



Intergovernmental Agreement

Metro Contract No. 930179

PROJECT: SMARTTRIPS NORTH AND NORTHEAST

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

RECITALS

1. Metro is the recipient of Federal Transit Administration (FTA) Congestion Mitigation/Air Quality funds (CMAQ).
2. Metro has made FTA funds available for transportation projects and programs that reduce transportation-related emissions to meet and maintain regional air quality standards.
3. Metro wishes to enter into this Agreement with the City utilizing these federal funds for the purpose of implementing an individualized marketing project SmartTrips North and Northeast.
4. By authority granted in ORS Chapter 190.110 units of local government may enter into Agreements to perform any functions and activities that the parties to the Agreement, or their officers or agents have the duty or authority to perform.
5. The parties desire to enter into this Agreement for their mutual benefit.

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

TERM OF AGREEMENT; PROJECT DESCRIPTION & COSTS

1. This Agreement is subject to a financial assistance Agreement between Metro and the Federal Transit Administration (FTA). The City shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "recipient" set forth in the October 1, 2009 FTA



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Master Agreement [FTA MA 16] 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 2 CFR 225 (formerly A-87), Cost Principles for State, Local and Indian Tribal Governments; and (4) FTA Circular 5010.1D.

2. The beginning date of this Agreement is July 1, 2010. The termination date of this Agreement is June 30, 2011. Costs incurred after June 30, 2010, which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.
3. The project is described in the attached Exhibit A, which is incorporated by this reference as if set forth in full.
4. The total Agreement amount is **SIX HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED TWENTY FIVE AND NO/100TH'S DOLLARS (\$666,525.00)**. The maximum amount of FTA funds to be dispersed to the City by Metro shall not exceed **ONE HUNDRED SEVENTY ONE THOUSAND FIVE HUNDRED TWENTY AND NO/100TH'S DOLLARS (\$171,520.00)**.
5. The City shall be responsible for one hundred percent (100%) of the non-federal matching funds required and shall equal **NINETEEN THOUSAND SIX HUNDRED THIRTY ONE AND NO/100TH'S DOLLARS (\$19,631.00)**. The City shall be responsible for additional project funds of **FOUR HUNDRED SEVENTY FIVE THOUSAND THREE HUNDRED SEVENTY FOUR AND NO 100TH'S DOLLARS (\$475,374.00)**. The maximum amount of funds to be contributed by the City shall be no less than **FOUR HUNDRED NINETY FIVE THOUSAND FIVE AND NO 100TH'S DOLLARS (\$495,005.00)**.
6. Qualified costs are project costs, incurred by the City and personal services contractor(s) during the term of this Agreement that are eligible for federal funds.

REPRESENTATIONS AND WARRANTIES OF THE CITY

1. The City shall perform the work and provide the deliverables and services described in Exhibit A, for which the City is identified as being responsible for.



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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 Agreement 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 quarterly. The City shall not submit requests for payments that exceed **ONE HUNDRED SEVENTY ONE THOUSAND FIVE HUNDRED TWENTY AND NO/100THS DOLLARS (\$171,520.00)** for the total project, unless otherwise authorized to do so by future amendments to this Agreement. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. Invoices shall also display a categorical breakdown of costs, such as personnel costs (salary and benefits), other direct charges, and indirect costs that are appropriate for this project. Documentation for other direct (non-labor) charges must be received by Metro before payment will be made, and may include copies of receipts for expenditures or system-generated accounting reports documenting the actual expense. Timesheets may be periodically requested to document labor costs. The City shall follow OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local, and Indian Tribal Governments, for determining the allowability of costs.
5. The City agrees to cooperate with Metro, and at the request of Metro, agrees to:
 - a. Meet with the Metro's Project Manager; and
 - b. Present information about the project to Metro's Project Manager.
6. The City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the City's performance. The City acknowledges and agrees that Metro, FTA, the U.S. Secretary of Transportation, and Comptroller of the United States or their authorized representative shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations



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

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

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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 project is partially funded by the Federal Transit Administration and Metro's Regional Travel Options program."

