

Reference Numbers:

CCLRT Project: _____

Metropolitan Council: _____

City of Minneapolis: _____

PROJECT: CENTRAL CORRIDOR LIGHT RAIL TRANSIT PROJECT

NAME: Master Funding Agreement – City of Minneapolis

PARTIES:

- **Metropolitan Council**
- **City of Minneapolis**

This agreement is entered into by and between the Metropolitan Council (“Council”), a public corporation and political subdivision of the State of Minnesota, and the City of Minneapolis (“City”).

WHEREAS:

1. The parties to this agreement have been involved in various activities regarding the development of a Central Corridor Transitway running between Downtown Minneapolis and Downtown St. Paul, generally via Washington and University Avenues. The locally preferred alternative for the transitway, as selected by the Council in June 2006, is a light rail transit line along the corridor. Design and construction of such a light rail transit line is referred to in this agreement as the “Central Corridor LRT Project” or the “Project.”
2. The Council has received appropriations from the State of Minnesota for the purpose of conducting environmental studies, completing preliminary engineering, and designing the Central Corridor Transitway. The Council also expects to receive future appropriations from the State of Minnesota for final design and construction of the Project.
3. The Council has also received grants from the FTA for preliminary engineering for the Central Corridor Transit Project. The Council also expects to receive future grants from the Federal Transit Administration for final design and construction for the Central Corridor Transit Project, including grants to be received under a Full Funding Grant Agreement with the FTA.
4. The Council has also received a grant from the Counties Transit Improvement Board (CTIB) for preliminary engineering for the Central Corridor Transit Project. The Council also expects to receive future grants from the CTIB for final design and construction for the Central Corridor Transit Project.

5. The Council is a party to a Cooperative Funding Agreement for Preliminary Engineering and Final Design with the Ramsey County Regional Rail Authority and Hennepin County Regional Rail Authority (Regional Rail Authorities) for preliminary engineering and final design for the Central Corridor Transit Project. The Council expects to enter into future Cooperative Funding Agreement(s) with the Regional Rail Authorities for construction of the Central Corridor Transit Project.
6. It is anticipated that the City will be involved in certain activities or provide materials in connection with and in support of the Project and the Council desires to pass through federal, state, CTIB or other local funds to the City for costs associated with such Project activities and/or materials.
7. In addition, it is anticipated that the City may provide partial funding for certain Project components or non-FFGA components through the transfer of City funds to the Council.
8. This Master Funding Agreement is entered into between the parties in order to provide a mechanism for the transfer of Project funds from the Council to the City for activities that may be undertaken by the City in connection with and in support of the Project and for the transfer of City funds to the Council in partial funding for the Project.

NOW, THEREFORE, the parties hereby agree as follows:

PART ONE

ARTICLE 1. PURPOSE

The purpose of Part One of this agreement is to provide:

- a method for the transfer of funds from the Council to the City for activities that may be undertaken or materials supplied by the City in connection with and in support of the Project; and
- contractual provisions that address compliance with federal and state laws and regulations, and Council procedures including, without limitation, federal requirements for the monitoring of the City's Project activities using federal grant funds.

ARTICLE 2. SUBORDINATE FUNDING AGREEMENTS TRANSFERRING FUNDS FROM COUNCIL TO CITY

2.01 Passthrough of Funds from Council to City. The Council may make use of, and the City may provide, materials, engineering and other technical and professional services of the City, including regular staff, information technology, equipment, and qualified consultants, in order to assist in the design and construction of the Project and the Council will pass through Project funds for the costs associated with such activities. The passthrough of funds from the Council to the City for costs incurred in providing such materials engineering, technical or professional services shall only be in accordance with one or more duly executed Subordinate Funding Agreements pursuant to this Article 2,

each of which shall define the amount of federal, state, CTIB or other local funds committed by the Council to the City for the Project, the specific purpose for the funds, and the City's responsibility with respect to those funds. Each such Subordinate Funding Agreement, in conjunction with this Master Funding Agreement, shall constitute a subrecipient agreement for the purposes of any federal grant funds passed through to the City thereby. The Council shall bear no responsibility for any costs incurred by the City for the Project that exceed the amounts committed by executed Subordinate Funding Agreements or as such agreements may from time to time be amended.

2.02 Subordinate Funding Agreements. The parties shall enter into subsequent Subordinate Funding Agreements that will facilitate the funding by the Council of Project obligations to be incurred by the City in connection with and in support of the Project in accordance with section 2.01. The parties anticipate that there will or may be a number of such Subordinate Funding Agreements between them in connection with the Project. Each Subordinate Funding Agreement shall be in a form substantially similar to that attached Exhibit A and shall follow and be subject to the terms of this Master Funding Agreement, unless expressly agreed otherwise. Notwithstanding any other provisions of this agreement, this agreement itself is not intended to create a specific financial obligation for either party or to require either party to enter into any specific Subordinate Funding Agreements, and no liability shall attach to either party under this agreement for refusing to enter into one or more subsequent Subordinate Funding Agreements.

2.03 Implementation of Subordinate Funding Agreements. The City shall not incur any reimbursable obligations for the Project that are not the subject of a Subordinate Funding Agreement, and the only local, state or federal funds available to the City for the Project are those which are approved through Subordinate Funding Agreements or available to the City through direct state appropriation or from City funds. Prior to entering into a contractual obligation with any third party (including the acquisition of property rights) to accomplish the City's reimbursable obligations in connection with and in support of the Project, or prior to authorizing any City employees to proceed with any reimbursable actions in that regard, the City shall present to the Council for prior review and approval, and to arrange for the execution of a Subordinate Funding Agreement, a work scope and/or staffing plan for such services or expenditures.

2.04 Modifications of Subordinate Funding Agreements. The following provisions apply to any modifications in a particular subordinate funding agreement:

- Rebudgeting within an approved budget is authorized when approved in writing by the Project Director of the party transferring funds.
- Modifications in work scope, if within the approved budget, are authorized when approved in writing by the Project Director of the party transferring funds.
- Any other modifications in a particular subordinate funding agreement, including any increase in the authorized "not to exceed" amount of funding or in a project activity period, shall require a formal amendment of the subordinate funding agreement approved by the Council and City and executed by both parties.

2.05 Transfer of Project Funds to the City Under Subordinate Funding Agreements. Funds for the Project committed by the Council to the City under

Subordinate Funding Agreement(s) shall be distributed by the Council to the City as follows:

- a. Unless specifically agreed to by the parties in and for a particular Subordinate Funding Agreement, payment to the City for Project costs under each Subordinate Funding Agreement shall be on a reimbursement basis based upon the submittal of invoices evidencing the expenditure of funds by the City for the Project.
- b. Invoices shall be submitted separately for each outstanding Subordinate Funding Agreement. Invoices for any particular Subordinate Funding Agreement shall be submitted as necessary and shall be sent to the following address:

Central Corridor Project Office
450 Fairview Avenue North, Suite 200
St. Paul, MN 55104
Attn: Gary Berger

or to such other address or person as the Council may from time to time designate for itself by notice to the City.

- c. Each invoice shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be funded. Each invoice must include a Payment Request Form (Form C-21A) as shown in Exhibit B. Each invoice must include a description of activities undertaken in accordance with the Subordinate Funding Agreement and an itemization of the expenditures for which payment is requested, along with supporting documentation. After receipt of an invoice, the Council may request additional information from the City regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested or as required by the Federal Transit Administration for reporting purposes.
- d. If applicable, each copy of the invoice shall also include a monthly Disadvantaged Business Enterprise (DBE) Reporting Form in the format as shown in Exhibit B, or such other format as may be prescribed by the Council, and shall include the information required by section 5.06(e) of this agreement.
- e. Upon review and approval of an invoice, the Council shall promptly distribute to the City the approved invoice amount. The Council may deny part or all of any invoice payment request if it reasonably believes that the requested payment does not conform to the terms of this agreement and the applicable Subordinate Funding Agreement. The parties will promptly meet to review and discuss any denied payment requests and dispute resolution will ensue if the parties cannot agree.
- f. No invoice payment shall be made which would cause distribution of Project funds to exceed, cumulatively through such payment, the authorized amount under the applicable Subordinate Funding Agreement.
- g. Distribution of any funds to the City pursuant to an invoice, or approval of any report, shall not be construed as a Council waiver of any City noncompliance with this agreement or the applicable Subordinate Funding Agreement.

2.06 Repayment of Unauthorized Use of Project Funds. Upon a finding by the Council that the City has made an unauthorized or undocumented use of Project funds, and upon a demand for repayment issued by the Council, if the City agrees, the City shall promptly repay such amounts to the Council. If the City disagrees, the parties will promptly meet to review and discuss any challenged use of funds already paid and dispute resolution will ensue if the parties cannot agree. Neither party shall be deemed to have waived any rights or remedies available under State, federal, common law or otherwise.

ARTICLE 3. REQUIREMENTS FOR PROJECT FUNDED WORK

3.01 Use of Project Funds; Allowable Costs. The City is authorized to use funds provided by the Council under this agreement only for allowable costs directly incurred for the Central Corridor LRT Project. Allowable costs will be determined in accordance with United States Office of Management and Budget (OMB) Circular A-87. Any funds provided to the City under this agreement and applicable Subordinate Funding Agreements that are not expended for authorized Project activities shall be promptly repaid to the Council. Funds provided by the Council under this agreement may only be used for costs directly incurred:

- within the authorized work scope,
 - during the project activity period, and
 - in accordance with the approved budget for the funds,
- all as specified in the relevant subordinate funding agreement.

3.02 Documentation of Project Costs. All costs charged to the Project by the City must be supported by proper documentation, including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges per requirements of Article 5.02.

3.03 Establishment of Asset Ownership. The Subordinate Funding Agreement shall state who the asset owner will be upon completion of the Project.

3.04 Establishment and Maintenance of Project Information. The City agrees to establish and maintain accurate, detailed, and complete separate books, accounts, financial records, documentation, inspection and quality assurance reports produced by City staff and/or contracted services, and other evidence relating to the receipt and expenditure of all Project funds. These documents shall include the property records required by section 5.10. All such project information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by the City until the latest of:

- a. complete performance of this agreement and all Subordinate Funding Agreements entered into pursuant thereto; or
- b. six years following the term of the this agreement and all Subordinate Funding Agreements entered into pursuant thereto; or
- c. six years following the close out of the Central Corridor Light Rail Transit Project by the Council and the Federal Transit Administration; or
- d. if any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If the City engages any contractors to perform any part of the Project activities, the City agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain project information in accordance with the provisions of this section and to allow audit of such information in the same manner provided with respect to the City in section 3.04.

The provisions of this section shall survive termination of this agreement.

3.05 Audit. The accounts and records of the City relating to the reimbursable costs for the Project shall be audited in the same manner as all other accounts and records of the City are audited. During the time of maintenance of information under section 3.03, authorized representatives of the Council, the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, section 16C.05, subdivision 5, the United States Secretary of Transportation, the Federal Transit Administration Administrator, and the United States Comptroller General will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by the City.

The provisions of this section shall survive termination of this agreement.

3.06 Use of Contractors. In addition to the requirements of Article 5.06, if the City engages any contractors to perform any part of the Project activities, the City agrees that the contract for such services shall include all of the following provisions. (Note: these requirements are in addition to other requirements for such contracts set forth in this agreement.)

- a. The contractor must maintain all records and provide all reporting as required by this agreement.
- b. The contractor must defend, indemnify, and save harmless the Council from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused in whole or in part by any negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.
- c. The contractor must provide and maintain insurance in amounts and types of coverage appropriate to the contracted work and naming the Council as an additional insured, and provide to the City prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage.
- d. The contractor must be an independent contractor for the purposes of completing the contracted work.
- e. The contractor must acknowledge that the contract between the City and the contractor does not create any contractual relationship between the Council and the contractor.

3.07 Contract Information. The City shall, in connection with any contract entered into for the Project:

- a. keep the Council informed as to the progress of such contract;

- b. allow authorized representatives of the Council access to all meetings and documentation related to such contract; and
- c. upon request, promptly provide the Council with copies of correspondence between the City and the contractor on any such contract.

ARTICLE 4. NOT USED

ARTICLE 5. FEDERAL REQUIREMENTS

5.01 Federal Requirements. Monies that may be provided to the City by the Council pursuant to this agreement may be funded in whole or in part by the United States Department of Transportation, Federal Transit Administration. The requirements in this Article 5 are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this agreement. If any requirement in this article is inconsistent with a provision found elsewhere in this agreement and is irreconcilable with such provision, the requirement in this article shall prevail.

5.02 Incorporation of Federal Grant. As federal grants, including a potential Full Funding Grant, with respect to the Central Corridor LRT Project are received by the Council, the terms of each grant and any amendments thereto shall be automatically incorporated by reference into this agreement without further action by the parties. These grants are collectively referred to in this agreement as the “Federal Grants.” When performing work or expending funds for Project activities, the City agrees to comply with all applicable terms and conditions of the Federal Grants received by the Council with respect to the Project.

5.03 Incorporation of Specific Federal Requirements. Specifically, and without limitation, the City agrees to comply with the federal requirements set forth in Exhibit C and agrees to require, unless specifically exempted, subrecipients (if authorized) and third party contractors at every tier to comply with the same.

5.04 Federal Certifications and Assurances; Execution and Incorporation. The City agrees to comply with and to certify compliance with the federal *Fiscal Year 2010 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements* or the most recent version attached to and incorporated into this agreement as Exhibit D. The City must certify compliance with the applicable provisions by signing the appropriate certification(s) and returning the signed certification(s) as part of the execution of this agreement. During the term of this agreement, the City shall annually execute the most current federal certifications and assurances document and provide the same to the Council.

5.05 Compliance with Federal Requirements; Incorporation of Specific Documents by Reference. The City agrees to comply with all federal statutes, rules, FTA Circulars, Executive Orders, guidance, and other requirements which may be applicable to the Federal Grants. In particular, and without limitation, the City agrees to comply with the terms and conditions of the current version of the following documents when performing work or expending funds for Project activities:

- *FTA Master Agreement*
- *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, 49 CFR Part 18
- *Grant Management Guidelines*, FTA Circular 5010.1D
- *Full-Funding Grant Agreements Guidance*, FTA Circular 5200.1A

and as such statutes, rules, circulars, executive orders, guidance and other requirements may hereafter be amended or modified. The listed documents are incorporated by reference into this agreement. Copies of these documents are available at the internet websites indicated or, upon request by the City, from the Council.

5.06 Third Party Contracts. If the City decides to fulfill any of its obligations or duties under a Subordinate Funding Agreement through a third party contract to be paid for by funds received under this agreement, the City agrees to the following provisions. (Note: these requirements are in addition to other requirements for such contracts set forth in this agreement.)

- Compliance with Federal Procurement Requirements.** The City will comply with all applicable federal law, rules, and guidance relating to such procurement including, without limitation, the provisions of the most current version of the *Third Party Contracting Requirements*, FTA Circular 4220.1F, which document is incorporated by reference into this agreement. A copy of this document is available at the internet website indicated or, upon request by the City, from the Council.
- Certification of City's Procurement System.** The City certifies that its procurement system complies with the standards described in the previous paragraph.
- Council Approval of Contracts.** The City shall not execute any third party contract or otherwise enter into a binding agreement until it has first received written approval from the Council. The Council's approval of any such third party contract is solely for the benefit of the Council and shall not relieve the City of the responsibility to ensure that such contracts are in the proper form and include all state and federal requirements.
- Inclusion of Provisions in Lower Tier Contracts.** The City agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier subcontract financed in whole or in part with monies from the Project provided under this agreement including all applicable provisions of this agreement. Provisions to be included in such subcontracts include, at a minimum, the provisions in Exhibit C.
- Disadvantaged Business Enterprise Requirements.** For all work performed under this agreement, the City will comply with the Council's Disadvantaged Business Enterprise (DBE) Program. In particular, the City agrees to comply with the requirements of the Council's "Disadvantaged Business Enterprise (DBE) Pass Through Agreement and Program" document which is attached to

and made a part of this agreement as Exhibit E. For the purpose of Exhibit E, the following provisions shall apply

- The Metropolitan Council DBE Liaison Officer, or designated staff, shall act as the City DBE Liaison Officer for the purposes of this grant.
- The City agrees to submit to the Council for review, approval, and establishment of the appropriate DBE goal all procurements in excess of \$50,000.
- The City will provide reports on a monthly basis to the Council on each above described procurement reflecting all invoices paid on these procurements and identifying all DBE activity on these procurements.
- The City will report DBE activity on a monthly basis to the Council on all other purchase orders and invoices not included above.
- Determination of DBE eligibility will be based on the list of DBE vendors provided by the Council.

f. **Federal Procurement Basics.** Exhibit B entitled “Managing Federally Funded Projects” is attached and made a part of this agreement. This exhibit contains an outline of federal procurement requirements for the convenience of the City. The exhibit does not contain all federal requirements to which the City may be subject as a subrecipient of federal grant funds under this Master Funding Agreement and specific subordinate funding agreements issued pursuant thereto. The City remains responsible for conforming its procurement processes to all applicable federal requirements for funds received from the Council under this Master Funding Agreement, notwithstanding the summary of requirements in the attached exhibit.

5.07 Provisions Subject to Change. The City acknowledges that federal requirements in this Article 5 are subject to change and agrees that the most recent of these requirements shall govern this agreement at any particular time.

5.08 No Federal Obligation. Monies provided under this agreement may be financed in whole or in part by federal funds. However, payments to the City will be made by the Council. The United States is not a party to this agreement and no reference in this agreement to the United States, the United States Department of Transportation, the Federal Transit Administration, or any representatives of the federal government makes the United States a party to this agreement. The City shall include this clause in any contracts or agreements entered into pursuant to this agreement.

5.09 Special Reporting Requirements. The Council is required to report to the FTA regarding the Project activities. Accordingly, the City agrees to provide the Council with any additional or follow-up information reasonably requested by the Council, in order to meet the Council’s FTA reporting requirements.

5.10 Property Management. The City acknowledges and agrees that title, acquisition, use, management, and disposition of all property acquired or constructed with

- 49 C.F.R. Parts 18.31, 18.32, and 18.33
- *FTA Master Agreement*
- *FTA Circular 5010.1D*

and as such laws, rules, and guidance may hereafter be amended or modified. The listed documents are incorporated by reference into this agreement. Copies of these documents are available at the internet websites indicated or, upon request by the City, from the Council.

The provisions of this section shall survive termination of this agreement.

PART TWO

ARTICLE 6. SUBORDINATE FUNDING AGREEMENT TRANSFERRING FUNDS FROM CITY TO COUNCIL

6.01 Purpose. The purpose of Part Two of this Agreement is to address a method for the transfer of City funds to the Council in partial funding for the Project components of non-FFGA components, should any such payment be authorized by the City.

6.02 Transfer of Funds from City to Council. The City may provide partial funding for the Project through the transfer of funds to the Council. Each such transfer of funds to the Council from the City shall only be in accordance with one or more duly executed Subordinate Funding Agreements, each of which shall define the amount of City funds committed by the City to the Council for the Project and the specific purpose for the funds. Any surplus moneys provided to the Council by the City pursuant to a Subordinate Funding Agreement shall be returned to the City upon completion of each portion of the Project authorized by a Subordinate Project Funding Agreement or otherwise shall be accounted for in funding authorized pursuant to any other Subordinate Project Funding Agreement.

6.03 Subordinate Funding Agreements. The parties shall enter into subsequent Subordinate Funding Agreements that will facilitate the funding by the City of Project obligations to be incurred by the City in connection with and in support of the Project in accordance with section 6.01. The parties anticipate that there will or may be a number of such Subordinate Funding Agreements between them in connection with the Project. Each Subordinate Funding Agreement shall be in a form appropriate to the authorization and shall follow and be subject to the terms of Parts Two and Three of this Master Funding Agreement, unless expressly agreed otherwise. Notwithstanding any other provisions of this agreement, this agreement itself is not intended to create a specific financial obligation for either party or to require either party to enter into any specific Subordinate Funding Agreements, and no liability shall attach to either party under this

agreement for refusing to enter into one or more subsequent Subordinate Funding Agreements.

6.04 Implementation of Subordinate Funding Agreements. The Council shall not incur any reimbursable obligations for the Project that are not the subject of a Subordinate Funding Agreement, and the only City funds available to the Council for the Project are those which are approved through Subordinate Funding Agreements. Prior to entering into a contractual obligation with any third party (including the acquisition of property rights) to accomplish the Council’s reimbursable obligations in connection with and in support of the Project, or prior to authorizing any Council employees to proceed with any reimbursable actions in that regard, the Council shall present to the City for prior review and approval, and to arrange for the execution of a Subordinate Funding Agreement, a work scope and/or staffing plan for such services or expenditures.

