. Responsibilities for Informing Subrecipients: At the time of any subawards and any disbursement of funds, each subrecipient must be separately informed of the Federal award number, CFDA number, and amount of Recovery Act funds. Contractor shall separately document compliance with this notification requirement.

7. Reporting: Program Management and Financial Expenditure: Accountability guidelines for the Recovery Act emphasize data quality, streamlining data collection, and collection of information that shows measurable program outputs. The Recovery Act also emphasizes transparency and frequent communication with the American public about the nature of the Recovery Act investments. As required by Section 1512 of the ARRA, the Contractor must provide reports and employment information to allow the City to document the number of jobs created or jobs retained by the ARRA funding, whether from the Contractor's own workforce or any subcontractors. Section 1512 of the Recovery Act requires that quarterly reports be filed with the federal agency that is the source of the funds. Generally, it will be the City's obligation to compile the necessary information for the reports. Contractor shall provide information as required in forms provided by the City.

Under Section 1512(c) of ARRA, recipients of ARRA funding must file reports containing specified data with the federal government "[n]ot less than 10 days after the end of each calendar quarter." Contractor shall cooperate with the City with respect to the reporting requirements under Section 1512 of the Recovery Act and related federal regulations. Cooperation shall include providing information requested by the City or by other authorized federal or State authorities related to such reporting requirements. Information from these reports will be made available to the public. Contractor must report the following programmatic information:

- status of the project or activity - what has been accomplished during reporting period
- an estimate of the number and types of jobs created or retained by the project or activity.

Contractor shall report performance results consisting of the number of jobs created and jobs retained as a result of the expenditure of ARRA funds. Contractor further agrees to provide the City with additional financial and programmatic information as may be required by the Federal Government due to amendments or clarifications by law or regulation. In order for the City and the Contractor to comply with the requirements of ARRA Sec. 1512(c), Contractor shall submit reports on a monthly basis, on or before the last business day of each month. Failure to submit any monthly report by the due date shall be deemed noncompliance. If the Contractor has previously been contacted regarding noncompliance and is found to have another monthly period of noncompliance, the Contractor shall be notified in writing that contract goals are not being met and that the Contractor has established a pattern of non-achievement of goals. Contractor shall then have to meet all goals inclusive to the next one-month period.

If the Contractor uses vendors in performance of any work under this Contract, Contractor's report shall include information on any direct jobs created or retained by vendor and the impact, if any, on its workforce.

8. Whistleblower Protection:

A. Contractor shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Section 153 of the Recovery Act requires that the Contractor, as a non-federal employer receiving ARRA funds, must post a notice of ARRA Whistleblower rights and remedies at all Recovery Act job sites. A copy of the notice may be obtained from the federal recovery.gov website: <http://www.recovery.gov/sites/default/files/Whistleblower+Poster.pdf> Contractor shall document compliance with this requirement.

Contractor shall include language addressing the substance of this Section 8 in any subcontracts funded in whole or in part by ARRA funding.

B. Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration. Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by the ARRA Whistleblower requirement may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration

agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of the ARRA Whistleblower requirement.

9. Wage Rate Requirements: Laborers and mechanics employed by contractors or subcontractors on construction, modernization, renovation, or repair projects, whether funded directly by or assisted in whole or in part with ARRA funds, must be paid in wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code (commonly called "Davis-Bacon and related acts"). No funds provided under this Contract will be used for construction, modernization, renovation or repair projects.

10. Buy American – Use of American Iron, Steel, and Manufactured Goods: Section 1605 of the Recovery Act generally prohibits using ARRA funds for the construction, alteration, maintenance, or repair of public buildings or works unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. No funds provided under this Contract will be used for the construction, alteration, maintenance or repair of any public buildings or works.

11. False Claims: Contractor shall promptly refer to the City for transmission to the funding federal agency or other appropriate Inspector General any credible evidence that a principal, employee, agent, Contractor, subgrantee, subcontractor or other person has submitted a false claim under the federal False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving ARRA funds under this Contract, or otherwise.