



METRO

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

185276

Intergovernmental Agreement

Metro IGA No. 930640

PROJECT: City of Portland Sunday Parkways Sponsorship

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

RECITALS

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

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

Metro wishes to enter into this Agreement with the City utilizing these federal funds for the purpose of sponsoring the City of Portland Sunday Parkways program which will span the months of May through September, 2012.

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

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

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

ARTICLE I

CMAQ SPONSORSHIP AWARD

Metro agrees to pay the City a portion of the CMAQ funding it has received in an amount not to exceed **SEVENTEEN THOUSAND AND NO/100TH S'S DOLLARS (\$17,000.00)** ("the Funds") for the Sunday Parkways Event(s) as set forth in the Scope of Work attached as Exhibit A and incorporated by this reference as if set forth in full.

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ARTICLE II

TERM OF SPONSORSHIP AGREEMENT

This Sponsorship Agreement is effective as of the last date of signature affixed below (the "Effective Date") and continuing through and including December 30, 2012, unless earlier terminated by Metro as provided herein, or extended by mutual written agreement of Metro and the City.

ARTICLE III

PAYMENT OF SPONSORSHIP FUNDS

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

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

The terms and conditions applicable to a "recipient" set forth in the October 1, 2011 FTA Master Agreement [FTA MA 18] between Metro and the FTA attached as Exhibit B and incorporated by this reference.

- 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local and Indian Tribal Governments
- FTA Circular 5010.1D

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

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ARTICLE IV OBLIGATIONS OF THE CITY

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

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

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

The City shall not submit requests for payments that exceed **SEVENTEEN THOUSAND AND NO/100TH'S DOLLARS (\$17,000.00)** for the total project, unless otherwise authorized to do so by future amendments to this Agreement.

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

- The terms and conditions applicable to a "recipient" set forth in the October 1, 2011 FTA Master Agreement [FTA MA 18] between Metro and the FTA;
- 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and
- FTA Circular 5010.1D.

The City shall document the expenditures for which reimbursement is sought under this Agreement and shall maintain all fiscal records relating to this Agreement in accordance with generally accepted

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accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the City's performance.

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

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

Without limitation, the City expressly agrees to comply with:

- Title VI of Civil Rights Act of 1964
- Sections V and 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990 and ORS.659A.142
- All regulations and administrative rules established pursuant to the foregoing laws
- All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations

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

ARTICLE V LIABILITY AND INDEMNITY

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

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

ARTICLE VII

OBLIGATIONS OF METRO

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

ARTICLE VIII

GENERAL PROVISIONS AND MISCELLANEOUS TERMS

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

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

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



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

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

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

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

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

No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a

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waiver by either party of that or any other provision

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

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

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

CITY OF PORTLAND**METRO**

By: _____

By: _____

Written: _____

Written: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

LaVonne Griffin-Valade
City Auditor

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: James H. Van Dyke

Mark Moline

Deputy City Attorney **CITY ATTORNEY**Date: 3/28/2012

Purpose and Goal of Sponsorship

Portland Sunday Parkways promotes healthy active living through a series of free events opening the city's largest public space - its streets - to walk, bike, roll and discover active transportation.

Portland Sunday Parkways fosters civic pride, stimulates economic development, and represents the community, business and government investments in Portland's vitality, livability and diversity.

Portland Sunday Parkways is about opening streets and connecting neighborhoods. All people - walkers, runners, bicyclists, mobility device users, seniors, adults and children - enjoy a day of healthy physical activities right in their own neighborhoods. Sunday Parkways shows off Portland's premier and new family friendly bicycle routes, called neighborhood greenways, and Portland's beautiful parks on these 7-9 mile routes with no start or end.

Metro and the Regional Travel Options program is primarily interested in promoting Metro resources before and after the events, such as Metro's Bike There! map, Walk There! book, the Drive Less Connect tool, and the Bike There! Quick Guides in English and Spanish.

The sponsorship of the Sunday Parkways program enables Metro promote the use of travel options and active transportation. These events encourage people to use Metro resources before and after the events to help "make Sunday Parkways every day."