6.05 Modifications of Subordinate Funding Agreements. The following provisions apply to any modifications in a particular subordinate funding agreement:

- Rebudgeting within an approved budget is authorized when approved in writing by the Project Director of the party transferring funds.
- Modifications in work scope, if within the approved budget, are authorized when approved in writing by the Project Director of the party transferring funds.
- Any other modifications in a particular subordinate funding agreement, including any increase in the authorized “not to exceed” amount of funding or in a project activity period, shall require a formal amendment of the subordinate funding agreement approved by the Council and City and executed by the parties.

6.06 Transfer of Project Funds to the Council Under Subordinate Funding Agreements. Funds for the Project committed by the City to the Council under Subordinate Funding Agreement(s) shall be distributed by the City to the Council as follows:

- a. Unless specifically agreed to by the parties in and for a particular Subordinate Funding Agreement, payment to the Council for Project costs under each Subordinate Funding Agreement shall be on a reimbursement basis based upon the submittal of invoices evidencing the expenditure of funds by the Council for the Project.
- b. Invoices shall be submitted separately for each outstanding Subordinate Funding Agreement. Invoices for any particular Subordinate Funding Agreement shall be submitted as necessary and shall be sent to the following address:

City of Minneapolis
Attn: Kelly Moriarity, Project Manager
209 2nd Ave S – Room 300
Minneapolis, MN 55401

or to such other city address or person as the City may from time to time designate for itself by notice to the Council.

- c. Each invoice shall be submitted in the standard Council format and shall reference the sequential number of the Subordinate Funding Agreement under which the invoice is to be funded. Each invoice must include a description of activities undertaken in accordance with the Subordinate Funding Agreement and an itemization of the expenditures for which payment is requested, along with supporting documentation. After receipt of an invoice, the City may request additional information from the Council regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested.
- d. Upon review and approval of an invoice, the City shall distribute to the Council the approved invoice amount within 30 days. The City may deny part or all of any invoice payment request if it reasonably believes that the requested payment does not conform to the terms of this agreement and the applicable Subordinate Funding Agreement. The parties will promptly meet to review and discuss any denied payment requests and dispute resolution will ensue if the parties cannot agree.
- e. No invoice payment shall be made which would cause distribution of Project funds to exceed, cumulatively through such payment, the authorized amount under the applicable Subordinate Funding Agreement.
- f. Distribution of any funds to the Council pursuant to an invoice, or approval of any report, shall not to be construed as a City waiver of any Council noncompliance with this agreement or the applicable Subordinate Funding Agreement.

6.07 Repayment of Unauthorized Use of Project Funds. Upon a finding by the City that the Council has made an unauthorized or undocumented use of Project funds, and upon a demand for repayment issued by the City, if the Council agrees, the Council shall promptly repay such amounts to the City. If the Council disagrees, the parties will promptly meet to review and discuss any challenged use of funds already paid and dispute resolution will ensue if the parties cannot agree. Neither party shall be deemed to have waived any rights or remedies available under State, federal, common law or otherwise.

6.08 Use of Project Funds; Allowable Costs. The Council is authorized to use funds provided by the City under this agreement only for allowable costs directly incurred for the Central Corridor LRT Project. Any funds provided to the Council under this agreement and applicable Subordinate Funding Agreements that are not expended for authorized Project activities shall be promptly repaid to the City . Funds provided by the City under this agreement may only be used for costs directly incurred:

- within the authorized work scope,
- during the project activity period, and
- in accordance with the approved budget for the funds, all as specified in the relevant subordinate funding agreement.

6.09 Documentation of Project Costs. All reimbursable costs charged to the Project by the Council must be supported by proper documentation, including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

6.10 Establishment of Asset Ownership. The Subordinate Funding Agreement shall state who the asset owner will be upon completion of the Project.

6.11 Establishment and Maintenance of Project Information. The Council agrees to establish and maintain accurate, detailed, and complete separate books, accounts, financial records, documentation, and other evidence relating to the receipt and expenditure of all Project funds. All such project information shall be established and maintained in accordance with generally accepted government accounting principles and practices and shall be retained intact by the Council until the latest of:

- a. complete performance of this agreement and all Subordinate Funding Agreements entered into pursuant thereto; or
- b. six years following the term of the this agreement and all Subordinate Funding Agreements entered into pursuant thereto; or
- c. six years following the close out of the Central Corridor Light Rail Transit Project by the Council and the Federal Transit Administration; or
- d. if any litigation, claim, or audit is commenced during any such periods, when all such litigation, claims or audits have been resolved.

If the Council engages any contractors to perform any part of the Project activities, the Council agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain project information in accordance with the provisions of this section and to allow audit of such information in the same manner provided with respect to the Council in section 6.11.

The provisions of this section shall survive termination of this agreement.

6.12 Audit. The accounts and records of the Council relating to the reimbursable costs for the Project shall be audited in the same manner as all other accounts and records of the City are audited. During the time of maintenance of information under section 3.03, authorized representatives of the Council, the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, section 16C.05, subdivision 5, the United States Secretary of Transportation, the Federal Transit Administration Administrator, and the United States Comptroller General will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. Proper facilities for such access and inspection shall be provided by the Council.

The provisions of this section shall survive termination of this agreement.

6.13 Use of Contractors. If the Council engages any contractors to perform any part of the Project activities, the Council agrees that the contract for such services shall include all of the following provisions. (Note: these requirements are in addition to other requirements for such contracts set forth in this agreement.)

- a. The contractor must maintain all records and provide all reporting as required by this agreement.
- b. The contractor must defend, indemnify, and save harmless the City from all claims, suits, demands, damages, judgments, costs, interest, and expenses arising out of or by reason of the performance of the contracted work, caused in

whole or in part by any negligent act or omission of the contractor, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.

- c. The contractor must provide and maintain insurance in amounts and types of coverage appropriate to the contracted work and naming the City as an additional insured, and provide to the Council prior to commencement of the contracted work a certificate of insurance evidencing such insurance coverage.
- d. The contractor must be an independent contractor for the purposes of completing the contracted work.
- e. The contractor must acknowledge that the contract between the Council and the contractor does not create any contractual relationship between the City and the contractor.

6.14 Contract Information. The Council shall, in connection with any contract entered into for the Project:

- a. keep the City informed as to the progress of such contract;
- b. allow authorized representatives of the City access to all meetings and documentation related to such contract; and
- c. upon request, promptly provide the City with copies of correspondence between the Council and the contractor on any such contract.

PART THREE

ARTICLE 7. GENERAL PROVISIONS

7.01 Independent Contractors. The parties agree that any and all persons employed by or on behalf of a party to perform any work or duties as an agent of a party under this agreement shall not be considered employees of the other party. Any and all claims that may or might arise under the Workers Compensation Act of Minnesota on behalf of said employees or persons while so engaged, and any and all claims made by any third person as a consequence of any act or omission on the part of said employees or persons while so engaged in any of the work contemplated in this agreement, shall not be the obligation or responsibility of the other party.

7.02 Entire Agreement. This agreement constitutes the entire agreement between the parties and supersedes all oral agreements and negotiations between the parties relating to the subject matter of this agreement. As stated herein, this agreement depends upon one or more Subordinate Funding Agreements for the actual authorization or transfer of any reimbursements and the terms of any subsequent Subordinate Funding Agreements shall be considered together with this agreement.

7.03 Non-Waiver of Immunity and Limits. Nothing in this agreement shall be construed to waive the immunities or liability limits provided in Minnesota Statutes, section 3.736, or Minnesota Statutes, Chapter 466, or other applicable state or federal law. The provisions of Minnesota Statutes, section 471.59, subdivision 1a, specifically apply to this agreement.

7.04 Amendments. The terms of this agreement may be changed only by mutual agreement of the parties. Such changes shall be effective only upon the execution of written amendments signed by authorized officers of the parties to this agreement.

7.05 Non-Waiver. The failure of either party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this agreement shall not be deemed a waiver by that party of any subsequent breach or default in the said terms, conditions, or covenants by the other party.

7.06 Severability. The provisions of this agreement shall be deemed severable. If any part of this agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to either party.

7.07 Assignment Prohibited. Neither party shall assign their obligations under this agreement without receiving the express written consent of the other party.

7.08 Time. The parties agree that all obligations undertaken under this Master Funding Agreement, and with respect to any subsequent Subordinate Funding Agreements entered into by the parties, will be diligently performed in a manner consistent with the proper exercise of professional care and with due consideration to project timelines and constraints.

7.09 Notices. Except as otherwise expressly provided in this agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile or email attachment, with confirmation of receipt by telephone, with an original deposited postage prepaid in the first class mails of the United States, addressed:

For the Council:

Mark Fuhrmann, Deputy General Manager
Central Corridor LRT Project Office
540 Fairview Avenue North, Suite 200
St. Paul, MN 55104
Phone: 651-602-1942
Email: mark.fuhrmann@metc.state.mn.us

For the City:

Attn: Kelly Moriarity, Project Manager
City of Minneapolis
209 2nd Ave S – Room 300
Minneapolis, MN 55401

Phone: 612-673-3617

Email: kelly.moriarity@ci.minneapolis.mn.us

or to such other persons and at such other addresses as either party may at any time or from time to time designate for itself by notice in accordance this section. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided.

7.10 Project Director

The Council's Project Director for purposes of administration of this agreement, and any subordinate funding agreements entered into pursuant to this agreement, is the person listed in Section 7.09 above, or such other person as may be designated in writing by the Council's Regional Administrator.

The City's Project Director for purposes of administration of this agreement and any subordinate funding agreements entered into pursuant to this agreement is the person listed in Section 7.09 above, or such other person as may be designated in writing by the City. The City's Project Director shall:

- coordinate the carrying out of the City's obligations under this agreement,
- coordinate subordinate funding agreement work scope activities with the Council's Project Director,
- attend meetings called by the Council's Project Director for Central Corridor Project staff, and
- complete project manager training to be provided by the Council with respect to Council and federal requirements under this agreement and any subordinate funding agreements entered into pursuant to this agreement.

7.11 Applicable Law and Venue and Dispute Resolution. This agreement shall be interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings arising out of or relating to this agreement or any associated Subordinate Funding Agreements, or breach thereof, shall be in the state or federal court with competent jurisdiction in Hennepin County, Minnesota.

7.12 Effective Date and Termination. This agreement shall be effective upon execution by, and delivery to, both parties. This agreement shall terminate upon the earliest of:

- a. completion of construction of the Project and reimbursement of all costs provided for in this agreement and all Subordinate Funding Agreements entered into pursuant thereto, or
- b. abandonment of the plan for use of light rail transit in the Central Corridor by either the State of Minnesota or the local funding partners,
- c. a determination by the City that the Project cannot proceed; or
- d. a determination by the Council that sufficient funds do not exist, or are not reasonably projected to exist, in order to complete the Project.

The City agrees that Project closeout or termination of this agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the City by this agreement or such Subordinate Funding Agreements. Project closeout or termination of this agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the City's obligation to return any funds due to the Council as a result of later refunds, corrections, or other transactions. The Council agrees that Project closeout or termination of this agreement or any particular Subordinate Funding Agreement does not invalidate continuing obligations imposed on the Council by this agreement or such Subordinate Funding Agreements. Project closeout or termination of this agreement does not alter the City's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Council's obligation to return any funds due to the City as a result of later refunds, corrections, or other transactions.

Exhibits. All attached exhibits are deemed to be incorporated into this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on the dates indicated below.

CITY OF MINNEAPOLIS

METROPOLITAN COUNCIL

By: _____

By: _____

Thomas H. Weaver
Regional Administrator

Its: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

City Attorney

Metropolitan Council
Office of General Counsel

Date: _____

Date: _____

LIST OF EXHIBITS

| Exhibit | Description |
|----------------|--|
| A | Form of Subordinate Funding Agreement |
| B | Managing Federally Funded Projects |
| C | Specific Federal Clauses |
| D | Federal Certifications and Assurances |
| E | Disadvantaged Business Enterprise (DBE) Pass Through Agreement and Program |

Reference Numbers

CCLRT Project:

Metropolitan Council:

City of Minneapolis:

PROJECT: **CENTRAL CORRIDOR LIGHT RAIL TRANSIT PROJECT**

MASTER AGREEMENT NAME: **Master Funding Agreement – City of Minneapolis**

PARTIES TO MASTER AGREEMENT:

- **Metropolitan Council**
- **City of Minneapolis**

GRANT NUMBER:

SUBORDINATE FUNDING AGREEMENT NUMBER City of Minneapolis -__

This Subordinate Funding Agreement Number City of Minneapolis -__ is entered into by and between the above-named parties.

WHEREAS:

1. The parties entered into a Central Corridor Light Rail Project (“Project”) Master Funding Agreement, effective _____.
2. The parties provided in that agreement that certain aspects of funding for the Project would be determined in subsequent Subordinate Funding Agreements.
3. The parties desire to enter into this Subordinate Funding Agreement in order to provide funding for the Project as described below.

NOW, THEREFORE, the parties hereby agree as follows:

1. Maximum Amount of Authorized Funding: Not to exceed \$_____.

2. General Purpose for Funds:

3. Specific Description of Funding Authorization/(Work Scope):

Funds provided under this subordinate funding agreement may only be used for costs directly incurred within the described work scope.

4. **[ONLY WHEN THE SFA PASSES FUNDS THROUGH TO THE CITY OF MINNEAPOLIS] Project Budget.** The budget for the project funded by this subordinate funding agreement is attached to this subordinate funding agreement as Attachment 1. Funds provided by the Council under this agreement may only be used for costs directly incurred in accordance with the approved budget.
5. **[ONLY WHEN THE SFA PASSES FUNDS THROUGH TO THE CITY OF MINNEAPOLIS] Project Activity Period.** The Project Activity Period for the purposes of this subordinate funding agreement shall run from _____ until _____. Funds provided by the Council under this subordinate funding agreement may only be used for costs directly incurred during the approved Project Activity Period.
6. **[ONLY WHEN THE SFA PASSES FUNDS THROUGH TO THE CITY OF MINNEAPOLIS] Subrecipient Agreement.** This subordinate funding agreement, in conjunction with the Master Funding Agreement, constitutes a subrecipient agreement for the purposes of any federal grant funds passed through to the City hereby.
7. **Integration.** The terms, conditions and definitions of the Central Corridor Light Rail Master Funding Agreement, entered into by and between the parties, are expressly incorporated into this Subordinate Funding Agreement.

CITY OF MINNEAPOLIS

METROPOLITAN COUNCIL

By: _____

By: _____

Its: _____

Thomas H. Weaver
Regional Administrator

Date: _____

Date: _____

Approved as to form:

Metropolitan Council
Office of General Counsel

ATTACHMENT 1

**SUBORDINATE FUNDING AGREEMENT BUDGET
[IF INCLUDED IN SUBORDINATE FUNDING AGREEMENT]**



Managing Federally Funded Projects

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November 2008

Managing Federally Funded Projects: **A Project Manager's Guide**

Responsibilities of the Recipient (Metropolitan Council)

Recipient

The Recipient is responsible for administration and management of the grant in compliance with the grant agreement and applicable Federal Transit Administration (FTA) circulars and regulations. The grantee is also responsible for funds that "pass through" to a Subrecipient.

1. Primary responsibility lies with the Metropolitan Council ("Council") as the Recipient.
2. FTA annually updates Master Agreement.
3. FTA annually requires renewal of the required Certifications and Assurances.

Significant participation by a Subrecipient

Although the Recipient may delegate any or almost all Project responsibilities to one or more Subrecipients, the Recipient agrees that it, rather than the Subrecipient, is ultimately responsible for compliance with all applicable federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

Significant participation by a Third Party Contractor

Although the Recipient may enter into a Third Party Contract in which the Third Party Contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the Third Party Contractor, is ultimately responsible to FTA for compliance with all applicable federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

Significant participation by a lessee of a Recipient

Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing (newly added in FFY 2007 Master Agreement as part of SAFETEA-LU clarification).

Brief Terms and Definitions

The following is a brief list of terms and definitions important to understanding the federal grants process. An expanded list of terms and definitions can be found near the end of this document.

Grants and Awards

Financial award: A grant, contract, or cooperative agreement from external sponsor to conduct a specified project(s). The award carries the sponsor's requirements and expectations that the work conducted will be in accordance with the application and award document. The award can be received from federal, state or local governmental agencies, foundations, non-profit groups, or private enterprises including business and industry.

Metropolitan Council Policy Income/Grants 3-2-2: This policy governs this activity, and states that "the Metropolitan Council may enter into agreements with other governments and organizations which provide income/grants to the Council which are consistent with the Council's mission and priorities. Grant applications must be approved by the Council through the normal budget process or on a case-by-case basis."

FTA Definitions

Recipient: The entity that receives federal assistance directly from FTA to support the Project. The term "Recipient" includes each FTA "Grantee" that receives federal assistance directly from FTA through a Grant and each FTA Recipient that receives federal assistance directly from FTA through a Cooperative Agreement.

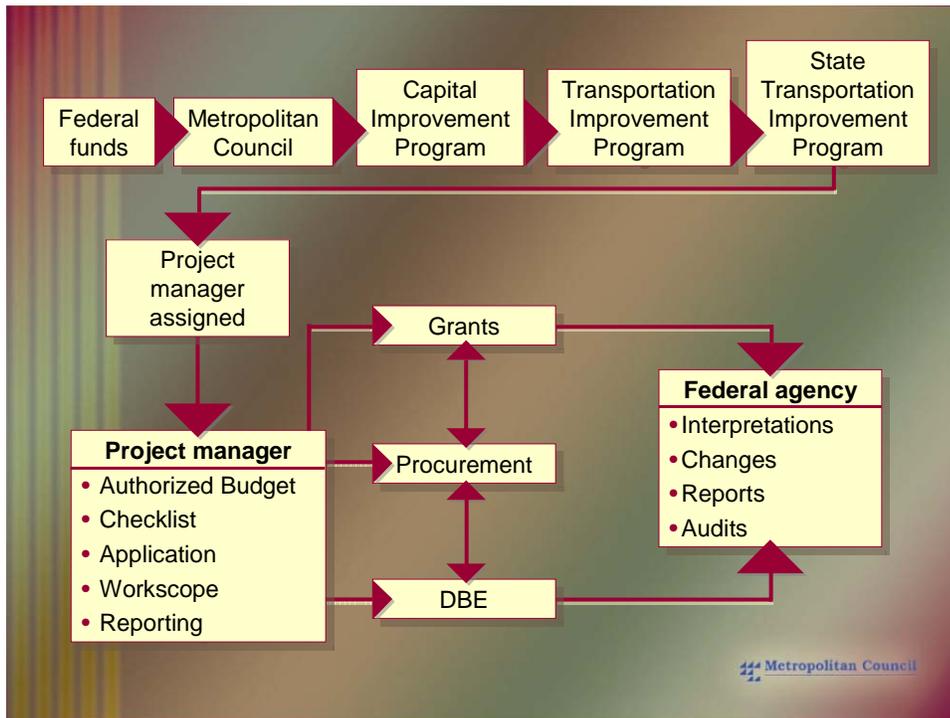
Subrecipient: Any entity that receives federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term "Subrecipient" also includes the term "Subgrantee," but does not include "Third Party Contractor" or "Third Party Subcontractor."

Subagreement: An agreement through which a Recipient awards federal assistance derived from FTA to a Subrecipient as defined below. The term "Subagreement" also includes the term "Subgrant," but does not include the term "Third Party Subcontract."

