

**PASSTHROUGH GRANT AGREEMENT
BETWEEN
THE METROPOLITAN COUNCIL
AND**

**THE _____
FOR _____
(Direct 5307 Passthrough)**

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THIS AGREEMENT is made and entered into by and between the Metropolitan Council ("Council") and _____ ("Grantee"), each acting by and through its duly authorized officers.

WHEREAS:

1. The Federal Transit Administration has awarded grant number _____ (under CFDA _____) to the Council from Title 49 United States Code Section 5307 funds to be used _____.
2. The Council desires to passthrough certain of such 5307 Funds to the Grantee in order to perform the project work.
3. The Council and the Grantee desire to agree on the procedures for the Grantee to receive such 5307 Funds provided to the Council by the Federal Transit Administration.

NOW, THEREFORE, the Council and the Grantee agree as follows:

I. GRANTEE PERFORMANCE OF GRANT PROJECT

1.01 Grant Project Activities. The Grantee agrees to perform and complete in a satisfactory and proper manner the activities specified in the Council's Application and Award for federal funds, Grant Number _____ which is attached to and incorporated into this agreement as Exhibit A. These activities are referred to in this agreement as the Grant Project and Grantee shall carry out the Grant Project in accordance with the terms and conditions of this agreement. After the effective date of this agreement, all proposed changes in the Grant Project activities must be submitted to the Council's Grant Manager for approval. Such changes are not effective until the Grantee receives approval for the changes in writing from the Council's Grant Manager. All Grant Project activities must be consistent with the approved Grant Project Activities described in this paragraph.

1.02 Use of Contractors. The Grantee may engage contractors to perform Grant Project activities. However, the Grantee retains primary responsibility to the Council for performance of the Grant Project and the use of such contractors does not relieve the Grantee from any of its obligations under this agreement.

If the Grantee engages any contractors to perform any part of the Grant Project activities, the Grantee agrees that the contract for such services shall include 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;

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- 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 Grantee 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; and
 - e. the contractor must acknowledge that the contract between the Grantee and the contractor does not create any contractual relationship between the Council and the contractor.

II. AUTHORIZED USE OF GRANT AND MATCHING FUNDS

2.01 Authorized Uses. The Grantee is authorized to use the grant and matching funds awarded under this agreement only for costs directly incurred for the Grant Project activities specified in paragraph 1.01 and only during the Project Activity Period specified in paragraph 6.01. Grant and matching funds may be used only for: (1) the allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and (2) reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee. Allowable costs will be determined in accordance with Office of Management and Budget (OMB) Circular A-87. No other use of grant or matching funds is permitted.

III. GRANT AMOUNT, MATCH, AND DISTRIBUTION

3.01 Estimated Project Amount. The total estimated cost of the Grant Project identified in paragraph 1.01 is \$ _____, consisting of the Maximum Grant Amount and Grantee's required match as set forth below.

3.02 Maximum Grant Amount. The Council awards to the Grantee a grant of up to \$ _____ ("Maximum Grant Amount") for the Grant Project. However, in no event will the Council's obligation under this agreement exceed the lesser of:

- a. the Maximum Grant Amount; or,
- b. eighty percent (80%) of actual total Grant Project expenditures.

The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee in performance of the Grant Project.

3.03 Grantee's Match. The Grantee has an obligation under this agreement to share in the costs of the Grant Project by providing at least a twenty percent (20%) local match from sources other than from Council funds, i.e., not less than \$ _____ against the Maximum Grant Amount. The eligibility and use of matching funds shall be governed by applicable federal law, regulations and guidance.

3.04 Distribution of Grant Funds. Grant funds will be distributed by the Council as follows:

- a. The Grantee must submit invoices to request reimbursement of Grant Project expenditures on a calendar monthly basis, not later than twenty (20) calendar days after the end of each month. Each reimbursement request must include an itemization of all Grant Project

expenditures during the invoice period and must be submitted in a format prescribed by the Council. Each reimbursement request must include the monthly report specified in paragraph 5.01. The Grantee shall submit any additional data and information requested by the Council to justify and support the Grantee's reimbursement request or as required by the federal government for reporting under to the FTA.