11. The City shall submit one (1) electronic copy of all final products produced in accordance with this Agreement to Metro's Program Manager, unless otherwise specified in Exhibit A.
12. The City shall submit to the Program Manager all payment claims within 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 with a completion report. The report must contain:
- a. A summary of qualified costs incurred for the project, including reimbursable costs and matching amount;
 - 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 Program Manager for reimbursement.
14. Without limiting the generality of the foregoing, the City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections V and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS.659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.



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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 RESPONSIBILITIES

1. Metro shall reimburse the City for qualified costs for work described in Exhibit A, in accordance with OMB Circular 2 CFR 225 (formerly 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 an approved invoice, proper documentation, and Program Manager's approval of the progress reports described in paragraph 4 of the City's Representations and Warranties, for deliverables identified as being the City's responsibility in the approved statement of work, described in Exhibit A. Subject to the ten percent (10%) withholding described in paragraph 3 below, the amount of the interim payment for a deliverable will be the qualified costs requested minus any matching amounts. In no event shall the total due to the City under this paragraph exceed the City's allotted amount authorized under this Agreement.
3. Metro reserves the right to withhold payment equal to ten percent (10%) of the total project amount until all work required hereunder (and under any personal services contract(s) related to the project) is completed and accepted by the Program Manager.
4. Metro certifies that, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure as set forth herein.
5. Metro will assign a Program Manager for this Agreement who will be Metro's principal contact person regarding administration of this Agreement.

GENERAL PROVISIONS

1. Metro considers the City to be a subrecipient of federal funds. Funding for this project is obtained from an Agreement between Metro and the FTA, utilizing Federal Transit Formula Grant Funds, CFDA No. 20.507



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2. Budget modifications and major adjustments from the work described in Exhibit A must be processed as an amendment to this Agreement and personal services contract(s).
3. This Agreement may be terminated by mutual written consent of all parties. Metro may terminate this Agreement effective upon delivery of written notice to the City, or at such later date as may be established by Metro under, but not limited to, any of the following conditions:
 - a. Failing to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or failing to perform any of the provisions of this Agreement and the City does not correct any such failure within 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 right or obligations accrued to the parties prior to termination.

4. As federal funds are involved in this Agreement, Exhibit B, Attachments A and B are attached hereto and by this reference made a part of this Agreement and are hereby certified to by the City's representatives.
5. The City, as a recipient of funds pursuant to this Agreement with Metro, shall assume sole liability for breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon breach of any such conditions that requires Metro to return funds to any funding source, hold harmless and indemnify Metro for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the City, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received



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under this Agreement.

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

Metro

Caleb Winter
600 NE Grand Avenue
Portland, OR 97232-2736
Phone: (503) 797-1758
Fax: (503) 797-1930

City of Portland

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

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the City and Metro that arise from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either of the parties of any form of defense or immunity from any Claim or from the jurisdiction of any court.
9. This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms



METRO

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

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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: _____
Samuel Adams
Mayor

By: _____
Michael Jordan
Chief Operating Officer

Date: _____

Date: _____

By: _____
LaVonne Griffin-Valade
City Auditor

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
[Signature]
Deputy City Attorney
CITY ATTORNEY

Date: _____ 8/30/10

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Exhibit A

SCOPE of WORK

1. Project Description

Each year the City of Portland Transportation Options Division (Options) selects an area of Portland to focus on to increase the number of bicycling, walking, transit, carpool and car sharing trips taken by residents and area employees and to promote physical activity. In 2011, the project will be called "SmartTrips North and Northeast" and will reach 23,000 households in Portland (see map 1 for project boundaries). Businesses in these areas may choose to participate in the program through the "SmartTrips Business" program as well, which is funded separately by PBOT.