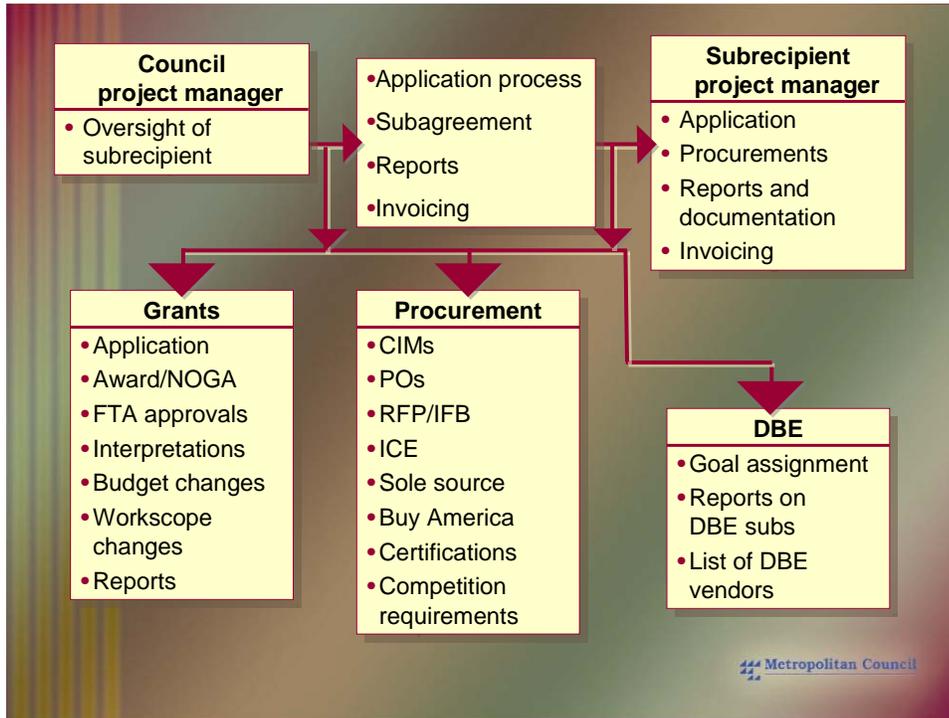
Third Party Contract: A contract or purchase order awarded by the Recipient or Subrecipient to a vendor or contractor, financed in whole or in part with federal assistance awarded by FTA.

Third Party Subcontract: A subcontract at any tier financed in whole or in part with federal assistance originally derived from FTA that is entered into by the Third Party Contractor or third party subcontractor. See the end of this document for a more detailed list of terms and conditions

Using Federal Funds (FTA) at the Council



Subrecipient Process Detail



Projects Using Federal Funding

Federal Transit Administration (FTA)

4. Predominant source of federal funds.
5. Subject to annual FTA Master Agreement and Certifications and Assurances.
6. Fund appropriations are received on an annual basis.
7. Includes Congestion Mitigation Air Quality (CMAQ), NewStarts, 5309 Bus Capital, Job Access Reverse Commute (JARC), New Freedoms, etc., as well as projects to be funded by 5307 formula and other 5309 discretionary (earmarks) appropriations.

Other federal sources

1. State Department of Public Safety (flow through)
2. Homeland Security
3. National Institutes of Health (NIH)
4. Occupational Safety and Health Administration (OSHA)
5. Federal Highway Administration (FHWA)

Metropolitan Council Capital Improvement Program (CIP)

Management recommends and the Council annually approves a six year listing of planned capital projects. The CIP is the basis for new capital program authorizations and for projects to be identified for FTA funding.

Transportation Improvement Program (TIP)

A list of projects selected from the Capital Improvement Program (CIP) that will use federal funds. The TIP is approved and sent to MnDOT for inclusion in the State Transportation Improvement Program (STIP); the STIP is sent to FTA and the Federal Highway Administration (FHWA) for approval.

Authorized capital program

Reflects those projects from the CIP that have been approved by inclusion in the capital budget to receive and expend funds. Project funding cannot be accepted until the capital budget recognizes the authority for the project.

Local match

1. Regional Transit Capital (RTC) or other local funds are used to meet federal match requirements.
2. Farebox revenue CANNOT be used as match for FTA.
3. Only the net project cost is used to calculate the federal participation.
4. Match amounts can vary.

Application

1. Grantees must complete an application for federal funds before the funds are available for use on a project.
2. Projects funded from CMAQ, Surface Transportation Program (STP) and Transit Enhancement (TE) funds are approved for FHWA dollars called “flex” funds. These funds are held by FHWA and are intended for use for highway or transit projects. Transit projects that are awarded by FTA require these funds to be transferred from FHWA to FTA before an application can be submitted.
3. Apportionments of formula funds (5307) and all other FTA or FHWA funds are received annually and are available for use in an application only after the annual apportionment is made.
4. Internal application forms and completion of environmental documentation must be completed for the application.
5. Transportation Electronic Award Management (TEAM) system will be loaded with the application information and submitted to FTA for processing. This is a 60 to 90 day approval process.

Federal Grant Application and Award Process

Project Manager Checklist starts application process

1. Project is listed in the TIP/STIP as required.
2. Templates are provided to Project Manager from Grants staff.
3. The Council Project Manager sends a form letter to any Subrecipient(s) for flow through projects.
4. Council staff must assure that the Council’s Authorized Capital Budget includes, or will be amended to add, authority to include the grant amount.
5. Local match must be available.
6. The Project Manager must provide the project description, budget detail and milestone information.
7. Environmental documentation.
8. Completed forms are returned to Grants.

Subrecipient application

1. The Council Project Manager initiates the application process and sends a form letter to Subrecipient organization(s).
2. Follow the same procedure as above.

TEAM system application

Grants management staff will prepare the application in FTA's TEAM system.

1. Project Scope will be reflected in Federal Budget Categories called Activity Line Items (ALIs) to provide maximum flexibility for rebudgeting.
2. If there are questions, Project Manager will be contacted for assistance as needed for budget, fleet, project description, timelines, etc. as the application is processed.
3. The application process includes the completion and approval of environmental documentation, including:
 - a) Categorical Exclusions
 1. CE II(c) – no construction; includes planning, fencing, vehicle acquisition, landscaping, rehab etc.
 2. CE II(d) – construction activity with minimal impact but documentation is needed to justify.
 - b) Environmental Assessments – actions in which the significance of the environmental impact is not clearly established.
 - c) Environmental Impact Statements (EIS): Actions that significantly affect the environment.
 - d) Other related approvals may be needed when a project makes use of public park land or sites of historic significance.

Note that the Grants intranet site contains information and forms for CEII(d) and other information.

4. When the application is complete, a copy of the TEAM application is sent to the Project Manager for review and concurrence before it is submitted to FTA.
5. FTA staff reviews the content for accuracy and regulatory compliance.
 - a) The Regional FTA office reviews projects for environmental clearances, project scopes and completeness of information.
 - b) DOL approvals are required on all applications.
 - c) The Regional FTA office forwards the application to the Washington D.C. office for approval.
 - d) After FTA approves the grant, the Met Council's Regional Administrator or designee must execute it BEFORE the grant is awarded and money is available for disbursement.
 - e) The Met Council makes a good faith effort to avoid the commitment of funding prior to receipt of the federal award, including obligating funds for procurements or for Subagreements. Prior approval from whom? is needed for advance spending and in some cases is not allowable.

Notice of Grant Award (NOGA)

The Grants management staff will notify the Project Manager, accounting and other appropriate staff of the receipt of the award by means of an internal document called a Notice of Grant Award (NOGA). See Appendix E.

Subrecipient Agreement/Award Process

Subrecipient Agreement

1. The federal award is received.
2. The NOGA is issued.
 - a) Capital budget authorization.
 - b) Council Project Manager requests subrecipient agreement from the Office of General Counsel.
3. Cost reimbursement:
 - a) Invoice only expenses actually incurred in direct support of the project.
 - b) No advances are allowed.
4. The agreement flows through all applicable federal requirements, including:
 - a) procurement;
 - b) Disadvantaged Business Enterprise (DBE);
 - c) program-specific concerns;
 - d) prior approvals;
 - e) reporting requirements; and
 - f) invoicing.
5. Work scope: identifies what activity is allowable.
6. Approved budget: identifies the allowable costs for the work scope.

Subrecipient Administration of Award

The Subrecipient is responsible for adhering to the work scope and budget. All changes to the work scope require prior written approval from the Council's Grants staff. Prior approvals are required for some activities even if they are included in the work scope and budget. Subrecipients apply to Council staff for prior approval in writing for the following proposed budget revisions. See Award Activity for more detail on prior approvals.

Award Activity

Federal Procurement Basics

These procurement basics represent the minimum requirements to be used by recipients and subrecipients when purchasing goods and services with Federal funds. Recipients and subrecipients may follow their own procurement requirements as long as their requirements are more restrictive than these basics.

All procurements must be reasonable and made for goods, services, and/or items needed for the direct completion of the project work scope.

Micro purchases (procurements under \$2,500) require:

1. Micro-purchases may be made without obtaining competitive quotations if the recipient or subrecipient determines that the price to be paid is fair and reasonable...

2. Micro purchases of construction services valued at greater than \$2,000 require the application of Davis-Bacon Act federal prevailing wage rates.
3. All micro purchases for architectural and engineering services require compliance with requirements of the Brooks Act.
4. Minimal documentation is required: (a) a determination that the price is fair and reasonable and (b) how this determination was derived.

Purchases greater than \$2,500 and less than \$25,000 require:

1. An Independent Cost Estimate (ICE): a documented analysis of the estimated cost of the item or services, based on historic costs, vendor information, or other reasonable methods.
2. Use of the Disadvantaged Business Enterprise list to determine if there is a certified DBE source for the goods or services.
3. Three written or verbal quotes.
4. A documented price analysis, using the ICE as a basis of comparison.
5. The Council's FTA clauses must be attached to the purchase order. If you have question, please call your Project Manager.

Purchases greater than \$25,000 and less than \$50,000 require the same process as above, except the quotes must be written.

Purchases of \$50,000 and greater require approval from Council staff. Contact the Council's Project Manager for further guidance.

1. A Contract Initiation Memo (CIM) or Subrecipient Contract Initiation Memo (SCIM) is required for all purchases of this value.
2. The Subrecipient Project Mangers work through the Council Project Manager for approvals/reviews.
3. Completed CIMs or SCIMs are forwarded by the Council Project Manager for required approvals from the Council's Grants, Purchasing and Office of Diversity and Equal Opportunity (ODEO). Once approved, the solicitation can be issued
4. Draft solicitation documents are forwarded by the Council's Project Manager to the Council's Purchasing and ODEO for approval.
5. The solicitation is issued.
6. Solicitation responses are forwarded by Council's Project Manager to Council's Purchasing and ODEO for approval and DBE compliance check before the award of a contract.
7. Copies of executed Metropolitan Council and Subrecipient contracts are kept by Council's Project Manager and Council Purchasing.
8. Metropolitan Council and Subrecipient Contract changes require prior review and approval by the Council's Project Manager, Council Purchasing and ODEO.

Contract Changes

1. Every change order and contract amendment requires that a cost or price analysis be performed to determine if the price change is fair and reasonable.

2. A change order valued at greater than 10% of the original value of the purchase order is considered to be a separate purchase, and must be supported by an appropriate competitive process or be authorized as a sole source purchase.
3. An amendment to a non-construction contract valued at greater than 10% of the original value of the contract is considered to be a separate purchase, and must be supported by an appropriate competitive process or be authorized as a sole source purchase.
4. Construction change orders valued at less than 5% of the original value of the construction contract are considered to be minor adjustments to the contract.
5. Change orders that increase the total amount of the construction contract by no more than 5% of the original contract value or \$50,000 (whichever is greater), may be authorized by staff with appropriate Construction Change Order Signature Authority.
6. Change orders that increase the total amount of the construction contract by more than 5% of the original contract value or \$50,000 (whichever is greater) must be approved by the policy board.
7. Use of sole source procurement for change orders and contract amendments must be done with care *on an exception basis only* and must be justified for each occurrence. Sole source authorization must be obtained *prior to* ordering the goods or services except in a declared public emergency.

Charging expenses against a grant

1. Project managers should review the NOGA to identify which expense lines have been established.
2. Subrecipient Project Managers should review the approved budget in the Subrecipient Agreement
3. The Contract Initiation Memo (CIM) or Subrecipient CIM must reference the grant number and verify availability of funds.
4. Work orders or any form or method used to initiate a charge against a grant should refer to the funding source; Project Managers should check to see if funds are available.
5. Changes to the existing budget
 - Budget revision:* A transfer of funds within an approved grant budget, not involving a change in the grant, scope, or terms and conditions.
 - Budget revision without prior FTA approval:*
 - a) Fund transfers within scope and between scopes of the same matching ratio, if the amount is under 20 percent of the most recently FTA-approved budget or, for planning grants, if the amount is under 30 percent.
 - b) Adding activities that are within scope.
 - Budget Revision with prior FTA approval and limitations:*
 - a) Add, delete or modify grant work tasks consistent with the currently approved Unified Planning Work Program or State work program;
 - b) Transfer funds within an approved budget that cumulatively exceeds 20 percent of the budget most recently approved by FTA but does not exceed 30 percent of planning grants, and FTA's share of grant is more than \$100,000. This would include changes totaling 30 percent or more at the state (cumulative) level for metropolitan planning grants (49 U.S.C. Section 5303), as well as at the state level for statewide planning (49 U.S.C. Section 5313(b));

- c) Increase or reduce the number of units to be purchased or constructed where the change does not exceed the greater of two units or 20 percent of the approved grant scope;
- d) Change the size of physical characteristics of the project scope items; and/or
- e) Transfer funds between operating, capital/planning scopes; or scopes with different matching ratios.
- f) Formal amendments to grants – FTA approval required:

Administrative amendment: An amendment normally initiated by FTA that is needed to change or clarify the terms, conditions or provisions of a grant contract but does not change the scope, amount or purpose of the grant. An administrative amendment is used to modify a grant contract for such purposes as to comply with changes required by FTA law, to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another or to reflect a change in the grantee's name: all programs.

Grant amendment: A change in the scope of a grant or the federal participation.

- a) A change that exceeds the greater of two units or 20 percent of the units to be purchased or constructed under an approved grant scope;
- b) A change to add a project scope, if not previously included as a contingency project in the budget, or to add or delete a project scope which changes the grant scope; and/or
- c) Any other changes that alter the scope of a grant.

Other expenditures requiring approvals

- Buy America Waiver
- Acquisition of Right of Way (ROW) over \$500,000;
- Disposition of property (real or equipment);
- Incidental use of transit property; and/or
- Other project specific requirements.
- Make no assumptions on any changes.

Billing and invoicing

The Subrecipient submits an invoice at least quarterly on a cost reimbursement basis. All invoices for reimbursement must contain the standard certification that all attached invoices are for a reasonable price, based on market prices offered by the vendors to the general public. Refer to the invoice form sample provided in this document.

Reporting

1. *Milestone/progress reports:* The requirement for milestone/progress reports applies to all FTA grants. Report forms are sent from Grants to Project Managers with instruction and deadline for completion.
2. *Financial Status Reports (FSR):* FTA grant Recipients are to submit financial information through TEAM. This report should be provided concurrently with the milestone/progress reports.
3. *Final project reports:* Final reports are due within 60 days of project completion and must include a financial reconciliation and final work scope detail.
4. *Disadvantaged Business Enterprise (DBE) Quarterly Progress Reports:* As with financial reports, grantees may submit these reports (required by FTA Circular 4716.1A) with other quarterly reports if grantees are furnishing paper forms.

Appendix A: More Terms and Definitions

Other related acronyms and terms

| | | | |
|------------------|--|--------------|---|
| C&As: | Certifications and Assurances | JARC: | Job Access Reverse Commute Program |
| CE: | Categorical Exclusion (Environmental document) | MPO: | Metropolitan Planning Organization |
| CIP: | Capital Improvement Program | NOGA: | Notice of Grant Award |
| CMAQ: | Congestion Mitigation Air Quality Program | NTD: | National Transit Database |
| DBE: | Disadvantaged Business Enterprise | SHPO: | State Historic Preservation Office |
| DOT: | Department of Transportation | STIP: | State Transportation Improvement Program |
| EA: | Environmental Assessment | TE: | Transit Enhancement |
| EIS: | Environmental Impact Statement | TEAM: | Transportation Electronic Award Management (incorporates TIP) |
| FG: | Fixed Guideway | TIP: | Urban Area Transportation Improvement Program |
| FTA: | Federal Transit Administration | | |
| FWHA: | Federal Highway Administration | | |

Definitions:

5307 Funds Formula: Annual appropriation of funds based on NTD service levels and sometimes referred to as NTD funds.

5309 Funds: Earmarks or legislative appropriations based on requests by the organization to the federal legislator.

Authorized Budget: Projects from the Capital Improvement Program that have been given spending authority in the capital budget.

Capital Improvement Program (CIP): Five-year plan of projects based on cash flow.

Categorical Exclusion (CE): There are two types.

CE II(c): If the project as defined under this category indicate no other documentation is required.

CE II(d)'s require documentation that demonstrates that the specific conditions or criteria for these CE's are satisfied and that significant environmental effects will not results. This documentation must be prepared and submitted with the rest of the grant application.

Certifications and Assurances (C&As): Submitted to FTA annually to self-certify proficiency and compliance in 23 areas. The Council certifies to 19 of the 23 of the areas, with four not being applicable to the urban area program.

Earmarks: Non-formula, based on a legislative request.

Environmental Documentation: Based on the type of program and the amount of construction involved, documentation varies from a Categorical Exclusion to a full Environmental Impact Statement. At the time of application, all projects are reviewed to decide what document is appropriate, if any.

Formula Funds: Based on service, population or some countable statistic that is then used to determine what level of funds are to be received.

Grant Application (FTA): Formal request to FTA for obligation of funds to a named project in the STIP.

Job Access Reverse Commute (JARC): Formula Funds received annually, based on census figures.

Master Agreement: FTA’s annual agreement that applies to all transit grants nationwide. It is a blanket agreement that covers all programs administered by FTA and can be found on the website below.

Match: The amount of funding that the recipient must contribute in support of the funded project.

National Transit Database (NTD): Mechanism for reporting service levels and other information on transit in the Metropolitan Seven County Area.

New Freedom: Formula Funds received annually, based on census figures.

New Starts: Earmarks made for major capital investments – over \$75 million.

State Transportation Improvement Plan (STIP): Improvement plan for the entire state; includes TIP.

Total Eligible Cost: The cost of the project including federal dollars and local Match.

Transportation Electronic Award Management (TEAM): FTA’s electronic award processing and management system.

Transportation Improvement Plan for the Metropolitan Area (TIP): Four years’ of projects listed by year, based on state fiscal year.

Appendix B: Disadvantaged Business Enterprise Program Definitions

In accordance with 49 CFR section 26.5, the following definitions apply to the Metropolitan Council’s DBE program.

Affiliation: As defined in the Small Business Administration (SBA) regulations, 13 CFR part 121:

Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- One concerns controls or has the power to control the other;
- A third party or parties controls or has the power to control both; or
- An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of arms in the DBE program.

Affirmative Action: Septic and positive activities undertaken by the Metropolitan Council and its contractors to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs funded by the DOT.

Alaska Native: A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation: Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Appeal: A formal filing by a business entity who has been denied certification by the Metropolitan Council as a Disadvantaged Business Enterprise (DBE).

Applicant: One who submits an application, request, or plan to be approved by a departmental official or by a primary recipient as a condition of eligibility for DOT financial assistance; and application means such an application, request, or plan.

Challenge: A formal filing by a third party to rebut the presumption that a particular business meets the definition of DBE.

Commercially useful function: Work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the Metropolitan Council's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Compliance: The condition existing when a recipient or contractor has correctly implemented the requirements of the program.

Contract: A legally binding relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them.

Contracting opportunity: Any decision by the Metropolitan Council or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

Contractor: One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program covered by this part; and includes lessees.

DBE Directory: The Metropolitan Council's list of Certified and Denied Firms which is used by the Metropolitan Council and its contractors to identify DBE potential prime and subcontractors and suppliers.

DBE Liaison Officer: The official designated by the head of the department element to have overall

Department of Transportation, or DOT: The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHA), the Federal Transportation Agency (FTA), and the Federal Aviation Administration (FAA).

responsibility for promotion of DBE participation.

Disadvantaged Business Enterprise (DBE): A for-profit small business concern:

- that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and
- whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract: Any contract or modification of a contract between the Metropolitan Council and a contractor (at any tier) that is funded for in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Equal Opportunity: The requirements of non-discrimination in employment with regard to race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, age, marital status, or sex, and in accordance with Government Code, Section 12490.

Goal: The annual percentage of DOT-assisted dollars intended to be awarded to DBEs. The annual overall DBE goal is achieved through a combination of race-neutral and race-conscious measures, including contract-specific goals.

Good faith efforts: Efforts to achieve a DBE goal or other requirement of the program, which by their scope, intensity, and appropriateness to the objective, can be expected to fulfill the program requirement.

Immediate family member: Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe: Any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in these definitions.

Joint development: The planning and implementation of an income producing real estate development which is adjacent to or physically related to an existing or proposed public transportation facility (e.g. transit station, Park and Ride, or bus facility).