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- b. Upon review and approval of the reimbursement request, the Council will draw 80 percent of the invoice and distribute to the Grantee as required by the FTA. The 20 percent match portion is the responsibility of the Grantee. The Council may deny part or all of any reimbursement request if it believes that it is not warranted or justified.
- c. No reimbursement payment will be made which would cause distribution of grant funds to exceed, cumulatively through such payment, the limits in paragraph 3.02. The Council may withhold payment if the Grantee is not current in its reporting requirements under article V. Distribution of any funds or approval of any report is not to be construed as a Council waiver of any Grantee noncompliance with this agreement.

3.05 Repayment of Unauthorized Use of Grant Funds. Upon a finding by the Council that the Grantee has made an unauthorized or undocumented use of grant funds, and upon a demand for repayment issued by the Council, the Grantee agrees to promptly repay such amounts to the Council.

3.06 Reversion of Unexpended Grant Funds. All funds granted by the Council under this agreement that have not been expended for Grant Project activities taking place during the Project Activity Period shall revert to the Council.

3.07 Grant Contingent on Federal Funding. The Grantee acknowledges and agrees that the Council's payment of funds under this agreement is contingent on the Council receiving grant funds from the USDOT. If, for any reason, USDOT reduces the amount of the Council's grant, or otherwise fails to pay any part of the cost or expense of the Grant Project in this agreement, the Grantee agrees to pay those costs and expenses. The Grantee and its contractors and subcontractors further agree to pay any and all lawful claims arising out of or incidental to the performance of the Grant Project covered by this agreement in the event that USDOT does not pay the same and, in all events, agree to hold the Council harmless from those claims and from any claims arising out of this agreement. Notwithstanding any other provisions of this agreement, in the event that the FTA rescinds funding for the Grant Project, the Council may immediately terminate this agreement by written notice to the Grantee.

IV. ACCOUNTING AND RECORDKEEPING REQUIREMENTS

4.01 Documentation of Project Costs. All costs charged to the Grant Project, whether paid with grant funds or charged as the Grantee's match, 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.

4.02 Establishment and Maintenance of Project Information. The Grantee agrees to establish and maintain accurate, detailed, and complete separate books, accounts, financial records, documentation, and other evidence relating to: i) Grantee's performance under this agreement, and ii) the receipt and expenditure of all grant funds and the Grantee's match under this agreement. These documents shall include the property records required by article VIII of this agreement. The Grantee shall establish and maintain all such project information in accordance with generally accepted accounting principles and practices and shall retain intact all such Grant Project information until the latest of:

- a. complete performance of this agreement; or

- b. six (6) years following the term of this agreement; or
- c. if any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.

If the Grantee engages any contractors to perform any part of the Grant Project activities, the Grantee 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 paragraph and to allow audit of such information in accordance with paragraph 4.03.

4.03 Audit. The accounts and records of the Grantee relating to the Grant Project shall be audited in the same manner as all other accounts and records of the Grantee are audited. During the time of maintenance of information under paragraph 4.02, 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 FTA 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. The Grantee will provide proper facilities for such access and inspection.

V. REPORTING AND MONITORING REQUIREMENTS

5.01 Monthly, Quarterly and Annual Reports. Along with each monthly invoice, Grantee shall submit a calendar monthly report to the Council for review and approval. Each monthly report shall include a detailed summary of completed Grant Project activities and expenditures for such month including the following information:

- a. A description of work or progress covered by the invoice.
- b. The total amount of reimbursement requested.
- c. A breakdown of expenses by approved line item budget in a manner that reflects total approved amount, current amount requested, cumulative total requested to-date, and unexpended balance by line item.
- d. Certification by an authorized Grantee representative that the invoice has been reviewed, that the costs have been properly incurred and used solely for the purposes of the work described in this Agreement, and that the amount charged is correct and in accordance with the terms of this Agreement.
- e. A DBE Project/Progress Reports and narrative.
- f. Other information as deemed necessary for completion of required reports.