Deliverables:

- Option for a 10x20 booth at each of the Sunday Parkways events (Sunday Parkways volunteers may support setting up Metro tent with Bike There! photo backdrop)
- Promotion of Metro programs (as determined by Metro) on Sunday Parkways, Options and Smart-Trips email blasts, blog, e-newsletter and Facebook page, such as placement of Bike There! or Walk There! promotions, promotion of Metro website and biking quick guides in English and Spanish
- Metro will use the Sunday Parkways sponsorship to promote content and programs related to travel options, tools and resources, such as Bike There! map and quick guides, Walk There! book and app, Drive Less Connect and other web resources in English and Spanish, through Sunday Parkways, Options and Smart-Trips communications
- Metro to provide content and calendar and Sunday Parkways staff to work content provided into Sunday Parkways and Smart-Trips communications over the next 6 months from the start of the sponsorship
- Mention and/or logo in all event newsletters
- Company message and logo on website 2 paragraphs links to biking and walking resources on Metro pages
- Logo placement on season-wide collateral (space permitting)
- Logo placement on all event collateral
- Opportunity to provide biking and walking and Metro-branded material for information booth at Sunday Parkways, all events

Exhibit A

Scope of Work

- Opportunity to distribute materials at all events with a street team (takes the place of a booth)

Events:

Five Sunday Parkway events shall be held by The City during the spring, summer and fall of 2012:

- East Portland – September 30, 2012
- North Portland – June 24, 2012
- Southwest Portland – July 22, 2012
- Southeast Portland – August 26, 2012
- Northeast Portland – May 13, 2012

Final Report

The City shall provide Metro with a final report that documents the events, including estimates of the number of participants and volunteers; route maps; a summary of media coverage generated by the events; and documentation of Metro recognition and placements of the Metro logo, including copies of all collateral materials, such as brochures, postcards, flyers, event maps and signs, and online information.

Payment and Billing

The City may submit an invoice request for payment not to exceed **SEVENTEEN THOUSAND AND NO/100ths DOLLARS (\$17,000.00)**, upon receipt of the fully executed Agreement. The City is responsible to hold all five (5) Sunday Parkway events. If they are not held, for any reason, the City shall reimburse Metro **THREE THOUSAND FOUR HUNDRED AND NO/100ths DOLLARS** for each event not held. The City shall reimburse Metro within thirty (30) days of each event not held.

Exhibit B**Federal Clauses (\$0 -\$25,000)**

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2011 FTA Master Agreement [FTA MA 18]** including, but not limited to, the following:

A. Federal Laws, Regulations, and Directives. The Recipient agrees that:

(a) Federal laws and regulations are Federal requirements that control Project award and implementation. The Recipient understands and agrees it might violate Federal laws or regulations, the underlying Agreement, or this Master Agreement if it adopts an alternative procedure or course of action without first securing FTA's approval in writing.

(b) Federal directives, as defined in this Master Agreement, provide Federal guidance. FTA strongly encourages the Recipient to follow Federal directives to ensure compliance with Federal requirements.

(c) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(d) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(e) The most recent of Federal laws, regulations, and directives will apply to its Project at any specific time, except as FTA determines otherwise in writing by:

1. Special Condition with the underlying Agreement,
2. Special Requirement with the underlying Agreement,
3. Special Provision within the underlying Agreement,
4. Condition of Award within the underlying Agreement,
5. Change to an FTA directive, or
6. Letter to the Recipient signed by an authorized FTA official.

(f) All standards or limits in the underlying Agreement and this Master Agreement are minimum requirements, except as FTA determines otherwise in writing.

(g) It will include in each third party agreement notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except as FTA determines in writing. *[FTA Master Agreement §2.c (1)]*

B. No Federal Government Obligations to Third Parties. Except as the Federal Government expressly consents in writing, the Recipient agrees that:

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

- (a) The Project,
- (b) Any third party participant at any tier, or
- (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government has no obligations or liabilities to any:

- (a) Third party participant, or

Exhibit B**Federal Clauses (\$0 -\$25,000)**

(b) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.
[FTA Master Agreement §2.f]

C. Debarment and Suspension. The Recipient agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:

- (a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,
- (b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and
- (c) Executive Orders Nos. 12549 and 12689. "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at <http://epls.gov/>, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:

- (a) Federal debarment and suspension requirements, and
- (b) Review the "Excluded Parties Listing System" at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations 2 C.F.R. part 1200. [FTA Master Agreement §3.b]

D. Lobbying Restrictions. The Recipient agrees that:

(1) As provided by 31 U.S.C. §1352(a), it will not use Federal funds 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, to award or extend the underlying Agreement,

(2) It will comply with other Federal laws and regulations prohibiting the use of Federal funds for activities designed to influence Congress or a State legislature concerning legislation or appropriations, except through proper, official channels, and

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

E. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Project:

- (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and
- (2) U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31.