Joint venture: An association of a DBE firm and one or more other firms to carry out a single for profit business enterprise, for which the parties contribute their property, capital, efforts, skills, and knowledge, and in which the DBEs responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital, contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Lessee: A business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient’s or department’s facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

Level playing field: The objective of the DOT and Metropolitan Council DBE program; wherein an environment is created to achieve the level of participation by DBEs that would reasonably be expected in the absence of discrimination.

Manufacturer: A business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

Minority: A person who is a U.S. citizen or lawful permanent resident of the U.S. and who is a:

“Black American”, which includes persons having origins in any of the black racial groups of Africa.

“Hispanic American”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

“Native American”, which includes persons that are American Indians, Eskimos, Aleuts or Native Hawaiians.

“Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; or

“Asian-Indian American”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

Native Hawaiian: Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian organization: Any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered under the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance: The condition existing when a recipient or contractor has not correctly implemented the requirements of the program.

Operating Administration (OA): Any of the following parts of the DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth: The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Pre-bid/pre-proposal conference: A meeting held by the Metropolitan Council, prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Metropolitan Council specification requirements, which include DBE provisions.

Pre-bid-pre-construction conference: A meeting held by the Metropolitan Council prior to solicitation at which the prospective prime contractors are advised of its federal compliance obligations and other technical and administrative requirements.

Preponderance of the evidence: The standard of evidence used in DBE eligibility criteria. Pertains to the total context of factual submissions.

Primary Industry Classification: The four-digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual.

Primary recipient: A recipient who received DOT financial assistance and passes some or all of this assistance on to another recipient.

Principal place of business: The business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program: Any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

Race-conscious measure or program: One that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program: One that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Rebuttable presumption: A fact related to DBE eligibility criteria that is held to meet the standards of eligibility unless proven otherwise.

Recipient: Any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Regular dealer: A firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.

Relative availability: The percentage of available DBE firms in light of local circumstances and the number of total available firms.

Secretary: The Secretary of Transportation or his/her designee.

Set-aside: A contracting practice restricting eligibility for the competitive award of a contract solely

to DBE firms.

Small Business Administration (SBA): The United States Small Business Administration.

Small business concern: (with respect to firms seeking to participate as DBEs in DOT-assisted contracts) A small business as defined pursuant to Section 3 of the Small Business Act (13 CFR 121), and regulations implementing it, that does not exceed the cap on gross receipts specified in 49 CFR 26.65(6).

Socially and economically disadvantaged individuals: (for purposes of DOT-assisted projects) Any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is:

- Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;
- Women (regardless of race, ethnicity or origin); or
- Individuals found to be socially and economically disadvantaged by the U.S. SBA pursuant to Section 8(a) of the Small Business Act.

The Metropolitan Council will make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. The Metropolitan Council may, on a case-by-case basis, determine or accept the determination by another DOT recipient, individuals who are socially and economically disadvantaged in accordance with 49 CFR 23, Subpart D, Appendix C.

Transit vehicle manufacturer: A manufacturer of vehicles used by FTA recipients for the primary program purpose of public mass transportation (e.g. buses, railcars, vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers of locomotives or ferryboats. The term refers to distributors or dealers in transit vehicles with respect to requirements of 49 CFR part 23.67 of the regulations.

Tribally-owned concern: Any concern that at least 51% owned by an Indian tribe as defined in these definitions.

U.S. DOT regulations: (49 CFR part 23 and part 26) Federal rules and regulations published in the Federal Register dated March 31, 1980; amended April 27, 1981; July 21, 1983; October 21, 1987; and March 4, 1999; by the Department of Transportation, Office of the Secretary; entitled “Participation by [Minority Business Enterprise] in Department of Transportation Programs” and codified at Title 49, Code of Federal Regulations, Part 23.

Appendix C: Useful Websites

FTA Websites

FTA Main Website

www.fta.dot.gov/

www.fta.dot.gov/funding/grants/grants_financing_263.html

Metropolitan & Statewide Planning (5303, 5304, 5305)

www.fta.dot.gov/funding/grants/grants_financing_3563.html

Large Urban Cities (5307)

www.fta.dot.gov/funding/grants/grants_financing_3561.html

Clean Fuels Formula Program (5308)

www.fta.dot.gov/funding/grants/grants_financing_3560.html

Major Capital Investments

(New Starts & Small Starts) (5309)

www.fta.dot.gov/funding/grants/grants_financing_3559.html

Rail and Fixed Guideway Modernization (5309)

www.fta.dot.gov/funding/grants/grants_financing_3558.html

Bus and Bus Facilities (5309, 5318)

www.fta.dot.gov/funding/grants/grants_financing_3557.html

Transportation for Elderly Persons and Persons with Disabilities (5310)

www.fta.dot.gov/funding/grants/grants_financing_3556.html

Transit Cooperative Research Program (5313)

www.fta.dot.gov/funding/grants/grants_financing_3552.html

National Research & Technology Program (5314)

www.fta.dot.gov/funding/grants/grants_financing_3551.html

Job Access and Reverse Commute Program (5316)

www.fta.dot.gov/funding/grants/grants_financing_3550.html

New Freedom Program (5317)

www.fta.dot.gov/funding/grants/grants_financing_3549.html

Flexible Funding for Highway and Transit

www.fta.dot.gov/funding/grants/grants_financing_3545.html

FTA Agreements

Master Agreement:

www.fta.dot.gov/documents/13-Master.doc

Certifications & Assurances

www.fta.dot.gov/funding/apply/grants_financing_93.html

FTA Circulars

www.fta.dot.gov/laws/leg_reg_circulars_guidance.html

5010.1C Grants Management

www.fta.dot.gov/laws/circulars/leg_reg_4114.html

4220.1E Procurement

www.fta.dot.gov/ftahelpline/fta_c4220_1

9030.1C Formula 5307

www.fta.dot.gov/laws/circulars/leg_reg_4125.html

9300.1A Capital 5309

www.fta.dot.gov/laws/circulars/leg_reg_4128.html

FTA DBE:

www.fta.dot.gov/civilrights/civil_rights_5089.html

FTA Best Practices Procurement Manual:

www.fta.dot.gov/publications/publications_4571.html

Mandatory Procurement Standards Worksheet:

www.fta.dot.gov/fta/library/admin/BPPM/appB19.doc

FTA Procurement System Self-Assessment Guide:

www.fta.dot.gov/ftahelpline/Cover_Self-Assessment_Guide.htm

Metropolitan Council Websites

Internet (available to the public)

Directory of Certified DBE Vendors:

www.dot.state.mn.us/eeocm/ucpdirectory.html

Councilinfo Intranet (available only to Council staff)

Metropolitan Council Procurement Procedures 3-4-3a:
councilinfo/policy/finance3_4_3a_procurement_procedure.doc

Grants

councilinfo/grants/index.asp

Appendix D: Assistance for Project Managers

Grants

Susan Stensland Grants Manager 612-349-7603
Email: susan.stensland@metc.state.mn.us

DBE

Wanda Kirkpatrick Director of Equal Opportunity 651-602-1085
Email: wanda.kirkpatrick@metc.state.mn.us

Procurement

Chris Gran Metro Transit Director of Purchasing 612-349-5060
Email: christopher.gran@metc.state.mn.us

Don Pleau Senior Purchasing Agent 612-349-5064
Email: donald.pleau@metc.state.mn.us

Appendix E: Sample Documents



Grant Application

Project Details

Project Title _____
Project Start Date _____ Project End Date _____
Council Project Manager _____

For Subrecipient projects, complete below

Subrecipient Project Manager _____
Subrecipient Organization _____

Fund Details

Funding sources - *FTA awards require a match of 20% in most cases; Subrecipients usually provide their own match.*

Award Amount _____
Local Match (RTC) _____
Local Match (Other) _____ Source:
Total Funding _____ \$0.00

Project Description - *In the space below, please provide detailed information about the proposed project. Include all project activities, dates and deliverables.*



| Budget Item: | Federal Funding | Match | Total Project Funding |
|--------------|-----------------|-------|-----------------------|
|--------------|-----------------|-------|-----------------------|

All asterisked items require milestone milestone information.

Use only those categories that apply and add any not listed that you need based on your chart of accounts

| | | | |
|--|--|--|--|
| Personnel (Salary) | | | |
| Fringe Benefit % of salary) | | | |
| Indirect Cost (% of salary) | | | |
| Consultant * | | | |
| Planning | | | |
| Engineer & Design | | | |
| Construction Mgmt | | | |
| Contractor * | | | |
| Construction - NEW | | | |
| Construction - Rehab / reno | | | |
| Lease/Rental Costs * | | | |
| Bus Purchase* (specify type) | | | |
| Spare Parts* | | | |
| 3rd Party Bus Inspection* | | | |
| Staff Travel * | | | |
| Local | | | |
| Non-local | | | |
| Staff Training*: Tuition | | | |
| Insurance * | | | |
| Real Estate* | | | |
| Acquisition | | | |
| Appraisal | | | |
| ROW | | | |
| Equipment(\$5000 or more) | | | |
| <i>List by type</i> | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Project supplies & Material* | | | |
| <i>Total of consumable items and/or have a unit cost under \$5,000. List each in Budget Items.</i> | | | |
| Computer Hardware* | | | |
| Computer Software* | | | |
| Other Costs | | | |
| <i>Itemize other categories</i> | | | |

Exhibit B
Managing Federally Funded Projects

| | | | |
|---------------------------------|---------------------|---------------------|---------------------|
| | <hr/> | <hr/> | <hr/> |
| | <hr/> | <hr/> | <hr/> |
| | <hr/> | <hr/> | <hr/> |
| Grand Total Project Cost | <hr/> <u>\$0.00</u> | <hr/> <u>\$0.00</u> | <hr/> <u>\$0.00</u> |

Milestone Information

Provide milestone information for each budget item from the Budget Page.

Use this format for bus purchases. This is the required FTA format for this activity and you should not change Milestone descriptions.

| Budget Item - Bus Only | Item Description or Purpose Bus Purchase | Total Budget Amount \$ _____ |
|-----------------------------------|---|---|
| | <u><i>Milestone Description</i></u> | <u><i>Milestone Dates</i></u> |
| 1 | RFP/IFB Issued | _____ |
| 2 | Contract Award Date | _____ |
| 3 | First Bus Delivery | _____ |
| 4 | All Bus Delivered | _____ |
| 5 | Contract Complete Date | _____ |
| 6 | | _____ |
| 7 | | _____ |
| 8 | | _____ |
| 9 | | _____ |
| 10 | | _____ |

Use the Milestone format below for all other budget items that need Milestones. Copy it for each Milestone which you need to identify and change the Milestone descriptions as needed to relate to the progress if different than the standard below.

| Budget Item # _____ | Item Description or Purpose | Total Budget Amount \$ _____ |
|----------------------------|-------------------------------------|---|
| | <u><i>Milestone Description</i></u> | <u><i>Milestone Dates</i></u> |
| 1 | RFP/IFB Issued | _____ |
| 2 | Contract Award Date | _____ |
| 3 | Contract Complete Date | _____ |
| 4 | | _____ |
| 5 | | _____ |
| 6 | | _____ |
| 7 | | _____ |
| 8 | | _____ |
| 9 | | _____ |
| 10 | | _____ |

Date _____

Grant Applicant Metropolitan Council 1305

**INFORMATION REQUIRED FOR PROBABLE
CATEGORICAL EXCLUSION
(SECTION 771.117(d))**

- _____ A. **DETAILED PROJECT DESCRIPTION:**
- _____ B. **LOCATION (INCLUDING ADDRESS):** Attach a site map or diagram, which identifies the land uses and resources on the site and the adjacent or nearby land uses and resources. This is used to determine the probability of impact on sensitive receptors (such as schools, hospitals, residences) and on protected resources.
- _____ C. **METROPOLITAN PLANNING AND AIR QUALITY CONFORMITY:** Is the proposed project "included" in the current adopted MPO plan, either explicitly or in a grouping of projects or activities? What is the conformity status of that plan? Is the proposed project, or are appropriate phases of the project included in the TIP? What is the conformity status of the TIP?
- _____ D. **ZONING:** Description of zoning, if applicable, and consistency with proposed use.
- _____ E. **TRAFFIC IMPACTS:** Describe potential traffic impacts; including whether the existing roadways have adequate capacity to handle increased bus and other vehicular traffic.
- _____ F. **CO HOT SPOTS:** If there are serious traffic impacts at any affected intersection, and if the area is nonattainment for CO, demonstrate that CO hot spots will not result.
- _____ G. **HISTORIC RESOURCES:** Describe any cultural, historic, or archaeological resource that is located in the immediate vicinity of the proposed project and the impact of the project on the resource. (SEE SHPO PROCESS)
- _____ H. **NOISE:** Compare the distance between the center of the proposed project and the nearest noise receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Noise Assessment" with conclusions.
- _____ I. **VIBRATION:** If the proposed project involves new or relocated steel tracks, compare the distance between the center of the proposed project and the nearest

vibration receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Vibration Assessment" with conclusions.

- ____ J. **ACQUISITIONS & RELOCATIONS REQUIRED:** Describe land acquisitions and displacements of residences and businesses.
- ____ K. **HAZARDOUS MATERIALS:** If real property is to be acquired, has a Phase I site assessment for contaminated soil and groundwater been performed? If a Phase II site assessment is recommended, has it been performed? What steps will be taken to ensure that the community in which the project is located is protected from contamination during construction and operation of the project? State the results of consultation with the cognizant State agency regarding the proposed remediation?
- ____ L. **COMMUNITY DISRUPTION AND ENVIRONMENTAL JUSTICE:** Provide a socio-economic profile of the affected community. Describe the impacts of the proposed project on the community. Identify any community resources that would be affected and the nature of the effect.
- ____ M. **USE OF PUBLIC PARKLAND AND RECREATION AREAS:** Indicate parks and recreational areas on the site map. If the activities and purposes of these resources will be affected by the proposed project, state how.
- ____ N. **IMPACTS ON WETLANDS:** Show potential wetlands on the site map. Describe the project's impact on on-site and adjacent wetlands.
- ____ O. **FLOODPLAIN IMPACTS:** Is the proposed project located within the 100-year floodplain? If so, address possible flooding of the proposed project site and flooding induced by proposed project due to its taking of floodplain capacity.
- ____ P. **IMPACTS ON WATER QUALITY, NAVIGABLE WATERWAYS, & COASTAL ZONES:** If any of these are implicated, provide detailed analysis.
- ____ Q. **IMPACTS ON ECOLOGICALLY-SENSITIVE AREAS AND ENDANGERED SPECIES:** Describe any natural areas (woodlands, prairies, wetlands, rivers, lakes, streams, designated wildlife or waterfowl refuges, and geological formations) on or near the proposed project area. If present, state the results of consultation with the state department of natural resources on the impacts to these natural areas and on threatened and endangered fauna and flora that may be affected. (COMPLETE DNR FORM)
- ____ R. **IMPACTS ON SAFETY AND SECURITY:** Describe the measures that would need to be taken to provide for the safe and secure operation of the project after its construction.
- ____ S. **IMPACTS CAUSED BY CONSTRUCTION:** Describe the construction plan and identify impacts due to construction noise, utility disruption, debris and spoil

disposal, air and water quality, safety and security, and disruptions of traffic and access to property.

The action described above meets the criteria for a NEPA categorical exclusion (CE) in accordance with 23 CFR Part 771.117 _____.

Applicant's Environmental Reviewer

Date

FTA Grant Representative

Date

| | | | |
|-------------------------------|--------------|-------------|---------------|
| For Agency Use Only: | | | |
| Review Objects _____ | Due _____ | RUSH | |
| Related ERDB# _____ | | | |
| Search Radius _____ mi. | ER/All _____ | Map'd _____ | EOs _____ |
| NoR/ NoC/ NoE/ Std/ Sub _____ | Let _____ | Inv _____ | Log out _____ |

MINNESOTA NATURAL HERITAGE INFORMATION SYSTEM (NHIS) DATA REQUEST FORM

DATE OF REQUEST: _____

WHO IS REQUESTING THE INFORMATION?

Name and Title: Susan Stensland, Grants Manager

Agency/Company: Metropolitan Council

Address: 560 6th Avenue North Minneapolis MN 55411

(Street)

(City)

(State)

(Zip Code)

Phone: 612-349-7603 FAX: 612-349-7503 e-mail: susan.stensland@metc.state.mn.us

WHAT INFORMATION DO YOU NEED?

Preferred Reply Method: Email X US Mail _____

- Printouts of known occurrences of federally and state listed plants and animals; native plant communities; and aggregation sites such as bat hibernacula, colonial waterbird nesting sites, and prairie chicken booming grounds.
 - With Environmental Review
 - Printouts Only; No Review Needed

- Printouts of information listed above, plus geological features and state rare species with no legal status.
 - With Environmental Review
 - Printouts Only; No Review Needed

Other (describe): For the purpose of applying for project funds from the Federal Transit Administration, we need to verify that there is no **Impacts on Ecologically Sensitive Areas and Endangered Species**: Describe any natural areas (woodlands, prairies, wetlands, rivers, lakes, streams, designated wildlife or waterfowl refuges, and geological information) on or near the proposed project area. If present, state the results of consultation with the State Department of Natural Resources on the impacts to these natural areas and on threatened and endangered fauna and flora that may be affected."

INFORMATION WE NEED FROM YOU:

- 1) **Enclose a map** of the project boundary (topographic maps or aerial photos are preferred).
- 2) If possible, please **provide a GIS shapefile** (NAD 83, UTM Zone 15N) of the project area
- 3) List the following locational information (attach additional sheets if necessary):

| | |
|----------------------|---|
| For Agency Use Only: | <u>County</u> _____ <u>Township #</u> _____ <u>Range #</u> _____ <u>Section(s) (please list all sections)</u> _____ |
| | _____ |
| | _____ |
| | _____ |

- 4) Please provide the following information (attach additional sheets if necessary):

| |
|---|
| Project Name _____ |
| Project Proposer _____ |
| Detailed Project Description (see instructions, please) _____ |
| _____ |
| _____ |
| Current/Past Land-Use of Project Site _____ |
| _____ |

5) You will be provided with a response letter, an index database printout, and a detailed database printout. **Describe how you plan to use this information, including** in what form and detail, if any, you wish to publish this information. (Please note that we do not generally give permission to publish the detailed database printout.) This information will be used as part of the environmental documentation required by the Federal Transit Administration in their application process. Federal funds will be used to support the project described herein.

TURN-AROUND TIME

Requests generally take **3 weeks** from date of receipt to process, and are processed in the order received. Rush requests are processed in 2 weeks or less, and include an extra fee.

FEES

For-profit organizations, including consultants working for governmental agencies, are charged a fee for this service. In addition, **a fee may be charged for large requests from any source. A surcharge of \$50 is applied for ALL rush orders;** if this is a rush order, please check the blank below. All fees are subject to change. Please do not include payment with your request; an invoice will be sent to you.

_____ **Rush - (\$50 fee for ALL rush orders)**

“The information supplied above is complete and accurate. I understand that material supplied to me from the Minnesota Natural Heritage Information System is copyrighted and that I am not permitted to reproduce or publish any of this copyrighted material without prior written permission from the Minnesota DNR. Further, if permission to publish is given, I understand that I must credit the Minnesota Natural Heritage and Nongame Research Program, Minnesota Department of Natural Resources as the source of the material.”

Signature _____
(required)

Mail or email completed forms to:

For further information call:

Lisa Joyal (for projects associated with environmental reviews; e.g., EAWs)
Endangered Species Environmental Review Coordinator
lisa.joyal@dnr.state.mn.us

(651) 259-5109

or

Sharron Nelson (for general requests)
Assistant Database Manager
sharron.nelson@dnr.state.mn.us

(651) 259-5123

at

Natural Heritage and Nongame Research Program
Minnesota Department of Natural Resources
500 Lafayette Road, Box 25
St. Paul, Minnesota 55155

Or FAX completed forms to: (651) 296-1811

Additional information about the Natural Heritage & Nongame Research Program is available at
<http://www.dnr.state.mn.us/eco/nhnrp/>

For Agency Use Only:

EO's requiring comment

| Sources contacted | Topic | Response |
|-------------------|-------|----------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Responder

Revised May 2007

Instructions for the Minnesota Natural Heritage Information System Data Request Form

Please read the following!