Grantee shall submit a calendar quarterly report to the Council for review and approval. The quarterly report shall be a compilation of the information provided in the monthly reports for that calendar quarter. The calendar quarterly report is due within fifteen (15) days after the end of each calendar quarter.

Grantee shall submit a calendar year report to the Council for review and approval. The annual report shall be a compilation of the information provided in the monthly reports for that calendar year. The calendar year report is due by January 30 of the year following the end of the calendar year.

The Council will prescribe the format of such reports and the information to be provided in the reports in order to meet federal reporting requirements.

5.02 Final Report. Upon completion of the Grant Project and not later than thirty (30) calendar days after the end of the Project Activity Period, the Grantee must submit a final report for Council review and approval describing the activities and expenditures for the Grant Project and containing a final accounting of grant and matching expenditures. The final report must include a list of Grant Project property as required by article VIII of this agreement.

5.03 Content of Reports; Copies. The Grantee agrees to report completely and to provide the Council with any additional or follow-up information as may be requested by the Council. The Grantee agrees to provide copies of the reports specified in paragraphs 5.01 and 5.02 to organizations and individuals upon request during the term of this agreement.

5.04 Other Monitoring Activities. To assist the Council in monitoring compliance with this agreement, the Grantee agrees to attend Grantee meetings as requested by the Council and to permit site visits by Council staff, during business hours, upon reasonable notice. The Grantee agrees to submit to the Council a copy of any promotional information regarding the Grant Project disseminated by the Grantee during the term of this agreement.

5.05 Changed Conditions. The Grantee agrees to notify the Council immediately of any change in conditions, law, ordinance, or regulation, or any other event that may affect the Grantee's ability to perform the Grant Project in accordance with the terms of this agreement.

5.06 Special Reporting Requirements. The Council is required to report to the FTA regarding the Grant Project activities. Accordingly, the Grantee 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.

VI. PROJECT ACTIVITY PERIOD; TERM; TERMINATION

6.01 Project Activity Period. The Grantee agrees to complete all Grant Project activities during the period from _____ through _____ ("Project Activity Period"). Grant funds may not be used by Grantee to reimburse costs for any Grant Project activities taking place before the beginning or after the end of the Project Activity Period. Grant funds may be used by Grantee to reimburse costs for any Grant Project activities taking place before the effective date of this agreement but only if such activities occurred during the Project Activity Period.

6.02 Term. The term of this agreement shall extend from the effective date of this agreement to a date sixty (60) calendar days following the end of the Project Activity Period, to permit closeout of this agreement.

6.03 Termination by Council for Convenience. The Council may terminate this agreement at any time and for any reason by providing Grantee written notice of such termination at least thirty (30) calendar days prior to the effective date of such termination. Upon such termination Grantee shall be entitled to compensation for Grant Project activities in accordance with this agreement which were incurred prior to the effective date of the termination, but not exceeding the limits in paragraph 3.02.

6.04 Termination by Council for Noncompliance. If the Council finds that there has been a failure to comply with the provisions of this agreement, the Council may terminate the agreement at any time following seven (7) calendar days written notice to the Grantee and upon failure of the Grantee to cure the noncompliance within the seven-day period. Noncompliance includes failure to make reasonable progress toward completion of the Grant Project. At the Council's option, the Council may cease payment of invoices during any period in which the Grantee is not in compliance with this agreement. If

the Council finds that the Grantee's noncompliance is willful and unreasonable, the Council may terminate or rescind this agreement and require the Grantee to repay the grant funds in full or in a portion determined by the Council. Nothing herein shall be construed so as to limit the Council's legal remedies to recover grant funds.

6.05 Effect of Project Closeout or Termination. The Grantee agrees that Grant Project closeout or termination of this agreement does not invalidate continuing obligations imposed on the Grantee by this agreement. Grant 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 Grantee's obligation to return any funds due to the Council as a result of later refunds, corrections, or other transactions.

VII. CONTACT PERSONS; GRANT MANAGER

7.01 Contact Persons. The authorized contact persons for receipt of notices, reports, invoices, and approvals under this agreement are the following:

COUNCIL:

GRANTEE

or such other person as may be designated in writing for itself by either party.