(b) By executing the underlying Agreement:

- (1) It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to the Federal Government in connection with the Project.

Exhibit B**Federal Clauses (\$0 -\$25,000)**

(2) It acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Recipient makes, presents, or submits to the Federal Government, a false, fictitious, or fraudulent:

- (a) Claim,
- (b) Statement,
- (c) Submission,
- (d) Certification,
- (e) Assurance, or
- (f) Representation.

(2) Criminal Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Project:

- (1) Federal Transit law, specifically 49 U.S.C. § 5323(1), and
- (2) 18 U.S.C. § 1001,

(b) That Federal Government may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

- (1) Claim to the Federal Government
- (2) Statement to the Federal Government
- (3) Submission to the Federal Government
- (4) Certification to the Federal Government
- (5) Assurance to the Federal Government, or
- (6) Representation to the Federal Government. *[FTA Master Agreement §3.f]*

F. Access to Records of Recipients and Subrecipients. The Recipient agrees that:

(1) It will provide, and also require its third party participants at each tier to provide the following people sufficient access to inspect and audit the Project, as required by 49 U.S.C. § 5325(g):

- (a) The U.S. Secretary of Transportation and the Secretary's duly authorized representatives.
- (b) The Comptroller General of the United States, and his or her duly authorized representatives, and
- (c) State officials and their duly authorized representatives.

(2) The people listed in the preceding Section 8.e (1) of this Master Agreement will have access to:

(a) Inspect all of the following, whether owned or maintained by the Recipient, subrecipient, or other third party participant:

- 1 Project work,
- 2 Project materials,
- 3 Project payrolls, and
- 4 Other Project data, and

(b) Audit any information about the Project, whether owned or maintained by the Recipient, subrecipient, or other third party participant in their:

- 1 Books,
- 2 Records, or

Exhibit B**Federal Clauses (\$0 -\$25,000)**

3 Accounts. *[FTA Master Agreement §8.e]*

G. Right of the Federal Government to Terminate.

a. Justification. After receiving notice, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding to be provided for the Project for the following reasons:

(1) The recipient has violated the underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project, or

(2) Any failure to make reasonable progress on the Project, or

(3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications. The Recipient agrees that:

(1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.

(2) The Federal Government may require the Recipient to refund the entire amount of the Federal funds provided for the Project or any lesser amount as the Federal Government may determine, if the Federal Government determines that the Recipient has willfully misused Federal funds by:

(a) Failing to make adequate progress,

(b) Failing to make appropriate use of Project property, or

(c) Failing to comply with the underlying Agreement or this Master Agreement

c. Expiration of Project Time Period. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute and expiration or termination of the underlying Agreement. *[FTA Master Agreement §11]*

H. Civil Rights.

The Recipient understands and agrees that it must comply with all Federal civil rights laws and regulations, and follow Federal directives, except as 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, and assures that each third party participant will, comply with Federal transit law, specifically 49 U.S.C. § 5332, which prohibits the following:

(1) Types of Discrimination.

(a) Exclusion from participation,

(b) Denial of program benefits, or

(c) Discrimination, including discrimination in employment or business opportunity,

(2) Basis for Discrimination:

Exhibit B**Federal Clauses (\$0 -\$25,000)**

- (a) Race,
- (b) Color,
- (c) Creed,
- (d) National origin,
- (e) Sex, or
- (f) Age.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) 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 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each third party participant will prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

(a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

(b) Follow and facilitate compliance with 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,

(c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and,

(d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Creed,

Exhibit B**Federal Clauses (\$0 -\$25,000)**

- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment Advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the recipient agrees to comply, and assures the compliance of each third party participant, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. parts 60 *et seq.*,

(b) 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

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each third party participant will facilitate, participation by Disadvantaged Business Enterprises (DBEs) in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [*U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see Fed. Reg. 5083)*], and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

(2) Assurance. The Recipient assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party agreement supported with Federal funds 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 provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third

Exhibit B Federal Clauses (\$0 -\$25,000)

party agreements supported with Federal funds derived from U.S. DOT. If U.S. DOT has approved the Recipient's DBE program, that DBE program is incorporated by reference and made part of the underlying Agreement. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the underlying Agreement and this Master Agreement. If U.S. DOT finds and notifies the Recipient that it has not implemented its approved DBE program, U.S. DOT may impose sanctions provided by the underlying Agreement 49 C.F.R. Part 26, and in certain cases, seek 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 the following Federal prohibitions against discrimination on the basis of sex:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*,
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and
- (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of age:

- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination against individuals on the basis of age,
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which implements the ADEA,
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
- (4) 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 implements the Age Discrimination Act of 1975, and
- (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

g. Accessibility. The Recipient agrees to comply with Federal prohibitions against discrimination against elderly individuals with disabilities of:

- (1) The following Federal laws:
 - (a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,
 - (b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

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(c) 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;

(d) 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;

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) The following Federal regulations:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37,

(b) 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,

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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,

(d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35,

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36,

(f) U.S. General Services Administration (U.S.GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19,

(g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630,

(h) 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,

(i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194,

(j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(3) Other applicable Federal civil rights and nondiscrimination directives.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

(1) Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and

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(3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

(1) Facilitating compliance with and following Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

j. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377, April 15, 1997.

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

l. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with the following U.S. domestic preference requirements and follow applicable Federal directives regarding:

a. Fly America. Air transportation requirements of:

(1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and

(2) U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 - 301-10.143. [*FTA Master Agreement §14(c)*]

J. Procurement.

The Recipient agrees not to use FTA funds for third party procurements unless they comply with Federal requirements. Therefore:

(a) Federal Laws, Regulations, and Guidance. The Recipient agrees

(1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,

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(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 - 19.48 and other applicable Federal regulations that affect its third party procurements as may be later amended,

(3) To follow the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except as FTA determines otherwise in writing, and

(4) That although the FTA "Best Practices Procurement Manual" provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time

(b) Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients will require, their third party contractors and subcontractors at each tier to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party procurement records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. [FTA Master Agreement §15 (a), (t)]

K. Patent Rights.

a. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire rights when the Recipient or third party participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery

(2) The Federal Government's rights arise when the patent or patentable information is:

- (a) Conceived or
- (b) Reduced to practice under the Project,

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of this Master Agreement, the Recipient agrees to:

- (a) Notify FTA immediately, and
- (b) Provide a detailed report satisfactory to FTA.

b. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State Government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education,

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or individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in:

- (a) 35 U.S.C. 200 *et seq.*, and
- (b) 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.

c. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
 - (a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and
 - (b) As FTA determines otherwise in writing. [FTA Master Agreement §17]

L. Rights in Data and Copyrights.

a. Definition of "Subject Data". As used in this Section 18 of this Master Agreement "subject data" means recorded information that:

- (1) Copyright. Are copyrighted or not copyrighted,
- (2) Delivery. Are delivered or specified to be delivered under the underlying Agreement, and
- (3) Examples. Include, but are not limited to:
 - (a) Computer software,
 - (b) Standards,
 - (c) Specifications,
 - (d) Engineering drawings and associated lists,
 - (e) Process sheets
 - (f) Manuals,
 - (g) Technical reports,
 - (h) Catalog item identifications, and
 - (i) Related information.
- (4) Exceptions. "Subject data" do not include:
 - (a) Financial reports,
 - (b) Cost analyses, or
 - (c) Other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the underlying Agreement:

- (1) Prohibitions. The Recipient may not:
 - (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or

Exhibit B Federal Clauses (\$0 -\$25,000)

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(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 - 19.48 and other applicable Federal regulations that affect its third party procurements as may be later amended,

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b. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State Government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education,

- (2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f (1) caused by the wrongful acts of Federal; employees or agents.
- g. Restrictions on Access. To Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data either:
- (1) Implies a license to the Federal Government under any patent, or
 - (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- h. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.
- (1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.
 - (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- i. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:
- (1) The Freedom of Information Act, 5 U.S.C. § 552,
 - (2) Another Federal law requiring access to Project records,
 - (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or
 - (4) Other Federal regulations requiring access to Project records. [FTA Master Agreement §18]
- M. Environmental Protections.
- a. Air Quality. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:
- (1) Public Transportation Operators. It will comply with:
 - (a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85;
 - (b) U.S. EPA regulations "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86, and
 - (c) U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600 and any revisions to these regulations.

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(2) State Implementation Plans. It will support State Implementation Plans (SIP) by:

- (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
- (b) Assuring that any Project identified as a Transportation Control Measure in its State's SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,
- (c) Complying with:

- 1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),
- 2. U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A, and
- 3. Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

- (a) comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and
- (b) 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.

b. Clean Water. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f - 300j-6.

(2) Violating Facilities. It will.

- (a) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and
- (b) 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),(c)]

N. Energy Conservation.

The Recipient agrees to

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.*, except as the Federal Government determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C. [FTA Master Agreement §26]