- There is generally a **3-week turn-around time** to process requests. Rush requests (2 week turn-around) are charged an additional \$50 (Please note that the rush fee applies to all rush requests regardless of non-profit or government status).
- Legible **maps** clearly showing the location and boundaries of the project (**including associated infrastructure**) are required for processing all data requests. Topographic maps or aerial photographs are preferred.
- If the project boundary is large **or** complex, please provide a **GIS shapefile** (NAD 83, UTM Zone 15) of the project boundary. An additional “digitizing fee” (regardless of non-profit or government status) will be charged for projects that require a substantial amount of time to digitize.
- Please provide a detailed **project description**, attaching separate pages to the form if necessary. Identify the type of development (e.g., housing, commercial, utility, ethanol facility) being proposed, the size and # of units (if applicable), construction methods, and **any associated infrastructure** such as access roads, utility connections, and water supply and/or discharge pipelines.
- **Signatures** are required. The person whose name is entered on the form under the “Who is Requesting the Information” section must sign the form as an acknowledgment of the State of Minnesota’s copyright on all generated printouts.
- We cannot begin processing data requests until we receive all parts of the request, including a map and a completed, signed information request form. Our reply due date will be 3 weeks (2 weeks for a rush job) from when we receive a complete request.
- **Responses** are returned to the person whose name is entered on the form under the “Who is Requesting the Information?” section.
- On the form, note the first sentence under the subheading “**FEES**”. As a courtesy, we currently provide database searches to other governmental agencies and non-profit entities free of charge. For-profit entities, *including* consultants working for governmental agencies, are charged a fee. Please do *not* include payment with your request; an invoice will be sent to you.
- An **electronic copy** of the form is available at the DNR’s web site – http://files.dnr.state.mn.us/eco/nhnrp/nhis_data_request.pdf
- You may reproduce this form for your own use or to distribute.

**State Historic Preservation Office (SHPO)
Approval Process for CE**

As part of the required documentation for obtaining a CE from FTA, we need to obtain concurrence from SHPO that the proposed project will not have a negative impact on any historic resources. To obtain approval, the grants office has been delegated authority by FTA to request directly from SHPO the required concurrence for inclusion in the CE documentation.

The Grants Office will submit a request to:

Mr. Dennis Gimmestad
Government Programs and Compliance Officer
State Historic Preservation Office
345 Kellogg Blvd. West
St. Paul, MN 55102

The request will include the following information:

1. Site location including address, city, section, Township, range (legal description)
2. Current and previous use description including any buildings or activities located on site that would be removed or demolished.
3. Map - USGS quad
4. Site Plan

Review and Concurrence

This Agreement/amendment meets award criteria adopted by the Council income grants.

| | | |
|---|----------------------------------|-------|
| | _____ | _____ |
| | Project Manager | Date |
| | _____ | _____ |
| | Grants Manager | Date |
| | _____ | _____ |
| | Finance | Date |
| : | _____ | _____ |
| | Metro Transit GM/MTS Director | Date |

Part 1 B. Attach information needed to prepare Agreement/Amendment.

Required:

- Approved description of project and/or scope of work
- Approved project budget

Check all that apply and attach as needed

- Copy of Notice of Grant Award (NOGA)
- Council Item (Administrative amendments or agreements for \$250,000 or less do not require)
- Council Item for the agreement

PART 2 Process for routing

| | <u>Party</u> | <u>Action</u> | <u>Party Initial and Date</u> |
|----|-----------------|---|-------------------------------|
| 1. | RA Finance | Assign Council number (SG__) | |
| 2. | General Counsel | Agreement finalization | |
| 3. | Project Manager | Agreement review and distribution to subrecipient for signature (4Copies) | |
| 4. | Project Manager | Receives signed copies | |
| 5. | Project Manager | Request authorized signature with division head Use cover letter templates | |
| 6. | General Counsel | Approval as to form of the agreement | |
| 7. | RA/Auth Sign. | Sign and return to project manager | |
| | Project Manager | Distribution of executed agreements a) One copy to Subrecipient (original signature) b) One copy to project file (original signature) c) One copy to Grants office (original signature) d) One copy to Finance (contract staff) for agreement encumbrance setup | |



Notice of Grant Award

Prepared on:

Section 1-Project Information

| | | | |
|--------------------|--|-------------------|--|
| Project Manager(s) | | Award Date | |
| Grant Title | | Council Project # | |

Section 2- Fund Information

| | | | | | | |
|---|--|------------------------------|--|-----------------|----------------|------------------|
| Funding Source (federal, state, other) | | Apportionment Fiscal Year | | CFDA # | | |
| Grant # | | Match Required | | Current Revenue | New Revenue | Total Revenue |
| Grant Begin Date | | Award Amount | | | | |
| Grant End Date | | Local Match Amount | | | | |
| | | Total Eligible Amount | | | | |

Section 3-Workscope

| |
|--|
| |
|--|

Section 4 - Revisions & Amendments

| |
|--|
| |
|--|

Section 5- Revenue & Expense Budget

Project:

Project Manager:

| Revenue Description | Acct. | Fund | Org. | Prog. | Sub class | Proj. | Previous Revenue Budget | Budget Change (+ / -) | Current Revenue Budget |
|-----------------------------|-------|------|------|-------|--------------|-------|-------------------------------|--------------------------|------------------------------|
| FTA | | | | | | | | | \$ - |
| Local Match | | | | | | | | | \$ - |
| Total Revenue Budget | | | | | | | \$ - | \$ - | \$ - |

| Expense Line | Acct | Fund | Org. | Prog. | Sub Class | Proj. | Previous Expense Budget | Budget Change (+ / -) | Current Expense Budget |
|---------------------------|------|------|------|-------|--------------|-------|-------------------------------|--------------------------|------------------------------|
| | | | | | | | | | \$0 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | \$ - |
| Total Expense Line | | | | | | | \$ - | \$ - | \$ - |

Project:

Project Manager:

Exhibit B
Managing Federally Funded Projects

| Revenue Description | Acct. | Fund | Org. | Prog. | Sub class | Proj. | Previous Revenue Budget | Budget Change (+ / -) | Current Revenue Budget |
|-----------------------------|-------|------|------|-------|-----------|-------|-------------------------|-----------------------|------------------------|
| FTA | | | | | | | | | \$ - |
| Local Match | | | | | | | | | \$ - |
| Total Revenue Budget | | | | | | | \$ - | \$ - | \$ - |

| Expense Line | Acct | Fund | Org. | Prog. | Sub Class | Proj. | Previous Expense Budget | Budget Change (+ / -) | Current Expense Budget |
|---------------------------|------|------|------|-------|-----------|-------|-------------------------|-----------------------|------------------------|
| | | | | | | | | | \$0 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | \$ - |
| Total Expense Line | | | | | | | \$ - | \$ - | \$ - |

| | | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|--|
| Grant Total Expense: | | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|--|

Section 6-Terms and Conditions

FTA Terms and Conditions: This grant is subject to the FTA Master Agreement; 49 CFR Subtitle A, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government; FTA Circular C 5010.1C – Grant Management Guidelines; and all other regulations cited or referenced in the previously listed documents. Procurement and Disadvantaged Business Enterprise (DBE) regulations specific to FTA apply. For questions on application process, expense allowability, rebudgeting and general administration of grant funding, contact Susan Stensland at 349-7603. Contact Chris Gran at 349-5060 for procurement questions; Wanda Kirkpatrick at 602-1050 for DBE questions.

COST ELIGIBILITY

The Grant Period reflects a time frame during which costs incurred for this project are eligible to be charged. If the time line on the project changes, an extension of the end date can be requested. Contact grants management staff with any questions.

Project Managers should review all expenditures against this grant to determine if the charges fall under one of the activity lines listed in the approved budget and is within the dollars available. Grants Management staff should be contacted if the cost does not appear to be part of the approved budget and to see if rebudgeting is needed and allowable. Under no circumstances should charges be made in excess of the total grant dollars available.

QUARTERLY REPORTS REQUIREMENT

Project Managers are responsible for completing and submitting quarterly Milestone/Progress Report for this grant or portion of grant under their supervision. Reports are due on the following dates:

- 1st Quarter ---January 15th of current year
- 2nd Quarter --- April 15th of current year
- 3rd Quarter --- July 15th of current year
- 4th Quarter --- October 15th of current year

Grants will notify Project manager of all reports that are due.

FINAL REPORT a final narrative milestone/progress report must be submitted to the Grants Specialist 60 days after completion of all project and related activities. The report must include detailed description of the activities completed, budget modifications and/or balances, and list of any equipment purchased under the grant. Upon receipt of the Final Report, the Grants Specialist will begin project close-out process.

A Milestone/Progress Report is **required even when no activity** has occurred within the quarter. Payments can be withheld by FTA for failure to submit the progress reports in a timely manner. Any delay in submitting the reports should be communicated to the Grants Specialist immediately. Please use the form provided to submit the reports electronically or manually.



Subrecipient Contract Initiation Memo

Section 1 – Project Information – to be completed by the Subrecipient Project Manager

| | | | |
|---|--|---------------------------------|--------------------------------|
| Subrecipient Project Manager: Phone: | | Date: | |
| Project Title: | | MC Project #: | |
| Proposed Services: | | Estimated Cost: | |
| Period of Performance: | From | To: | |
| Subcontracting: | Indicate whether or not there as a reasonable opportunity for subcontracting of this procurement | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Subrecipient Project Manager – I have accurately completed the information in Sections 1, 2, and 3 of this SCIM. If this will be a federally funded purchase, I have completed and filed an Independent Cost Estimate.

Date: _____

Signature

Council Project Manager Approval
I have reviewed the information in Sections 1, 2, and 3 and approve the initiation of this contract.

Date: _____

Signature

Title

Section 2 – Funding – to be completed by the Council Project Manager *Check one box only:*

- This contract will be FTA-assisted (complete the *Grant Approval* section, below)
- This contract will be USDOT-assisted by an agency other than FTA (i.e. FAA or FHWA)
- This contract will be Minnesota PFA-eligible
- This contract will NOT be assisted with grant funds from any source
- This contract has special funding:

| | | | | | | |
|-----------------------------|--|------|-----|---------|----------|---------|
| Subrecipient Project Budget | Project identification within the Subrecipient Accounting system and approved budget | | | | | |
| Met Council Project Budget | Account | Fund | Org | Program | Subclass | Project |
| | | | | | | |

Comments:

Council Grant Approval –
to be completed for all FTA-assisted contracts

Federal Grant Number: _____

| | |
|--------------------------|------|
| Grants Manager Signature | Date |
|--------------------------|------|

Funding Approval – Subrecipient financial officer.

Signature _____ Date _____

Title _____ (To be signed by appropriate authorized Subrecipient staff)

Section 3 – Solicitation and Selection Process – to be completed by Subrecipient Project Manager

1. Type(s) of contractor and subcontractors involved in this contract: (Please list by specialty, skill or industry)

2. Proposed means of publicizing the availability of the contract

- State Register
- Construction Bulletin
- Trade Publication(s): (Please list) _____, _____, _____
- Community Organization(s): _____, _____, _____
- Other: (Please Explain) _____

3. Proposed process to select contractor

- Sole Source Other: (Please explain) _____
- Sealed bids _____
- Council staff evaluation committee

Section 4 – Diversity – to be completed by Council Office of Diversity and Equal Opportunity Staff

- I wish to review the solicitation documents prepared for this procurement prior to advertisement and distribution
- I wish to be involved in the selection process for this procurement

The following diversity business subcontracting goal(s) or preference apply to this contract:

- DBE Goal of _____% M/WBE Goal of _____% TGB Goal of _____%
- MBE Goal of _____% SBRA Goal of _____%
- WBE Goal of _____% TGB Preference of _____%

Reviewed by:

Date:

Section 5 – Authorization

By **Subrecipient** in accordance with its organizational structure.

I authorize the initiation of the contracting process for this procurement.

Signature of Authorized Signer

Date: _____

Title of Authorized Signer

Distribution – executed original filed in Subrecipient records; copies provided to:

- Council Project Manager Council Office of Diversity Council Grants Manager
- Council Procurement Manager

Subrecipient Invoice

Remit to: _____
 Address: _____

Federal Grant No.: _____ Met Council Contract No.: _____
 Grant period: _____ Is this the FINAL invoice? Yes _____ No _____
 Invoice # _____ Dates covered by invoice: _____

Attach itemized detail and copies of receipts for all non-recurring expenditures

| Income Sources | Approved Income budget | Income recognized this | Income recognized year | Unrecognized income |
|-----------------------------------|------------------------|------------------------|------------------------|---------------------|
| INCOME | | | | |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| Total Income | \$ - | \$ - | \$ - | \$ - |
| Approved Budget Expense Category* | Approved Budget Amount | Expenses incurred this | Year to Date Actual | Balance Remaining |
| EXPENSE | | | | |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| | | | | \$ - |
| Total Expenditures | \$ - | \$ - | \$ - | \$ - |

Amount of Reimbursement : _____ (total expense less match provided by Subrecipient)

Certification: I certify the expenditures reflected in this invoice are true and correct and have been made for the purpose of and in accordance with applicable terms and conditions of the award. I have examined the expenditures reflected on this bill and determined that each reflects a reasonable price based on market prices offered by the vendors to the general public. Appropriate documentation to support these authorized expenditures is on file and available for review. These expenditures are not reimbursable from other sources and have not been previously claimed.

Authorized Signature: _____ **Date:** _____

* Copies of invoices for all non-recurring expenses should be included as attachments to this invoice. Invoices are submitted in triplicate.

Council Approval for Subrecipient Invoice

Subrecipient: _____

BLPO: _____

Total invoice amount: _____ Reimburse : _____ FTA _____ Other

| Expense Line | Acct | Fund | Org. | Prog. | Sub Class | Proj. |
|--------------|------|------|------|-------|-----------|-------|
| Subrecipient | | | | | | |

1. Project Manager receives 3 copies of invoice plus attachments

(Project manager retains one copy and routes the other two with this form.)

Project Manager approval: _____

Supervisor approval: _____

DBE Office (retain one copy): _____

Grant Mgr approval: _____

2. Purchasing:

Assign Release PO: _____

3. Finance: (retain one copy)

Finance retains the attached invoice documentation, reviews and processes for payment and sends a copy of this completed form to the Project Manager

DBE Progress/Project Report

| | | | |
|----------------------------------|--|--|---------|
| 1. Project #: | | 9. Original Contract Amount: | |
| 2. Project Title: | | 10. Contract Change Orders: | |
| 3. Prime Contractor: | | 11. Total Contract Amount: | \$0.00 |
| 4. Type of Services: | | 12. Contract Dollars Expended: | |
| 5. Contract # | | 13. Contract Dollars Remaining: | \$0.00 |
| 6. Contract Award Date: | | 14. Amount Paid to Date: | |
| 7. Payment Claim #: | | 15. Percent Paid to Date: | #DIV/0! |
| 8. DBE Progress Report #: | | | |

Utilization Goal: _____ %

___ Interim Report

Reporting Period: From _____ to _____

___ Final Report

| A) DBE Subcontractor | B) Company DBE is Sub-contracting to | C) \$\$ Amount of Original DBE Contract | D) \$\$ Amount DBE Subcontracted to Others (see Instruction 2) | E) \$\$ Amount in Change Orders to DBE Contract | F) Total DBE Contract \$\$ Amount (see Instruction 3) | G) \$\$ Amount DBE Paid This Pay Request | H) \$\$ Amount Paid To DBE To Date |
|---|--------------------------------------|---|--|---|---|--|------------------------------------|
| 16 | | | | | \$ - | | |
| 17 | | | | | \$ - | | |
| 18 | | | | | \$ - | | |
| 19 | | | | | \$ - | | |
| 20 | | | | | \$ - | | |
| 21 | | | | | \$ - | | |
| 22 | | | | | \$ - | | |
| 23 | | | | | \$ - | | |
| 24 | | | | | \$ - | | |
| 25 | | | | | \$ - | | |
| (see Instruction 3) DBE Totals: | | | | | \$0.00 | \$0.00 | \$0.00 |
| (see Instruction 3) Contract DBE % of Total Current Contracted Amount: | | | | | | | #DIV/0! |
| (see Instruction 3) Paid DBE % of Total Contract Amount Billed: | | | | | | | #DIV/0! |

Explanation if DBE Goal Not Being Met or Other Comments:

| | |
|-------------------|--------------|
| Signature: | Date: |
| Title: | |

INSTRUCTIONS:

1. Insert information in all blank spaces.
2. **Amount DBE Subcontracted to Others** (Column D) shall include non-DBE amounts included in Column E.
3. **Do NOT enter information into yellow cells. Information will be automatically calculated and entered.**

METROPOLITAN COUNCIL/METRO TRANSIT

PAYMENT REQUEST NO. _____ FOR CONSTRUCTION WORK/SERVICES

_____ Interim Payment Request _____ Final Payment Request

(NOTE: DIVERSITY OFFICE SIGN OFF REQUIRED FOR FINAL PAY REQUESTS ON FEDERALLY FUNDED PROJECTS)
(NOTE: CONTRACTS SIGNOFF REQUIRED FOR FINAL PAY REQUESTS ON CONSTRUCTION AND CONTRACTS)

| | |
|----------------|------------------------------|
| PAY TO: _____ | DATE: _____ |
| ADDRESS: _____ | PERIOD FROM: _____ TO: _____ |
| _____ | CONTRACT # _____ WO # _____ |
| _____ | INVOICE # _____ DATE _____ |

PROJECT NAME: Support Facilities Security and Retaining Wall- FTH PROJ # 62313

| CONTRACT SUMMARY: | |
|---|------|
| ORIGINAL CONTRACT AMOUNT | \$ - |
| CHANGE ORDERS TO DATE (CO#1 through _____): | \$ - |
| REVISED CONTRACT AMOUNT | \$ - |

| RETAINAGE : | |
|------------------------|------|
| PREVIOUS RETAINAGE | \$ - |
| THIS PAYMENT RETAINAGE | \$ - |
| TOTAL RETAINAGE | \$ - |

| AMOUNT OF PAYMENT: | |
|---------------------------------------|------|
| TOTAL EARNED TO DATE | \$ - |
| AMOUNT RETAINED (____%) | \$ - |
| LESS AMOUNT PAID OR BILLED PREVIOUSLY | \$ - |
| AMOUNT DUE THIS PAYMENT | \$ - |

CERTIFICATION BY CONTRACTOR
I hereby certify that the above services have been performed and that this claim is just and correct and no part of it has been paid

By _____
Contractor's/Consultant's Authorized Representative Date _____

METROPOLITAN COUNCIL CERTIFICATION
I hereby certify that I have prepared or examined this claim for work performed during the period for which this payment claim has been made and that the Contractor is entitled to payment of the claim Under the terms of the contract

By _____
Council's Authorized Representative/ Project Manager Date _____

By _____
Project Manager/Supervisor Date _____

NOTE: Blanket PO/Release PO required for all payments

COMPLETE THIS SIGNATURE SECTION FOR FINAL PAY REQUESTS ONLY

_____ Federal Funding Applies
METROPOLITAN COUNCIL DIVERSITY/EEO CERTIFICATION (final pay requests for federally-funded projects only)

By _____
Diversity Office Representative Date _____

METRO TRANSIT CONTRACTS (receipt of Form IC 134 and other close-out documents)

By _____
Contracts Office Representative Date _____

| ACCOUNT CHART FIELD | | | | | | | PROJECT/FUND CODE APPROVAL: | |
|---------------------|------|------|------|-------|---------|--------|-----------------------------|------------|
| Account | Fund | Dept | Prog | Class | Project | Amount | (finance dept use only) | |
| | | | | | | | By _____ | _____ |
| | | | | | | | Grants Analyst | Date _____ |
| | | | | | | | ECHO DRAW # | |

COMMENTS: This section is required to be completed to document any processing delays. Note the Council is legally required to make payment within as specified period or pay interest to the vendor. Documentation of all delays is imperative in determining whether or not the interest charge applies.