7.02 Council's Grant Manager. The Council's Grant Manager for purposes of administration of this agreement is the contact person listed for the Council in paragraph 7.01, or such other person as may be designated in writing by the Council's Regional Administrator. However, nothing in this agreement will be deemed to authorize the Grant Manager to execute amendments to this agreement on behalf of the Council.

VIII. GRANT PROPERTY

Title, acquisition, use, management, and disposition of all property acquired or constructed with grant funds under this agreement shall be governed by applicable federal law, rule, and guidance including, without limitation, the provisions of:

- 49 C.F.R. Parts 18.31, 18.32, and 18.33
(www.access.gpo.gov/nara/cfr/waisidx_98/49cfr18_98.html)
- *FTA Master Agreement* (www.fta.dot.gov/library/legal/agree.htm)
- *FTA Circular 5010.1C* (www.fta.dot.gov/library/policy/5010.1C/cover.htm)

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 Grantee, from the Council.

IX. GENERAL CONDITIONS

9.01 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.

9.02 Assignment Prohibited. Except as provided in paragraph 1.02, the Grantee shall not assign, subgrant, contract out, sublet, or transfer any Grant Project activities without receiving the express written consent of the Council. The Council may condition such consent on compliance by the Grantee with terms and conditions specified by the Council.

9.03 Indemnification. The Grantee assumes liability for and agrees to defend, indemnify and hold harmless the Council, its members, officers, employees and agents, from and against all losses, damages, expenses, liability, claims, suits, or demands including, without limitation, attorney's fees, arising out of, resulting from, or relating to the performance of the Grant Project by Grantee or Grantee's employees, agents, or subcontractors if caused in whole or in part by any negligent act or omission of the Grantee, including negligent acts or omissions of its employees, subcontractors, or anyone for whose acts any of them may be liable.

9.04 Grant Project Data. The Grantee agrees that the results of the Grant Project, the reports submitted, and any new information or technology that is developed with the assistance of this grant may not be copyrighted or patented by Grantee. The Grantee shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, in administering data under this agreement.

9.05 Nondiscrimination. The Grantee agrees to comply with all applicable laws relating to nondiscrimination and affirmative action. In particular, the Grantee agrees not to discriminate against any employee, applicant for employment, or participant in this Grant Project because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age; and further agrees to take action to ensure that applicants and employees are treated equally with respect to all aspects of employment, including selection for training, rates of pay, and other forms of compensation. In undertaking the Grant Project activities, the Grantee agrees to comply with Minnesota Statutes, section 363.03, subdivision 4, regarding non-discrimination in the provision of public services.

9.06 Acknowledgment. The Grantee shall appropriately acknowledge the grant assistance made by the Council and the FTA under this agreement in any promotional materials, reports, and publications relating to the Grant Project.

9.07 Compliance with Law; Obtaining Permits, Licenses, and Authorizations. The Grantee agrees to conduct the Grant Project in compliance with all applicable provisions of federal, state, and local laws, ordinances, or regulations. The Grantee is responsible for obtaining and complying with all federal, state, or local permits, licenses, and authorizations necessary for performing the Grant Project.

9.08 Workers Compensation; Tax Withholding. The Grantee represents that it is compliance with the workers compensation coverage requirements of Minnesota Statutes, section 176.181, subdivision 2, and that it, and any of its contractors or material suppliers, if any, under this contract, are in compliance with the tax withholding on wages requirements of Minnesota Statutes, section 290.92.

9.09 Jurisdiction, Venue, and Applicable Law. Venue for all legal proceedings arising out of this agreement, or breach of this agreement, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. All matters relating to the performance of this agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota.

9.10 Non-Waiver of Municipal Immunity and Limits. Nothing in this agreement shall be construed to waive the municipal immunities or liability limits provided in the Minnesota Municipal Tort Claims Act, Minnesota Statutes, Chapter 466, or other applicable state or federal law.