The primary goals for the project are:

- Reduce drive alone trips
- Reduce vehicle miles driven by area residents and employees
- Increase awareness and raise acceptability of all modes of travel
- Increase trips by walking, biking, transit, carpooling, and car sharing
- Increase neighborhood mobility and livability

Other related goals are:

- Increase bicycling and walking
- Use transportation incentives and programs to support local businesses and area economic development
- Create opportunities for area residents and employees to get together to walk, bike and take transit in the area
- Promote healthy, active lifestyle choices for transportation and recreation

A random telephone survey of 600 residents will be administered in advance of project. The key component of the survey is one-day trip diary that established a baseline for mode choice and trip purpose in the North and Northeast target area. In addition, the survey provided demographic information including age, gender, education, number of vehicles, children, and bicycles in the household.

Another telephone survey will be administered to as many of the 600 households as PBOT can recruit, with a minimum of 60%, in September 2011, after the project is complete. The survey will again provide PBOT with one-day trip diaries for the panel of households in the target area. These trip diaries will allow PBOT to calculate changes in travel behavior including shifts from drive alone trips to alternate modes. The average number of trips, trip purposes, and mode by trip purpose, gender, age, and other variables will be analyzed at the project's completion.

Exhibit A

SCOPE of WORK

In addition to the random telephone survey, PBOT will administer a qualitative program evaluation survey via mail and email to all program participants. This self-selecting survey of participants provides PBOT with information about how residents shifted their behavior, as well as feedback on the program and materials. This survey also asks for personal stories and testimonies about the program.

Occurring between these two surveys is the marketing phase of the project. North and Northeast area residents in the project area will receive a letter introducing the program from the City of Portland. Residents will then be mailed a customized order form from which they can select a variety of travel tools including walking, biking, and transit maps, kits, and other incentives all aimed at promoting transportation options in the targeted area. PBOT will process all the orders and deliver the materials to residents by bike, usually within one week.

Residents will be invited to participate in PBOT's popular guided "Ten Toe Express" walks and "Portland By Cycle" and "Women on Bikes" rides which will be planned and staffed by PBOT. In addition, PBOT will host a series of "Women on Bikes" clinics, several "Senior Strolls" walks, and a "Portland By Cycle" class specific to bicycling for North and Northeast residents.

Target Measurement Goals

- Reduce VMT by 8 percent and increase mode split for bicycling 20 percent, walking 10 percent, transit 20 percent, and carpooling 3 percent in the project area
- Decrease drive alone trips by 8 percent in the project area
- Reach all area residents at least five times with transportation options messages
- Reach interested residents in the target area at least ten times with transportation options' messages
- Involve 35 percent of the targeted population in at least one program or project
- Place five media stories in area papers, newsletters, radio and television outlets
- Increase awareness of CarpoolMatchNW.org and increase the number of residents who log on to the site
- Increase awareness of the "Drive Less. Save More." marketing campaign

Energy savings and vehicle miles traveled reductions stemming from the project will be calculated using the pre/post one-day trip diaries and average trips lengths by purpose. Previous individualized marketing projects used an average trip length of 7.1 miles per trip for all trips to calculate vehicle miles reduced (VMR). For SmartTrips North and Northeast, Metro provided PBOT with average trip lengths by trip purpose allowing for more accurate VMR calculations,

Exhibit A

SCOPE of WORK

recognizing that SmartTrips will likely influence people's shopping and leisure travel habits as well as commute habits.