METROPOLITAN COUNCIL/METRO TRANSIT

PAYMENT REQUEST NO. _____ FOR ENGINEERING/CONSULTANT CONTRACTS

_____ Interim Payment Request _____ Final Payment Request

(NOTE: DIVERSITY OFFICE SIGN OFF REQUIRED FOR FINAL PAY REQUESTS ON FEDERALLY FUNDED PROJECTS)

(NOTE: CONTRACTS SIGNOFF REQUIRED FOR FINAL PAY REQUESTS ON CONSTRUCTION CONTRACTS)

| | |
|----------------|------------------------------|
| PAY TO: _____ | DATE: _____ |
| ADDRESS: _____ | PERIOD FROM: _____ TO: _____ |
| _____ | CONTRACT # _____ WO # _____ |
| _____ | INVOICE # _____ DATE _____ |

| | |
|---------------------|--------------|
| PROJECT NAME: _____ | PROJ # _____ |
|---------------------|--------------|

| CONTRACT SUMMARY: | |
|--------------------------|------|
| ORIGINAL CONTRACT AMOUNT | \$ - |
| AMENDMENT #1 | \$ - |
| AMENDMENT #2 | \$ - |
| AMENDMENT #3 | \$ - |
| NET CHANGES(SUBTOTAL) | \$ - |
| REVISED CONTRACT AMOUNT | \$ - |

| AMOUNT OF PAYMENT: | |
|---------------------------------------|------|
| TOTAL EARNED TO DATE | \$ - |
| LESS AMOUNT PAID OR BILLED PREVIOUSLY | \$ - |
| AMOUNT DUE THIS PAYMENT | \$ - |

CERTIFICATION BY CONTRACTOR
I hereby certify that the above services have been performed and that this claim is just and correct and no part of it has been paid

By _____
Contractor's/Consultant's Authorized Representative Date

METROPOLITAN COUNCIL CERTIFICATION
I hereby certify that I have prepared or examined this claim for work performed during the period for which this payment claim has been made and that the Contractor is entitled to payment of the claim Under the terms of the contract

By _____
Project Manager Date

By _____
Supervisor Date

NOTE: Blanket PO/Release PO required for all payments

| COMPLETE THIS SIGNATURE SECTION FOR FINAL PAY REQUESTS ONLY | |
|---|--|
| <input type="checkbox"/> Federal Funding Applies METROPOLITAN COUNCIL DIVERSITY/EEO CERTIFICATION (final pay requests for federally-funded projects only) By _____ Diversity Office Representative Date | METRO TRANSIT CONTRACTS (receipt of Form IC 134 and other close-out documents) By _____ Contracts Office Representative Date |

| ACCOUNT CHART FIELD | | | | | | | PROJECT/FUND CODE APPROVAL: |
|---------------------|------|------|------|-------|---------|--------|---------------------------------------|
| Account | Fund | Dept | Prog | Class | Project | Amount | (finance dept use only) |
| | | | | | | \$ - | By _____ Grants _____ Analyst Date |
| | | | | | | | ECHO DRAW # |
| | | | | | | | |

COMMENTS: This section is required to be completed to document any processing delays. Note the Council is legally required to make payment within as specified period or pay interest to the vendor. Documentation of all delays is imperative in determining whether or not the interest charge applies.

EXHIBIT C

Specific Federal Clauses

(For the purposes of this exhibit, the term “CONTRACTOR” shall refer to any independent contractors retained by the “City” under this Agreement)

1. Fly America Requirements. The CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. Energy Conservation. The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

3. Access to Records and Reports. The CONTRACTOR agrees to provide the COUNCIL, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

CONTRACTOR also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or the Administrator’s authorized representatives, including any project management oversight (PMO) contractor, access to CONTRACTOR’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.

The CONTRACTOR agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any requirements for maintenance of project records and documents in other sections of this Contract, CONTRACTOR agrees to maintain such records and documents until the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this Contract

4. Federal Changes. The CONTRACTOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

5. Recovered Materials. The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR part 247.

6. No Obligation by the Federal Government. The COUNCIL and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this Contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the COUNCIL, CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The CONTRACTOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

7. Program Fraud and False or Fraudulent Statements or Related Acts. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.*, and USDOT regulations, “*Program Fraud Civil Remedies*,” 49 CFR part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

8. Civil Rights. The following requirements apply to this Contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- 2. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
 - a. Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 42 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 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Contract. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - b. Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 532, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

c. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

3. **Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this Section 15.08 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

9. Disadvantaged Business Enterprise (“DBE”).

1. **Nondiscrimination.** Pursuant to 49 CFR section 26.13, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this contract.

a. **Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR’s receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR’s receipt of payment of retainage from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this contract and the imposition of Administrative Sanctions described in paragraph 6 below.

10. **Incorporation of FTA Terms.** Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set

forth in the most current version of 49 CFR section 18.36 and FTA Circular 4220.1F are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

11. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

12. Clean Water. The provisions of this section 15.11 apply only if the amount of this contract (including the value of any amendments thereto) exceeds \$100,000.

The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.* The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. Certification of Restrictions on Lobbying; Disclosure. The provisions of this Section 15.12 apply only if the amount of this contract (including the value of any amendments thereto) is equal to, or exceeds \$100,000.

The CONTRACTOR certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR for influencing or attempting to influence an officer or employee of any federal 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. The certification of this compliance ("Lobbying Restriction Certification") submitted by CONTRACTOR in connection with this project is incorporated in, and made a part of, this contract.

The CONTRACTOR further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the projects funded by the funds allocated to the CONTRACTOR in this agreement, the

CONTRACTOR shall complete and submit to the COUNCIL, Standard Form-LLL, “*Disclosure Form to Report Lobbying*,” in accordance with its instructions.

The CONTRACTOR certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the CONTRACTOR. All certifications and disclosures shall be forwarded to the COUNCIL by the CONTRACTOR.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by CONTRACTOR in connection with this project and incorporated in, and made a part of, this contract) are material representations of fact upon which the COUNCIL relies when this contract is made.

14. Clean Air. The provisions of this section 15.13 apply only if the amount of this contract (including the value of any amendments thereto) exceeds \$100,000.

The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. section 7401 *et seq.* The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. Integrity Certification. The provisions of this section 15.14 apply only if the amount of this contract (including the value of any amendments thereto) exceeds \$100,000.

By signing this contract, the CONTRACTOR certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any Federal department or agency. This certification is a material representation of fact upon which the COUNCIL relies in entering this contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The CONTRACTOR shall provide to the COUNCIL immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

Title: Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

OMB Control Number: 2126-0008.

Type of Request: Revision of a currently-approved information collection.

Respondents: Insurance and surety companies of motor carriers of property (Forms MCS-90 and MCS-82) and motor carriers of passengers (Forms MCS-90B and MCS-82B).

Estimated Number of Respondents: 175,338.

Estimated Time per Response: The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or three minutes for the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle (foreign-domiciled motor carriers only) [49 CFR 387(f)]. These endorsements are maintained at the motor carrier's principal place of business [49 CFR 387.7(iii)(d)].

Expiration Date: March 31, 2010.

Frequency of Response: Upon creation, change or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 4,056 burden hours [182 hours for Passenger Carriers + 3,401 hours for Property Carriers + 33 hours for Property Carrier Surety Bonds) + 440 hours for placing financial responsibility documents in Canada-domiciled and Mexico- and Non-North America (NNA)-domiciled carriers].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: October 9, 2009.

David Anewalt,

Acting Associate Administrator, for Research and Information Technology.

[FR Doc. E9-25071 Filed 10-16-09; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2010 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. 5323(n), FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document. FTA is also required by 49 U.S.C. 5323(n) to publish a list of those certifications and assurances annually.

Appendix A of this Notice contains the comprehensive compilation of FTA's Certifications and Assurances for Federal Fiscal Year (Federal FY) 2010 applicable to the various Federal assistance programs that FTA will administer during that Federal FY. FTA's Certifications and Assurances for Federal FY 2010 reflect Federal statutory, regulatory, and programmatic changes that have now become effective.

DATES: *Effective Date:* These FTA Certifications and Assurances are effective on October 1, 2009, the first day of Federal FY 2010.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate FTA Regional Office or FTA Metropolitan Office listed below. For copies of other related documents, see the FTA Web site at <http://www.fta.dot.gov> or contact FTA's Office of Administration at 202-366-4022.

Region 1: Boston

States served: Connecticut (bus only), Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617-494-2055.

Region 2: New York

States served: Connecticut (rail only), New York, and New Jersey. Telephone # 212-668-2170.

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. Telephone # 215-656-7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Territories served: Puerto Rico and the U.S. Virgin Islands. Telephone # 404-865-5600.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312-353-2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Telephone # 817-978-0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816-329-3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720-963-3300.

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Territories served: Guam, American Samoa, and the Northern Mariana Islands. Telephone # 415-744-3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206-220-7954.

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area. Telephone # 312-886-1616.

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area. Telephone # 213-202-3950.

Lower Manhattan Recovery Office

Area served: Lower Manhattan. Telephone # 212-668-1770.

New York Metropolitan Office

Area served: New York Metropolitan Area. Telephone # 212-668-2201.

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area. Telephone # 215-656-7070.

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area. Telephone # 202-219-3562/219-3565.

SUPPLEMENTARY INFORMATION:

1. Purposes

The purposes of this Notice are to:

- Publish FTA's Federal FY 2010 Certifications and Assurances for Applicants for Federal assistance administered by FTA and the Projects for which they seek Federal assistance.

- Highlight new changes to the FTA Certifications and Assurances now in effect.
- Identify locations where these FTA Certifications and Assurances may be viewed, and
- Provide directions for submitting these FTA Certifications and Assurances.

2. Background

a. *FTA's Responsibilities.* Since Federal FY 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, when feasible in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act. Because U.S. DOT's full-year appropriations for Federal FY 2010 were not signed into law on October 1, 2010 (the first day of Federal FY 2010), and have not yet been signed into law, FTA is proceeding with publication of its Certifications and Assurances for FY 2010.

b. *Applicant's Responsibilities.* Irrespective of whether a project will be financed under the authority of 49 U.S.C. chapter 53, Title 23, United States Code, or another Federal statute, the Applicant must submit Federal FY 2010 Certifications and Assurances to FTA applicable to all projects for which the Applicant seeks funding during Federal FY 2010.

FTA requests that an Applicant submit all of the twenty-four (24) categories of the Certifications and Assurances that may be needed for all projects for which the Applicant intends to or might seek Federal assistance in the Federal FY 2010. Selecting and submitting these Certifications and Assurances to FTA signifies the Applicant's intent and ability to comply with all applicable provisions thereof.

In order to assure FTA that the Applicant is authorized under State and local law to certify compliance with the FTA Certifications and Assurances it has selected, FTA requires the Applicant to obtain a current (Federal FY 2010) affirmation signed by the Applicant's attorney affirming the Applicant's legal authority to certify its compliance with the FTA Certifications

and Assurances that the Applicant has selected. The Applicant's attorney must sign this affirmation during Federal FY 2010. Irrespective of whether the Applicant makes a single selection of all twenty-four (24) categories of FTA Certifications and Assurances or selects individual categories from the FTA Certifications and Assurances, the Affirmation of Applicant's Attorney from a previous Federal FY is not acceptable, unless FTA expressly determines otherwise in writing.

c. *Effect of Subrecipient Participation.* Absent a written determination by FTA to the contrary, the Applicant itself is ultimately responsible for compliance with the FTA Certifications and Assurances it has selected even though the Project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the Project, when the Applicant submits its FTA Certifications and Assurances, the Applicant is also signifying that it will be responsible for compliance, both of itself and of each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected. Therefore, in providing Certifications and Assurances that necessarily involve the compliance of any prospective subrecipient, FTA strongly recommends that the Applicant take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient participating in the project, to assure the validity of the Applicant's Certifications and Assurances to FTA.

3. Significant Information About FTA's Certifications and Assurances for Federal FY 2010

a. Legal Implications

(1) *Binding Commitments.* Because the Applicant is required by Federal law and regulations to comply with the applicable provisions of all FTA Certifications and Assurances it submits, it is important that the Applicant be familiar with the provisions of all twenty-four (24) categories of FTA Certifications and Assurances for Federal FY 2010. The text of those Certifications and Assurances is contained in Appendix A of this Notice, and also appears at <http://www.fta.dot.gov/documents/2010-Certs-Appendix.A.pdf>, and in FTA's electronic award and management system, TEAM-Web, <http://ftateamweb.fta.dot.gov>, at the "Cert's & Assurances" tab of the "View/Modify Recipients" page in the "Recipients" option. Provisions of this Notice supersede conflicting statements in any FTA circular containing a

previous version of FTA's annual Certifications and Assurances. The Certifications and Assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal FY 2010.

An Applicant's annual Certifications and Assurances to FTA generally remain in effect for either the duration of the Grant or Cooperative Agreement supporting the Project until the Project is closed out or for the duration of the Project or Project property when a useful life or industry standard is in effect, whichever occurs later. If, however, the Applicant provides Certifications and Assurances to FTA in a later year that differ from the Certifications and Assurances previously provided, the later Certifications and Assurances will apply to the Grant, Cooperative Agreement, Project, or Project property, except to the extent FTA permits otherwise in writing.

(2) *Penalties for Noncompliance.* If the Applicant 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 Applicant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, or the penalties of 49 U.S.C. 5323(l) invoking the criminal provisions of 18 U.S.C. 1001, or other applicable Federal law to the extent the Federal government deems appropriate.

(3) *FTA's Certifications and Assurances Constitute Only a Partial List of Federal Requirements.* FTA cautions that the FTA Certifications and Assurances required by Federal law and regulations do not address all the Federal requirements that will apply to the Applicant and its Project. FTA's Certifications and Assurances are generally pre-award requirements, *i.e.*, those requirements of Federal law and regulations the Applicant must fulfill before FTA is legally authorized to award Federal financial assistance to an Applicant.

(4) *Other Federal Requirements.* Because FTA's Certifications and Assurances do not encompass all Federal requirements that will apply to the Applicant and its Project, FTA strongly encourages the Applicant to

review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance. The FTA Master Agreement for Federal FY 2010 at <http://www.fta.dot.gov/documents/16-Master.pdf> identifies a substantial number of those Federal laws, regulations, and directives that apply to Applicants and their various projects.

b. *Importance of FTA's Certifications and Assurances for Federal FY 2010.* Following publication of these Certifications and Assurances, FTA may not award Federal financial assistance through a Federal Grant or Cooperative Agreement until the Applicant submits all of the FTA Certifications and Assurances for Federal FY 2010 pertaining to itself and its project as required by Federal laws and regulations. The Applicant's Certifications and Assurances for Federal FY 2010 will be applicable to all projects for which it seeks Federal assistance during Federal FY 2010 and through the next Federal FY until FTA issues its annual Certifications and Assurances for Federal FY 2011.

c. *Federal FY 2010 Changes.* Apart from minor editorial revisions, significant matters concerning FTA's Certifications and Assurances include the following:

(1) In the Introductory paragraphs preceding the text of FTA's Certifications and Assurances, the FTA Web site for the FTA Master Agreement for Federal FY 2010 is identified as <http://www.fta.dot.gov/documents/16-Master.pdf>.

(2) Certification (01)F.5(g) has been revised to substitute a more specific citation to the confidentiality provisions of the Public Health Service Act of 1912, as amended, in lieu of the general citation to the Public Health Service Act of 1912.

(3) The text of Certification (02), "Lobbying Certification," has been revised for consistency with terms used in the Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. chapter 6, and to add a reference to OMB's Standard Form-LLL, "Disclosure of Lobbying Activities," Rev. 7-97, currently in use.

(4) The heading of Certification (23) has been changed from "Infrastructure Finance Projects" to "TIFIA Projects" for clarity. The acronym "TIFIA" has thus been substituted for the term "Infrastructure Finance" where used previously.

(5) Although the American Recovery and Reinvestment Act of 2009, Public Law 111-5, February 17, 2009 ("Recovery Act") requires the

submission of certain certifications, as a condition of Recovery Act funding, Recovery Act certifications are submitted individually and separately as required by that Act, rather than as a part of FTA's Annual Certifications and Assurances. For that reason, we have not added a new category for annual Recovery Act certifications and assurances.

d. *When to Submit.* All Applicants for FTA formula program or capital program assistance, and current FTA Grantees with an active project financed with FTA formula program or capital program assistance, are expected to provide their FTA Certifications and Assurances for Federal FY 2010 within 90 days from the date of this publication or as soon as feasible after their first application for Federal assistance authorized or made available for Federal FY 2010, whichever is earlier. In addition, FTA encourages Applicants seeking Federal assistance for other projects to submit their FTA Certifications and Assurances to FTA as soon as possible to expedite awards of FTA assistance.

4. Ways To Submit FTA Certifications and Assurances

As further explained, FTA will accept an Applicant's Certifications and Assurances submitted either in TEAM-Web at <http://ftateamweb.fta.dot.gov>, or on paper containing the text set forth on the Signature Page(s) of Appendix A of this Notice. In order of preference, FTA permits:

a. *Electronic Submission in Team-Web.* An Applicant registered in TEAM-Web must submit its FTA Certifications and Assurances, as well as its applications for Federal assistance in TEAM-Web. FTA prefers that other Applicants for Federal assistance submit their FTA Certifications and Assurances through TEAM-Web.

The TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of the "View/Modify Recipients" page contains fields for selecting among the twenty-four (24) categories of FTA Certifications and Assurances to be submitted. There is also a field for entering a single selection covering all twenty-four (24) categories of FTA Certifications and Assurances.

Within the "Cert's & Assurances" tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the FTA Certifications and Assurances selected. In addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal

authority to make and comply with the FTA Certifications and Assurances the Applicant has selected. The Applicant's authorized representative may enter his or her PIN in lieu of the Attorney's PIN, provided that the Applicant has a current Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney in Federal FY 2010.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice or the TEAM-Web Helpdesk.

b. *Paper Submission.* Only if the Applicant is unable to submit its FTA Certifications and Assurances in TEAM-Web may the Applicant submit its FTA Certifications and Assurances on paper.

If an Applicant is unable to submit its FTA Certifications and Assurances electronically, it must mark the categories of FTA Certifications and Assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit them to FTA. The Applicant may signify compliance with all categories by placing a single mark in the appropriate space or select the categories applicable to itself and its projects.

The Applicant must enter its signature on the Signature Page(s) and must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity to make and comply with the Certifications and Assurances the Applicant has selected. The Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney and dated in Federal FY 2010.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice.

Authority. 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), as amended by the SAFETEA-LU Technical Corrections Act, 2008, Public Law 110-244, June 6, 2008; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC, this 8th day of October 2009.

Peter M. Rogoff,
Administrator.

BILLING CODE 4910-57-P

APPENDIX A

**FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

PREFACE

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2010. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of \$100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests each Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(16) for Federal Fiscal Year 2010 at the FTA Web site <http://www.fta.dot.gov/documents/16-Master.pdf>. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the applicable Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient. The Applicant understands and agrees that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects.

APPENDIX A

FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at <http://ftateamweb.fta.dot.gov>. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients." Should the Applicant choose not to submit its certifications and assurances through TEAM-Web, the Applicant may submit its certifications and assurances on paper by submitting the Signature Page(s) at the end of this document, indicating the certifications and assurances it is making on one side of the document or on one page, and signing its affirmation and that of its attorney on the other side or other page.

01. ASSURANCES REQUIRED FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

- (1) Execute and file the application for Federal assistance on behalf of the Applicant;
- (2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
- (3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the

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appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

- (1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project;
- (2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions;
- (3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project;
- (4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits;

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- (5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance; and
- (6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF-424B and SF-424D, the Applicant assures that, with respect to itself or its project, the Applicant:

- (1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;
- (2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
- (3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
- (4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;
- (5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
 - (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

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- (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;
 - (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
 - (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
 - (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;
 - (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and
 - (i) Any other nondiscrimination statute(s) that may apply to the project;
- (6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
- (a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
 - (b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
 - (c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
 - (d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

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- (e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;
 - (f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
 - (g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;
 - (h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and
 - (i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;
- (7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;
 - (8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
 - (9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;
 - (10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;
 - (11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;
 - (12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;
 - (13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure

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- that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;
- (14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:
- (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;
 - (b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;
 - (c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;
 - (d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;
 - (e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;
 - (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;
 - (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;
 - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and
 - (i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);
 - (j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and
 - (k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;
- (15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;
- (16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of

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- Human Subjects,” 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;
- (17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;
 - (18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT; and
 - (19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding \$100,000 until the Applicant provides this certification by selecting Category “02.”

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, “New Restrictions on Lobbying,” at 49 CFR 20.110, the Applicant’s authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding \$100,000:
 - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
 - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” Rev. 7-97; and
 - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts

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under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).

- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a 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.

03. PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system fail to comply with Federal laws or regulations in accordance with applicable Federal directives.

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has expressly approved otherwise in writing.

04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

- A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;
- B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
- C. Paid just compensation under State or local law to the company for any franchise or property acquired.

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05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(b), for a proposed capital project that will substantially affect a community, or the public transportation service of a community, the Applicant certifies that it has, or before submitting its application, it will have:

- A. Provided an adequate opportunity for public review and comment on the proposed project;
- B. After providing notice, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- C. Considered the economic, social, and environmental effects of the proposed project; and
- D. Determined that the proposed project is consistent with official plans for developing the community.