X. GENERAL FEDERAL REQUIREMENTS

10.01 Federal Requirements. This grant is funded in whole or in part by the United States Department of Transportation, Federal Transit Administration. The requirements in this article X 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.

10.02 Incorporation of Federal Grant. FTA Grant Number _____ has been incorporated into this agreement as Exhibit A. When performing work or expending funds for Grant Project activities, the Grantee agrees to comply with all applicable terms and conditions of said grant.

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

10.04 Federal Certifications and Assurances; Execution and Incorporation. The Grantee agrees to comply with and to certify compliance with the federal *Fiscal Year 2004 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements* attached to and incorporated into this agreement as Exhibit C. The Grantee 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 Grantee shall annually execute the most current federal certifications and assurances document and provide the same to the Council.

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

- *FTA Master Agreement* (www.fta.dot.gov/library/legal/agree.htm)
- *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, 49 CFR Part 18 (www.access.gpo.gov/nara/cfr/waisidx_98/49cfr18_98.html)
- *Grant Management Guidelines*, FTA Circular 5010.1C (www.fta.dot.gov/library/policy/5010.1C/cover.htm)

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 Grantee, from the Council.

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

- a. Compliance with Federal Procurement Requirements.** Grantee will comply with all applicable federal law, rules, and guidance relating to such procurement including, without limitation, the provisions of *Third Party Contracting Requirements*, FTA Circular 4220.1E (www.fta.dot.gov/library/policy/tpcrpc.htm), 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 Grantee, from the Council.

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- b. **Certification of Grantee's Procurement System.** Grantee certifies that its procurement system complies with the standards described in the previous paragraph.
- c. **Council Approval of Contracts.** The Grantee shall not execute any third party contract or otherwise enter into a binding agreement until it has first received written approval from the Council's Grant Manager.
- d. **Inclusion of Provisions in Lower Tier Contracts.** The Grantee agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier subcontract financed in whole or in part with financial assistance under this agreement including all applicable provisions of this agreement.
- e. **Disadvantaged Business Enterprise Requirements.** For all work performed under this grant agreement, Grantee will comply with the Council's Disadvantaged Business Enterprise (DBE) Program. In particular, Grantee 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 incorporated into this agreement as Exhibit D. For the purposes of Exhibit D, the following provisions shall apply:

- The Metropolitan Council DBE Liaison Officer, or designated staff, shall act as the Grantee DBE Liaison Officer for the purposes of this grant.
- Grantee agrees to submit to the Council for review, approval, and establishment of the appropriate DBE goal all procurements in excess of \$50,000.
- Grantee 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.
- Grantee 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.

10.07 Provisions Subject to Change. The Grantee acknowledges that federal requirements in this article X are subject to change and agrees that the most recent of these requirements shall govern this agreement at any particular time.

10.08 No Federal Obligation. This grant is financed by federal funds. However, payments to the Grantee 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, USDOT, FTA, or any representatives of the federal government makes the United States a party to this agreement. The Grantee shall include this clause in any contracts or agreements under this agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the dates set forth below. This agreement is effective upon final execution by, and delivery to, both parties.

GRANTEE _____

Date _____

By _____

Name _____

Title _____

METROPOLITAN COUNCIL

By _____
Regional Administrator

Approved as to form:

Metropolitan Council
Office of General Counsel

Date _____
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LIST OF EXHIBITS

Exhibit	Description
A	FTA Grant Number _____
B	Specific Federal Clauses
C	Federal Fiscal Year 2004 Annual List of Certifications and Assurances
D	Disadvantaged Business Enterprise (DBE) Pass Through Agreement and Program

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EXHIBIT A

FTA GRANT NUMBER _____

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EXHIBIT B
SPECIFIC FEDERAL CLAUSES

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**EXHIBIT C
FEDERAL FISCAL YEAR 2003 ANNUAL LIST OF CERTIFICATIONS AND ASSURANCES
FOR FEDERAL TRANSIT ADMINISTRATION GRANTS AND COOPERATIVE
AGREEMENTS**

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**EXHIBIT D
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PASS THROUGH AGREEMENT AND
PROGRAM**

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