2. Project Tasks and Reporting

- **Task 1** – Baseline Survey will be completed September 30, 2010. The survey will be administered by a research firm to 600 households establishing a baseline of travel mode choice, distance and trip purpose of residents within the target area. Contact information will be kept to field the follow up survey with the same panel of households in task 3. Every effort will be made to record complete trip diary data from respondents.
 - *Deliverables:* baseline questionnaire, survey data summary, baseline survey report including relevant frequencies, cross-tabulations and discussion of sample demographics compared to population.
- **Task 2** – Individualized Marketing, including materials development and production, staff time and project implementation to 23,000 households in the North and Northeast SmartTrips project area. Task 2 includes a preliminary report on households reached, materials delivered, and any anecdotal or qualitative information gathered during the project through this point.
 - *Deliverables:* Summary report with number of orders, materials ordered and delivered, and attendance at events.
- **Task 3** – Follow-up Survey, Panel-Style survey nearly identical to the Baseline Survey with a minimum of 400 repeat surveys, measuring changes in resident's travel behavior. The trip diaries will allow PBOT to calculate changes in travel behavior including shifts from drive alone trips to alternate modes. The average number of trips, trip purposes, and mode choice by trip purpose, gender, age, and other variables will be analyzed at the project's completion.
 - *Deliverables:* follow up survey questionnaire, survey data summary, final project survey report to be included in final report (Task 4) including relevant frequencies, cross-tabulations and discussion of sample demographics compared to population.
- **Task 4** – Final Report, documenting project methodology and results, and the final total project budget, including actual expenditures and revenue sources.
 - *Deliverables:* Final Report including report on survey findings, modal measures such as bike counts, carpoolmatchnw.org registrations, carshare registrations or other relevant data sources as identified. Final report will

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outline costs by program and report on program performance including number of orders, materials ordered, and attendance at project outreach events.

3. Budget, Timeline, Payments & Reporting

Task Timeline and Budget

Task	Approximate completion date	Approximate RTO Grant Funds	Approximate City of Portland Funding	Approximate Total Project Cost
Task 1	10/1/10	\$4,505	\$12,996	\$17,501
Task 2	9/30/11	\$161,223	\$464,301	\$625,524
Task 3	10/1/11	\$4,505	\$12,995	\$17,500
Task 4	1/31/12	\$1,287	\$3,713	\$5,000

Cost Breakdown by Agency

Project Costs - SmartTrips North and Northeast	Approximate Total	Approximate RTO Grant Funds	Approximate City of Portland Funding
Approximate Staff	\$470,000	\$120,954	\$349,069
Approximate M&S	\$196,525	\$50,566	\$145,936
Actual Total Project Cost	\$666,525	\$171,520	\$495,005

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Exhibit B

FEDERAL CLAUSES
(\\$100,000 and over)

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2009 FTA Master Agreement [FTA MA 16]** including, but not limited to, the following:

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

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

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

- B. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.. [FTA Master Agreement §2.f]
- C. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participant at any tier of the Project will, review the "Excluded Parties Listing System" at

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(\$100,000 and over)

<http://epls.gov/> before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the Project.

D. Lobbying Restrictions. The Recipient agrees that:

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

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

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

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

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

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

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

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(\\$100,000 and over)

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

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

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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 and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

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

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

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

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

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

(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

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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 with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

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

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

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as amended, 42 U.S.C. §§ 4541 et seq., and 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 facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and 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 facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. *[FTA Master Agreement §12]*
- I. 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 amended 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 later amendments thereto. The Recipient also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and examples and may omit certain Federal requirements applicable to specific third party contracts. *[FTA Master Agreement §15(a)]*
- K. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. *[FTA Master Agreement §15(t)]*
- L. Patent Rights.
 - a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, any third party contractor, or other participant at any tier of the Project is conceived or first

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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, each lessee, each third party contractor, or any other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 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, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, 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. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

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

(2) The restrictions on publication of 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, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

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

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, 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, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal 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 Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

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

h. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or regulation providing access to such records). [*FTA Master Agreement §18*]

N. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations in accordance with

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applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), 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 in accordance with any applicable Federal directives that may be issued at a later date; to comply 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 US.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 to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the 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 laws and regulations in accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

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

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

- P. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy 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]*

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(\$100,000 and over)**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 53 of this Master Agreement shall be provided, 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 its legal rights and remedies available under any third party contract or available under law or regulations.
- 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]*

Exhibit B, Attachment A

Debarment Certification

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, _____, 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

Exhibit B, Attachment B

Debarment Certification

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 _____