06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock for use in revenue service is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663, at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA-LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

An Applicant that intends to request the use of Federal assistance authorized under 49 U.S.C. chapter 53 to acquire capital assets by lease is required to provide the following certifications. FTA may not provide Federal assistance to support those costs until the Applicant provides this certification by selecting Category "07."

As required by FTA regulations, "Capital Leases," 49 CFR part 639, at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

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- (1) It will not use Federal assistance authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and
- (2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. BUS TESTING

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide Federal assistance for the acquisition of any new bus model or bus model with a major change until the Applicant provides this certification by selecting Category "08."

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665):

- A. The bus model will have been tested at FTA's bus testing facility; and
- B. The Applicant will have received a copy of the test report prepared on the bus model.

09. CHARTER SERVICE AGREEMENT

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."

- A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.4, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands and agrees that:
 - (1) The requirements of FTA regulations, "Charter Service," 49 CFR part 604, will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;
 - (2) The definitions of FTA regulations, "Charter Service," 49 CFR part 604, will apply to

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- this Charter Service Agreement; and
- (3) A pattern of violations of this Charter Service Agreement may require corrective measures and imposition of remedies, including barring the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has engaged in that pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

10. SCHOOL TRANSPORTATION AGREEMENT

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C.133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C.133 or 142 for such projects until the Applicant enters into this School Transportation Agreement by selecting Category "10."

- A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), the terms and conditions of which are incorporated herein by reference.
- B. The Applicant understands and agrees that:
- (1) The requirements of FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;
 - (2) The definitions of FTA regulations, "School Bus Operations," 49 CFR part 605 will apply to this School Transportation Agreement; and
 - (3) If there is a violation of this School Transportation Agreement, FTA will bar the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has violated this School Transportation Agreement from receiving Federal transit assistance in an amount FTA considers appropriate.

11. DEMAND RESPONSIVE SERVICE

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized under 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized under 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11."

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As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

If the Applicant is required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

13. INTEREST AND OTHER FINANCING COSTS

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Paul S. Sarbanes Transit in Parks Program is required to provide the following certification. FTA may not provide Federal assistance to support interest or other financing costs until the Applicant provides this certification by selecting Category "13."

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest or other financing costs unless it is eligible to receive Federal assistance for those costs and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following

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assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

- A. As provided in subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, apart from certain exceptions, "intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA-LU]." To facilitate compliance with subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing; and
- B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. URBANIZED AREA FORMULA PROGRAM

Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients participating in its projects. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a "Designated Recipient" as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications and assurances.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its

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Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM-Web or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.

FTA may not award Federal assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category "15."

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

- A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
- B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;
- C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;
- D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;
- E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
- F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested

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- parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;
- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
- J. In compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of existing or planned public transportation; and
- K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this Federal fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the total amounts the Designated Recipients receive each Federal fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those

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funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. CLEAN FUELS GRANT PROGRAM

Each Applicant for Clean Fuels Grant Program assistance authorized under 49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category "16."

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the State or State organization serving as the Applicant on behalf of the State, certifies as follows:

- A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
- B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
- C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
- D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;
- E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of

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- 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
- F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- J. The Applicant certifies it will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

**17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES
FORMULA GRANT PROGRAM AND PILOT PROGRAM**

Before FTA may award Elderly Individuals and Individuals with Disabilities Formula Grant Program assistance and, if applicable, Elderly Individuals and Individuals with Disabilities Pilot Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5310. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor,

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or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and section 3012 of SAFETEA-LU, respectively. The State is thus requested to select Category "17."

- A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Grant Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by subsections 3012(b)(3) and (4) of SAFETEA-LU, for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and
 - (3) 49 U.S.C. 5303 through

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- 5306 (planning and private enterprise requirements);
- B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310;
 - C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities;
 - D. In compliance with 49 U.S.C. 5310(d)(2)(A) and subsection 3012(b)(2) of SAFETEA-LU, the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;
 - E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU will be distributed on a fair and equitable basis; and
 - F. In compliance with 49 U.S.C. 5310(d)(2)(B) and subsection 3012(b)(2) of SAFETEA-LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program for States do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established in Category 22 for an Indian tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5311. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications and assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its

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subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "18."

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program for States authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

- A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
- B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;
- C. The State assures that the project equipment and facilities will be adequately maintained;
- D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;
- E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;
- F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;
- G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
- H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. 5311 to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and

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assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."

- A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;
 - (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (6) In compliance with 49 U.S.C. 5316(f)(1) and 49 U.S.C. 5307(d)(1)(F), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct a statewide solicitation for applications, and make awards on a competitive basis; and that these activities will be carried out in a manner that complies with or will comply with 49 U.S.C. 5307(c);
 - (7) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(h) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); and
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and
 - (3) 49 U.S.C. 5303 through

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- 5306 (planning and private enterprise requirements);
- B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;
 - C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;
 - D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;
 - E. In compliance with 49 U.S.C. 5316(g)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and
 - F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

20. NEW FREEDOM PROGRAM

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."

- A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New

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Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:

- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and
 - (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;
- C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;
- D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and
- E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and through participation by the public.

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21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

Each State, tribal area, or local government authority that is an Applicant for Paul S. Sarbanes Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications by selecting Category "21."

- A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Paul S. Sarbanes Transit in Parks Program to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including the safety and security aspects of that project;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C. 5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and

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- minimize transportation-related fuel consumption and reliance on foreign oil);
- (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and
- (7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:
 - (1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;
 - (2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and
 - (3) Consult with the appropriate Federal land management agency during the planning process.

22. TRIBAL TRANSIT PROGRAM

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurances set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category "22."

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and assures as follows:

- A. The Applicant assures that:
 - (1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
 - (2) It has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) The project equipment and facilities will be adequately maintained; and
 - (4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources;
- B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36;
- C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document; and
- D. If its application exceeds \$100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

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23. TIFIA PROJECTS

Each Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award TIFIA credit assistance to the Applicant until the Applicant provides these certifications by selecting Category "23."

- A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6, not more than fifty (50) percent of the peak hour fare;
 - (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (a) has made available, or will make available, to the public information on the amounts available for TIFIA credit assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake; (b) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (c) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (d) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (e) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (f) has considered or will consider the comments and views received, especially

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- those of private transportation providers, in preparing its final list of projects; and (g) has made or will make the final list of projects available to the public;
- (7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
 - (8) In compliance with 49 U.S.C. 5307(d)(1)(H), (1) the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
 - (9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
 - (10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of a Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and
 - (11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) an Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each Federal fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that Federal fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances; and
- B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless the Applicant is eligible to receive Federal assistance for those expenses and the Applicant's records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

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**24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE
TO STATE INFRASTRUCTURE BANKS**

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award Federal assistance for the SIB Program to the State until the State provides these assurances by selecting Category "24."

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with Federal assistance derived from SIB will be administered in accordance with:

- A. Applicable provisions of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;
- B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program;
- C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or section 1511 of TEA-21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement;
- D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and
- E. The provisions of applicable Federal guidance that may be issued and amendments thereto, unless FTA has provided written approval of an alternative procedure or course of action.

##

Selection and Signature Page(s) follow.

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**FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Categories 01 – 24. _____

OR

The Applicant agrees to comply with applicable provisions of the Categories it has selected:

| <u>Category</u> | <u>Description</u> | |
|-----------------|--|-------|
| 01. | Assurances Required For Each Applicant. | _____ |
| 02. | Lobbying. | _____ |
| 03. | Procurement Compliance. | _____ |
| 04. | Protections for Private Providers of Public Transportation. | _____ |
| 05. | Public Hearing. | _____ |
| 06. | Acquisition of Rolling Stock for Use in Revenue Service. | _____ |
| 07. | Acquisition of Capital Assets by Lease. | _____ |
| 08. | Bus Testing. | _____ |
| 09. | Charter Service Agreement. | _____ |
| 10. | School Transportation Agreement. | _____ |
| 11. | Demand Responsive Service. | _____ |
| 12. | Alcohol Misuse and Prohibited Drug Use. | _____ |
| 13. | Interest and Other Financing Costs. | _____ |
| 14. | Intelligent Transportation Systems. | _____ |
| 15. | Urbanized Area Formula Program. | _____ |
| 16. | Clean Fuels Grant Program. | _____ |
| 17. | Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. | _____ |
| 18. | Nonurbanized Area Formula Program for States. | _____ |
| 19. | Job Access and Reverse Commute Program. | _____ |
| 20. | New Freedom Program. | _____ |
| 21. | Paul S. Sarbanes Transit in Parks Program. | _____ |
| 22. | Tribal Transit Program. | _____ |
| 23. | TIFIA Projects | _____ |
| 24. | Deposits of Federal Financial Assistance to a State Infrastructure Banks. | _____ |

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FEDERAL FISCAL YEAR 2010 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE
(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2010.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2010.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature _____ Date: _____

Name _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature _____ Date: _____

Name _____
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. E9-24922 Filed 10-16-09; 8:45 am]
BILLING CODE 4910-57-C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2009-0271]

Identification of Interstate Motor Vehicles: New York City, Cook County and New Jersey Tax Identification Requirements; Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of Petition for Determination; request for comments.

SUMMARY: FMCSA is inviting all interested persons to comment on three petitions submitted by the American Trucking Associations (ATA) requesting determinations that the Commercial Motor Vehicle (CMV) identification requirements imposed by the State of New Jersey, New York City, and Cook County, Illinois are preempted by Federal law. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) prohibits States and their political subdivisions from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation, with certain exceptions. FMCSA seeks comment on whether the credential display requirements described below are preempted or whether they qualify for the relevant exception codified at 49 U.S.C. 14506(b)(3).

DATES: Comments are due on or before November 18, 2009.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Fax:* 1-202-493-2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation,

Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

• *Hand Delivery:* Ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the "Help" section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA-2009-0271. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-7056; e-mail Genevieve.Sapir@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

New Jersey's Tax Code requires all motor carriers hauling, transporting, or

delivering fuel to display a Motor Fuel Transport License Plate and annual Transport License Certificate. This requirement applies to all motor carriers hauling, transporting, or delivering fuel in New Jersey regardless of their State of domicile or registration. New Jersey Statutes Annotated § 54:39-41 and § 54:39-53.

New York City's Administrative Code requires CMVs used principally in the city or used principally in connection with a business carried on within the city to pay a tax and display a stamp. The requirement appears to apply whether or not the CMV is registered to an address in New York City.¹

Cook County's Code of Ordinances requires motor vehicle owners residing within the unincorporated area of Cook County to: (a) Display a window sticker showing payment of fees; and (b) paint business vehicle identification information on their vehicles. Article XIV of chapter 74 of the Cook County Code of Ordinances is referred to as the "Cook County Wheel Tax on Motor Vehicles Ordinance," and was amended most recently on March 4, 2009.

Section 4306 of SAFETEA-LU, codified at 49 U.S.C. 14506(a), prohibits States from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation. However, § 14506(b)(3) provides, in part, that "a State may continue to require display of credentials that are required * * * under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate." This authority has been delegated to FMCSA by 49 CFR 1.73 (a)(7). FMCSA believes that Congress intended to limit the exception at § 14506(b)(3) to two categories of requirements. The first includes identification requirements related to motor vehicle license plates. The second includes any other identification displays that the Secretary of Transportation approves.

FMCSA seeks comment on whether the referenced identification display requirements are preempted by Federal law. Specifically, the Agency seeks comment on: (1) Whether New Jersey's, New York City's, and/or Cook County's credential display requirements qualify as identification requirements related to motor vehicle license plates; and/or (2) whether there is any other reason FMCSA should consider approving these requirements under 49 U.S.C.

¹ Chapter 8 of Title 11 of the New York City Administrative Code Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers.

EXHIBIT E

METROPOLITAN COUNCIL (“COUNCIL”) DISADVANTAGED BUSINESS ENTERPRISE (DBE) PASS THROUGH AGREEMENT AND PROGRAM

1.0 METROPOLITAN COUNCIL DBE POLICY

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1.0 METROPOLITAN COUNCIL DBE POLICY

1.1 Policy Statement

In accordance with 49 CFR sections 26.3, 26.7, 26.21, and 26.23, Grantee hereby affirms the Metropolitan Council's policy to utilize businesses owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts. Grantee will, in accordance with authority granted by DOT regulations, other federal, state and local laws and ordinances, act affirmatively to create a “level playing field” for Disadvantaged Business Enterprises (DBEs) to achieve the goal of equal opportunity.

Grantee recognizes that creating a “level playing field” for DBEs can only be achieved through the energetic implementation of the Councils plan and the commitment of all Grantee’s employees, committees and contractors to the goals of equal opportunity.

This policy statement will be circulated throughout the Grantee’s organization, and to the DBE and non-DBE business communities that perform work on these DOT-assisted contracts.

In addition, Grantee will not:

1. Exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this program on the basis of race, color, sex, or national origin.
2. In administering the DBE program, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

1.2 Objectives

In accordance with 49 CFR section 26.1, the objectives of the Metropolitan Council's DBE program are:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Metropolitan Council's financial assistance programs.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the Metropolitan Council's DBE program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet program eligibility standards are permitted to participate as DBEs.
5. To remove barriers to the participation of DBEs in DOT-assisted contracts.
6. To assist in the development of firms that can compete successfully in the marketplace outside the DBE program.
7. To utilize the flexibility accorded by Federal financial assistance to establish and provide opportunities for DBEs.

These objectives are passed on to the Grantee. The Grantee accepts these objectives as their own.

2.0 PROGRAM DEFINITIONS

In accordance with 49 CFR section 26.5, the following definitions apply to the Metropolitan Council's DBE pass through program.

AFFILIATION As defined in the Small Business Administration (SBA) regulations, 13 CFR part 121:

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - a. One concern controls or has the power to control the other;
 - b. A third party or parties controls or has the power to control both; or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in

determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

AFFIRMATIVE ACTION Specific and positive activities undertaken by the Metropolitan Council and its contractors to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs funded by the DOT.

ALASKA NATIVE A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

ALASKA NATIVE CORPORATION Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

APPLICANT One who submits an application, request, or plan to be approved by the MnUCP as a condition of eligibility for DOT financial assistance.

COMMERCIALLY USEFUL FUNCTION Work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the MnUCP's judgement, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

COMPLIANCE The condition existing when a recipient or contractor has correctly implemented the requirements of the program.

CONTRACT A legally binding relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

CONTRACTING OPPORTUNITY Any decision by the Metropolitan Council or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

CONTRACTOR One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program covered by this part; and includes lessees.

DBE DIRECTORY The MnUCP's list of Certified and Denied Firms which is used by the Metropolitan Council and its contractors to identify DBE potential prime and subcontractors and suppliers.

DEPARTMENT OR DOT The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHA), the Federal Transportation Agency (FTA), and the Federal Aviation Administration (FAA).

DISADVANTAGED BUSINESS ENTERPRISE (DBE) A for-profit small business concern:

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-ASSISTED CONTRACT Any contract or modification of a contract between the Metropolitan Council and a contractor (at any tier) that is funded for in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

EQUAL OPPORTUNITY The requirements of non-discrimination in employment with regard to race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, age, marital status, or sex.

GOAL The annual percentage of DOT-assisted dollars intended to be awarded to DBEs. The annual overall DBE goal is achieved through a combination of race-neutral and race-conscious measures, including contract-specific goals.

GOOD FAITH EFFORTS Efforts to achieve a DBE goal or other requirement of the program, which by their scope, intensity, and appropriateness to the objective, can be expected to fulfill the program requirement.

IMMEDIATE FAMILY MEMBER Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

INDIAN TRIBE Any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in these definitions.

JOINT DEVELOPMENT The planning and implementation of an income producing real estate development which is adjacent to or physically related to an existing or proposed public transportation facility (e.g. transit station, Park and Ride, or bus facility).

JOINT VENTURE An association of a DBE firm and one or more other firms to carry out a single for profit business enterprise, for which the parties contribute their property, capital, efforts, skills, and knowledge, and in which the DBEs responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital, contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

LESSEE A business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient's or department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

LEVEL PLAYING FIELD The objective of the DOT and Metropolitan Council DBE program; wherein an environment is created to achieve the level of participation by DBEs that would reasonably be expected in the absence of discrimination.

MANUFACTURER A business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

MINORITY A person who is a U.S. citizen or lawful permanent resident of the U.S. and who is

a:

- a. "Black American", which includes persons having origins in any of the black racial groups of Africa.
- b. "Hispanic American", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- c. "Native American", which includes persons that are American Indians, Eskimos, Aleuts or Native Hawaiians.
- d. "Asian-Pacific American", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; or
- e. "Asian-Indian American", which includes persons whose origins are from India, Pakistan, and Bangladesh.

NATIVE HAWAIIAN Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

NATIVE HAWAIIAN ORGANIZATION Any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered under the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

NONCOMPLIANCE The condition existing when a recipient or contractor has not correctly implemented the requirements of the program.

OPERATING ADMINISTRATION OR OA Any of the following parts of the DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

PERSONAL NET WORTH The net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participating DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.

PRE-BID/PRE-PROPOSAL CONFERENCE A meeting held by the MnUCP, prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Metropolitan Council specification requirements, which include DBE provisions.

PRE-BID/PRE-CONSTRUCTION CONFERENCE A meeting held by the MnUCP prior to solicitation at which the prospective prime contractors are advised of its federal compliance obligations and other technical & administrative requirements.

PREPONDERANCE OF THE EVIDENCE The standard of evidence used in DBE eligibility criteria. Pertains to the total context of factual submissions.

PRIMARY RECIPIENT A recipient who received DOT financial assistance and passes some or all of this assistance on to another recipient.

PROGRAM Any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

RECIPIENT The entity, public or private, to which DOT financial assistance is pass through, via the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

RELATIVE AVAILABILITY The percentage of available DBE firms in light of local circumstances and the number of total available firms.

SECRETARY The secretary of transportation or his/her designee.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS (for purposes of DOT-assisted projects) Any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is:

- a. Any individual who the MnUCP finds to be a socially and economically disadvantaged individual on a case-by-case basis;
- b. Women (regardless of race, ethnicity or origin); or
- c. Individuals found to be socially and economically disadvantaged by the U.S. SBA pursuant to Section 8(a) of the Small Business Act.

The MnUCP will make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. The MnUCP may, on a case-by-case basis, determine or accept the determination by another DOT recipient, individuals who are socially and economically disadvantaged in accordance with 49 CFR 23, Subpart D, Appendix C.

SUBRECIPIENT The entity, public or private, to which DOT financial assistance is pass through via the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

TRIBALLY-OWNED CONCERN Any concern that at least 51% owned by an Indian tribe as defined in these definitions.

U.S. DOT REGULATIONS (49 CFR part 23 and part 26) Federal rules and regulations published in the Federal Register dated March 31, 1980; amended April 27, 1981; July 21, 1983; October 21, 1987; and March 4, 1999; by the Department of Transportation, Office of the Secretary; entitled "Participation by [Minority Business Enterprise] in Department of Transportation Programs" and codified at Title 49, Code of Federal Regulations, Part 23.

DBE LIAISON OFFICER The official designated by the head of the department element to have overall responsibility for promotion of DBE participation.

3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

1. The Chair of the Metropolitan Council has overall responsibility for the Council's DBE program, and performs the role of providing policy leadership regarding the involvement of DBEs in the activities of the Metropolitan Council.
2. The Regional Administrator has responsibility for establishing and maintaining a program to promote the Metropolitan Council's DBE program. This responsibility

will be carried out in conjunction with the Metropolitan Council DBE Liaison Officer.

3. In accordance with 49 CFR section 26.25, the Metropolitan Council has designated its Director, Office of Diversity and Equal Opportunity as its DBE Liaison Officer, responsible for implementing all aspects of the DBE program. The Council DBE Liaison Officer shall have direct and independent access to, and direct communication with, the Regional Administrator concerning DBE program matters.
4. The Grantee shall designate an employee who has responsibility for establishing and maintaining the Grantees DBE pass through agreement and program. This person is referred to as the “Grantee DBE Liaison Officer.” The Grantee DBE Liaison Officer’s responsibilities will be carried out in conjunction with the Council DBE Liaison Officer.
5. The Grantee shall notify the Council DBE Liaison Officer of the person designated as the Grantee DBE Liaison Officer.
6. The Grantee DBE Liaison Officer shall work directly with the Metropolitan Council DBE Liaison Officer to ensure the program’s success.
7. The Grantee’s department directors, division directors and managers of operating elements have responsibility for effectively carrying out this program within their particular departments. Each department director will include DBE contracting efforts as a factor in regular contract review activities.

3.1 Duties of Grantee DBE Liaison Officer

The responsibilities of the Grantee DBE Liaison Officer include:

1. Providing compliance and goal achievement information to the Metropolitan Council DBE Liaison Officer. This includes:
 - a. Surveying the DBE community for development of contract goal-setting data and conducting outreach in order to increase business opportunities to DBEs.
 - c. Analyzing Grantee’s contract opportunities available for DBEs.
 - d. Establishing defensible contract-specific goals no less than the Metropolitan Council’s approved overall DBE program goal.
 - e. Conducting periodic training of Grantee’s project managers on DBE responsibilities.

2. Monitoring contractor/grantee compliance with DBE commitments, maintaining accurate records, demonstrating DBE efforts and accomplishments, and determining compliance. This includes:
 - a. Issuing periodic reports to the Metropolitan Council DBE Liaison Officer concerning DBE compliance or non-compliance of contractors and staff with the requirements of this program.
 - b. Attending meetings of the Grantee's board or council at which time these matters are considered; and responding to queries from Grantee's board or council members.
 - c. Compiling DBE statistical and narrative reports for the Metropolitan Council.
 - d. Reviewing contractor's good faith efforts to meet the DBE goal committed to in the bid or proposal throughout the performance of the contract.
 - e. Reviewing and recommending to Grantee's project managers the approval or disapproval of a prime contractor's request to substitute a DBE.
 - f. Reviewing contractor's violation of DBE utilization requirements; recommending any appropriate administrative sanctions to be imposed in accordance with 49 CFR part 26; and coordinating imposition of administrative sanctions with the Metropolitan Council DBE Liaison Officer.
3. Participating on Proposal/Bid Evaluation Teams.
4. Participating in prebid and preproposal meetings with potential prime and DBE contractors.
5. Evaluating bids and proposals for compliance with DBE requirements, including bidder's good faith efforts.
6. Monitoring contractor's compliance with DBE utilization goals.
7. Coordinating dispute resolution through process established in partnering workshops with contract representatives, vendors and others regarding DBE program.
8. Conducting compliance reviews.

9. Conducting on-site verification and interviews.

3.2 Responsibilities of Support Personnel

Grantee's personnel from other Departments share the responsibility for ensuring the effective implementation of the DBE program. They shall give their full cooperation and active support to the Grantee DBE Liaison and his/her designee(s) in this effort.

3.2.1 Legal Counsel

The responsibilities of the Grantee's Legal Counsel in support of the DBE Program include:

1. Addressing legal matters relating to DBE program implementation.
2. Rendering legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
3. Representing the Grantee in all litigation matters involving DBE issues.

3.2.2 Director of Finance/Controller

The responsibilities of the Grantee's Director of Finance/Controller in support of the DBE Program include:

1. Ensuring the submittal of data to the Grantee DBE Liaison Officer to assist in the establishment of contract-specific goals.
2. Ensuring the submittal of financial data to assist the Grantee DBE Liaison Officer in reports to the Metropolitan Council.

3.2.3 Contracting / Procurement Department

The responsibilities of the Grantee's Contracting/Procurement Department in support of the DBE Program include:

1. Ensuring the timely forward of data to the Grantee DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining the Bidders List of prime and subcontractors in accordance with 49 CFR section 26.11.
3. Ensuring that the contract documents from the requesting project managers has been properly routed to the Grantee DBE Liaison Officer for determination of contract-specific DBE goals.

4. Providing the Grantee DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications (RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.
5. Providing the Grantee DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.
6. Incorporating DBE goals and appropriate DBE and contract compliance language into IFBs, RFPs, and RFIQs.
7. Informing the Grantee DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the Grantee DBE Liaison Officer.
9. Placing IFB, RFP, RFIQ, and PO notices in minority-focused newspapers and websites.
10. Notifying the Grantee DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
11. Ensuring that the Grantee DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.
12. Forwarding copies of bids/proposals to the Grantee DBE Liaison Officer for evaluation of compliance with DBE requirements.
13. Maintaining computerized data on purchase orders and contracts to enable compilation DBE progress reports to the Metropolitan Council.
14. Ensuring that all procurement department staff:

- a. Receive adequate orientation on DBE policies and procedures.
 - b. Refer all potentially eligible vendors to apply for DBE certification.
 - c. Utilize the MnUCP's DBE Directory to seek potential vendors.
 - d. Solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
15. Incorporating applicable DBE provisions into all contracts.
 16. Ensuring that RFPs, RFIQs, and IFBs do not contain requirements that may unnecessarily restrict or eliminate DBEs from competing.
 17. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.
 18. Notifying the Grantee DBE Liaison Officer when the project scope, funding or other changes affecting the attainment of a DBE goal, is made.

3.2.4 Grantee's Project Managers

The responsibilities of Grantee Project Managers in support of the DBE Program include:

1. Ensuring the timely submittal of data to the Grantee DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Becoming familiar with the procedures in this document, including but not limited to, attending orientation sessions conducted by the Grantee DBE Liaison Officer concerning contract procurement and administration, and DBE procedures.
3. Providing the contracting/procurement department with a complete initial contract /procurement documentation.
4. Utilizing the DBE directory to search for potential DBE vendors.
5. Providing maximum opportunity to DBEs by initiating informal competitive procurement procedures for DBEs to compete for contracts within their respective areas that do not require solicitation of formal, public bids or proposals.
6. Referring all potentially eligible firms to apply for DBE certification.
7. For contracts with DBE goals, ensuring that:
 - a. DBEs maintain current DBE certification by verifying their status with the contract compliance function of the DBE Liaison.

- b. DBEs are utilized in accordance with the terms of the contract.
 - c. Potential DBE utilization problems are immediately referred to the Grantee DBE Liaison Officer.
 - d. The prime contractor continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.
 - e. Referring all requests for DBE substitution to the Grantee DBE Liaison Officer and conferring with him or her in granting or denying the request.
8. Packaging individual contracts in a manner to maximize the ability of DBEs to compete favorably and ensuring that RFPs, RFIQs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
9. Informing the Grantee DBE Liaison Officer of the scheduled pre-bid conference.
10. Informing the Grantee DBE Liaison Officer of any potential problems concerning DBE utilization during contract administration.

4.0 DBE Directory

1. In accordance with 49 CFR section 26.31, the Minnesota Uniform Certification Program (MnUCP) maintains a current directory of DBE firms certified to do work with the Metropolitan Council. The directory includes the following minimum information for each firm:
 - a. Name.
 - b. Address.
 - c. Phone number/fax number/e-mail.
 - d. Types of work certified to perform.
 - e. NAICS, ethnicity & certification dates
2. The DBE directory is available to the public electronically, on the Internet, and in print format. Electronic formats will be updated as appropriate; and the entire directory will be updated at least annually.
3. The DBE Directory shall serve as a source list to help in identifying DBEs with capabilities relative to contracting solicitations. The directory will be available to bidders and proposers during normal business hours to assist in their efforts to meet DBE requirements. The directory will be categorized by type of firm to facilitate identifying businesses with capabilities relative to a particular specification.

5.0 DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS

Pursuant to 49 CFR section 26.45, the Metropolitan Council will establish an annual overall DBE goal through a two-step process consisting of (a) establishing a base figure; and (b) adjusting the base figure. In accordance with 49 CFR Part 26 the Metropolitan Council will pass through it's established goal to the Grantee.

5.1 Contract Goals

Grantee will set contract-specific goals as follows:

1. The Grantee DBE Liaison Officer will receive from the requesting project manager initial contracting documentation for each purchase requisition over \$50,000.
2. The Grantee DBE Liaison Officer will consult with the Metropolitan Council DBE Liaison Officer, the project manager and the Contracting/ Procurement department to determine the level and type of subcontracting opportunities for goal setting.
3. The Grantee DBE Liaison Officer will conduct an in-depth analysis of the DBE availability within the identified contract. The contract-specific goal will be no less than the Metropolitan Council's overall DBE program goal.
4. The Grantee DBE Liaison Officer will provide the contract-specific goal to the Contracting/ Procurement department and the project manager for incorporation into the appropriate solicitation documents. A report of the contract-specific goal will be given to the Metropolitan Council DBE Liaison Officer prior to release of IFBs, RFPs, RFIQs.

5.2 Good Faith Efforts

In accordance with 49 CFR section 26.53, the following guidelines will apply to good faith efforts.

1. For all contracts where goals are set, regardless of contract size, prime contractors will be required to propose the participation of specific DBEs to either (a) meet the goal; or (b) demonstrate good faith efforts to meet the goal in their bid or proposal.
2. Bidders must submit with their bids/proposals, written confirmation of their commitment to use DBEs subcontractor(s), whose participation it submits to meet a contract-specific goal; and identify in their Bid (on the List of Proposed DBEs) all

DBEs proposed to participate in the contract, regardless of their percent of participation. The List of Proposed DBEs will include:

- a. A description of how DBE firms will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation in the contract as a prime contractor, joint venture partner, subcontractor, trucker, or supplier.
 - b. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the bidder intends to credit toward the DBE goal. The complete legal business name as used for DBE certification shall be identified on the form.
 - c. A description of the work to be performed or materials to be supplied by each DBE.
 - d. The estimated dollar value of each DBEs participation in the contract.
 - e. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR section 26.55.
3. All bidders must submit in their bid/proposal written confirmation from the DBE(s) participating in the contract as provided in the prime contractor's commitment.
 4. If the List of Proposed DBEs does not demonstrate meeting the contract-specific goal, bidders must complete and submit a Good Faith Efforts Summary form with the bid/proposal. Grantee will report findings to the Metropolitan Council DBE Liaison Officer prior to award of contract.
 5. The Grantee DBE Liaison Officer will determine whether a contractor made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto. The bidder must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the

solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs. The bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- e. A bidder using good business judgement would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and

political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
 - i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
 - j. The performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
6. Any of the following conditions will constitute failure to meet the goal:
- a. The total percentage participation by DBE firms reflected on the List of Proposed DBEs is less than the DBE goal set forth in the procurement.
 - b. Firms on the List of Proposed DBEs whose participation are being credited toward meeting the DBE goal, but are not certified by the MnUCP as DBEs as of the execution of the contract.
7. If the Grantee DBE Liaison Officer determines that the apparent successful bidder has failed to meet the Good Faith Efforts requirements of this program, it will, before contract award, provide the bidder an opportunity for administrative reconsideration. The bidder will have the opportunity to:
- a. Provide a written documentation or argument concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.

- b. Meet in person with the Grantee DBE Liaison Officer to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
8. The Grantee DBE Liaison will send the bidder a written decision on its reconsideration, explaining the basis of whether it met the goal or made adequate good faith efforts to do so.
9. In accordance with 49 CFR section 26.53, the result of the Grantee DBE Liaison Officer reconsideration process is not subject to administrative appeal to the Department of Transportation.
10. In “design-build” or “turnkey” contracting situations where the Grantee lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, the Grantee will set a goal for the project. The Grantee DBE Liaison Officer will provide the contract-specific goal to the Contracting/Procurement department and the project manager for incorporation into the appropriate solicitation documents. A report of the contract-specific goal will be given to the Metropolitan Council DBE Liaison Officer prior to release of IFBs, RFPs, RFIQs. The master contractor then must establish contract-specific goals, as appropriate, for all subcontracts it lets. The Grantee will monitor the master contractor’s activities to ensure that they are consistent with the requirements of the program.
11. The Grantee will require that prime contractors not terminate for convenience a DBE subcontractor listed on the List of Proposed DBEs (or an approved substitute DBE) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent of the Grantee DBE Liaison Officer.
12. If a DBE subcontractor is terminated or fails to complete its work on a contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract-specific goal.
13. These good faith efforts requirements also apply to DBE bidders/proposers for prime contracts. The work proposed to be performed with its own work force as well as work committed to DBE subcontractors and suppliers will count toward the contract-specific goal.

5.3 Counting DBE Participation

In accordance with 49 CFR section 26.55, the Grantee will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR section 26.87(I).
2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
3. The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
4. When a DBE participates in a contract, the value of the work actually performed will be counted as follows:
 - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR part 26.55 that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided that the Grantee determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, the Grantee will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. The Grantee will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
 - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out it

responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Grantee will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - d. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - e. The Grantee's decisions on matters of whether a DBE performs a commercially useful functions are subject to review by the concerned operating administration, but is not subject to an administrative appeal to DOT.
7. The Grantee will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on its contract.

- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - f. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. The Grantee will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a. The Grantee will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
 - b. The Grantee will count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
9. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

10. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
11. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR section 26.55(e)(2).
12. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Grantee will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Grantee has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Grantee will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

5.4 Quotas, Set-Asides and Penalties

1. Pursuant to 49 CFR section 26.43, the Grantee will utilize the following guidelines for use of quotas and set-asides:
 - a. The Grantee will not use quotas for DBEs on DOT-assisted contracts subject to the regulations of 49 CFR Part 26.
 - b. The Grantee has the discretion to use set-aside contracts only in limited and extreme circumstances, when no other method could be reasonably expected to redress egregious instances of discrimination.
2. In accordance with 49 CFR section 26.47, the Grantee will not be penalized or be held in non-compliance with the regulations because DBE participation falls short of its overall goal, unless the Grantee has failed to administer its program in good faith.

6.0 REQUIRED CONTRACT PROVISIONS

6.1 Assurances

1. In accordance with 49 CFR section 26.13, Grantee makes the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The

recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required under 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

2. In accordance with 49 CFR section 26.13, each contract the Grantee signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

6.2 Prompt Payment

In accordance with 49 CFR section 26.29, the Grantee shall establish:

1. A contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 5 days from receipt of each payment that the Grantee makes to the prime contractor. This clause requires the return of retainage payments from the prime contractor to the subcontractor within 10 days after the contractor receives payment from the Grantee. This clause also provides for:
 - a. Appropriate penalties for failure to comply, in accordance with terms and conditions set by the Grantee.
 - b. That any delay or postponement of payment among the parties may take place only for good cause, with the Grantee's prior written approval.
2. The Grantee shall also establish as part of its DBE program, the following additional mechanisms to ensure prompt payment:
 - a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes as referred to in Section 3.1 of this program.

- b. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
3. The Grantee may, consistent with the regulations and applicable state and local law, implement other mechanisms at its discretion, to ensure that DBEs and other contractors are fully and promptly paid.

6.3 Legal and Contract Remedies

1. In accordance with 49 CFR section 26.37, the Grantee will implement appropriate mechanisms to ensure compliance by all participants with program requirements, including that DBE commitments are actually performed by DBEs. This monitoring includes the review of monthly Summary of Subcontract Awards and Paid Report, and a provision that DBE participation is counted toward overall or contract goals only when payments are actually made to DBEs. The Grantee will apply all legal and contract remedies available under Federal, state, and local law as described in Section 6.3.1 of this program.
2. The contract compliance function of the Grantee DBE Liaison Officer will implement the monitoring aspect of the DBE program.
3. Non-compliance by the contractor with the requirements of the DBE regulations constitute a breach of contract and may result in termination of the contract, liquidated damages or other appropriate remedy as set forth in Section 6.3.1 of this program.
4. Prior to execution of all contracts containing DBE goals the prime contractor will be directed to the contract specification for the Grantee's specific DBE reporting and record keeping requirements, as described in Section 6.4 of this program.

6.3.1 Administrative Sanctions

1. All contractors deemed to be in non-compliance will be informed in writing, by certified mail, by the Contracting/Procurement department that sanctions shall be imposed for failure to meet DBE utilization goals and/or submit documentation of good faith efforts. The Contractor will be given five (5) working days from the date of the notice to file a written appeal to the Grantee DBE Liaison Officer. Failure to respond within the five- (5) day period shall constitute a waiver of appeal. The notice will state the specific sanction to be imposed.
2. The Grantee DBE Liaison Officer or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the DOT.
3. Sanctions may include, but not be limited to:

- a. Liquidated damages;
- b. Suspension of payment to the contractor of any monies held by Grantee as retained on the contract;
- c. The denial to the contractor (including its principal and key personnel) of the right to participate in future contracts of the Grantee for a period of up to three years; and
- d. Contract termination.
- e. The Grantee DBE Liaison Officer will recommend which sanction to apply.

6.4 Contractor Reporting Requirements

1. During the term of the contract, the contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform in the contract, and that the contractor meets its DBE goal. These efforts shall include but not be limited to the following:
 - a. Negotiating in good faith to attempt to finalize a subcontract agreement with DBEs committed to prior to contract award;
 - b. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contract;
 - c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Grantee approval to substitute the DBE;
 - d. As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers;
 - e. Timely submittal of complete and accurate DBE monthly reports in accordance with paragraph 3 below; and
 - f. Informing the Grantee's DBE Liaison in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid.
2. If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor must exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor subject to the approval of the Grantee DBE Liaison Officer.
3. The contractor will submit monthly progress reports to the Grantee DBE Liaison Officer, in conformance with the currently approved schedule, reflecting its DBE participation. A DBE Progress Project Report shall be submitted to comply with

this reporting requirement. Failure to submit this report in a timely manner will result in the imposition of administrative.

4. The Grantee DBE Liaison Officer will review the contractor's monthly progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the contractor as stated in its bid or proposal. The reports are forwarded to the Metropolitan Council DBE Liaison Officer.
5. If it is determined that the contractor's DBE utilization during performance of the contract is not consistent with the commitment thereto, the Grantee will request in writing that the contractor submit evidence of its good faith efforts to meet the goal. The contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the contractor in non-compliance, subject to sanctions as provided in the section on Administrative Sanctions below.
6. The contractor's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. The Grantee DBE Liaison Officer shall make a determination as to the adequacy of the contractor's good faith efforts documentation and so inform the contractor. If it is determined that the contractor's good faith efforts documentation is acceptable, the contractor will be deemed to be in compliance with the DBE utilization goals. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will be notified and be deemed to be in non-compliance with the DBE utilization goals.
7. The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which DBEs participation has been committed to in the bid, will be commensurately added to or subtracted from the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to Grantee and referenced above.
8. Failure to carry out these requirements constitutes a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the contract by Grantee or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR section 23.43(c). For purposes of this section, timely submittal means received in the contract compliance function of the Grantee DBE Liaison by the close of business on the fifteenth (15th) of the following month.

7.0 RECORD KEEPING, MONITORING AND ENFORCEMENT

7.1 Bidders List

1. Pursuant to 49 CFR section 26.11(c), the Grantee will create and maintain a bidder's list, consisting of firms bidding on prime contracts and bidding or quoting

subcontracts on DOT-assisted projects. The Bidders List will include the following minimum information for each firm:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE or non-DBE;
- d. The age of the firm; and
- e. The annual gross receipts of the firm.

7.2 Monitoring Payments to DBEs

1. In accordance with the requirements of Section 6.3 of this program, the Grantee will require all prime contractors to submit on a monthly basis, evidence of actual payments to each DBE listed on the contract.
2. This evidence shall take the form of the DBE Progress/Project Report.
3. The Grantee will review and monitor the amount actually paid to each DBE and non-DBE in accordance with the requirements of Section 6.3 of this program.

7.3 Reporting to the Metropolitan Council

1. The Grantee will continue to provide data on its DBE program to the Metropolitan Council as provided in this document. The Grantee shall submit a monthly report describing the activities undertaken toward progress achieved in meeting the goal of greater DBE participation in its procurement and financial assistance programs during the preceding federal quarter. These reports shall discuss at least the following:
 - a. Data on the level of DBE participation in contracting and subcontracting activities of the Grantee and recipients of financial assistance both in terms of number of DBE contracts awarded and the identities of DBEs and the dollar value of work being so contracted.
 - b. A statistical breakdown and methods of awards to DBEs, for example, open competition and subcontracts.
 - c. Data reported by prime contractors under subcontracting as required by federal procurement regulations.
 - d. A brief description of any problems encountered in the general area of DBEs, or specific contracts or projects.

- e. Specific efforts to identify and award contracts to DBEs.
 - f. A summary of the extent to which percentages have been met.
2. All reports and records will be categorized separately by type of work (by Primary Industry Classification code) for all DBE and other firms. Reports will be made available to the public and DBE reports will be submitted to the Metropolitan Council's board.

7.4 Confidentiality of Information

The identity of complainants will be kept confidential, at their election. If such confidentiality hinders an investigation, proceeding, or hearing, or will result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some cases, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows procedures of 14 CVR Part 16 with respect to confidentiality of information in complaints.

7.5 Intimidation and Retaliation Prohibited

The Grantee, its contractors, and other program participants must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the program. Violation of this prohibition will be deemed as noncompliance.