

**PASSTHROUGH GRANT AGREEMENT
BETWEEN THE METROPOLITAN COUNCIL
AND
THE CITY OF MINNEAPOLIS
FOR CONGESTION MITIGATION/AIR QUALITY FUNDS**

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

WHEREAS:

1. The Council will receive Congestion Mitigation and Air Quality ("CMAQ") funds from the Federal Transit Administration ("FTA") for Transportation Demand Management ("TDM") projects in the Twin Cities area.
2. The Council desires to pass-through certain sums of the CMAQ funds to the Grantee as a Transportation Management Organization ("TMO") to assist with preparation, implementation and evaluation of a TDM plan and program that will establish the TMO within the community, promote its services, and create on-going relationships.
3. This agreement is intended to memorialize the terms upon which the Grantee is to receive the CMAQ funds provided to the Council by the FTA.

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 grant project specified in **Exhibit A** ("Grant Project"), in accordance with the terms and conditions of this agreement. The Grantee shall submit to the Council, for review and approval, a Management Plan for the Grant Project. The Management Plan shall include the information described in Exhibit A. After the effective date of this agreement, all proposed changes in the Management Plan 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 Management Plan.

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;

- 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.

1.03 Material Representations. The Grantee agrees that all representations contained in its application for grant assistance are material representations of fact upon which the Council relied in awarding this grant and are incorporated by reference into this agreement.

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. No other use of grant or matching funds is permitted.

2.02 [Reserved]

2.03 Unauthorized Uses of Grant Funds. Grant and matching funds cannot be used by the Grantee:

- a. to purchase or lease land, buildings, or other interests in real property,
- b. to purchase equipment, machinery, supplies, or other personal property, or
- c. to pay overhead or indirect costs, legal fees, or permit, license, or other authorization fees,

unless specifically approved in advance by the Council's Grant Manager

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 \$731,250, which consists 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 \$585,000 ("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 that 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%) match from sources other than from Council local funds or from FTA funds, i.e., not less than a \$146,250 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. Each reimbursement request must include an itemization of expenditures for which reimbursement is requested 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 the FTA CMAQ Program.
- b. Upon review and approval of the reimbursement request, the Council will distribute to the Grantee the approved reimbursement request amount. 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 FTA CMAQ grant funds from the FTA. If, for any reason, FTA reduces the amount of the Council's FTA CMAQ passthrough 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 FTA or the federal government 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 FTA rescinds passthrough funding for the FTA CMAQ Program, 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

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

- a. Budget status including a breakdown of expenses into categories as a backup for the monthly invoice. Total expenses must match the total invoice amount and then reflect an 80% billing to the Council. Expenses must be broken down into common areas. This information must be provided in Microsoft Excel or similar format and sent via email to the Council's Grant Manager.
- b. A narrative describing activities not covered in the marketing logs including, for example, such things as research, committees, etc. This information must be provided in Microsoft Word or similar format and sent via email to the Council's Grant Manager.
- c. Five of each collateral material piece developed by the Grantee that is paid for with grant funds. This includes reports, posters, flyers, studies, etc. that are paid for with grant funds.

- d. Numbers from the monthly activity spreadsheet that is provided to Grantee by the Council. This information must be provided in Microsoft Excel format and sent via email to the Council's Grant Manager.
- e. Status against goals on work plan. This information must be provided in electronic format and sent via email to the Council's Grant Manager.
- f. DBE Project/Progress Reports and narrative.
- g. Other information as deemed necessary for completion of required reports.

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 FTA CMAQ Grant Program 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 January 1, 2005 through December 31, 2006 ("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:

David Christianson
Metropolitan Council
Mears Park Centre
230 East Fifth Street
Saint Paul, MN 55101-1634
651-602-1737 (voice)
651-602-1200 (fax)
david.christianson@metc.state.mn.us

GRANTEE:

Jon Wertjes, P.E.
Minneapolis Public Works
233 City Hall
350 South 5th Street
Minneapolis, MN 55415
612-673-2614 (phone)
612-673-2149 (fax)
jon.wertjes@ci.minneapolis.mn.us

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.

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.

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 CMAQ Grant No. _____ is attached to and incorporated into this agreement as **Exhibit B**. 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 C** and agrees to require, unless specifically exempted, sub-recipients (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 2005 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements* attached to and incorporated into this agreement as **Exhibit D**. 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 that 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.
- 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 and of the State Grant 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 E**.

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.

-The remainder of this page has been intentionally left blank -

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.

CITY OF MINNEAPOLIS

Countersigned:

By _____
City Finance Officer

Date _____

Approved as to Form:

By _____
City Attorney

Date _____

Approved:

By _____
Mayor

Date _____

Recommended for Approval:

By _____
Department Head

Date _____

METROPOLITAN COUNCIL

By _____
Regional Administrator

Date _____

Approved as to form:

Metropolitan Council
Office of General Counsel

Approved as to form:

Metropolitan Council
Office of General Counsel

LIST OF EXHIBITS

Exhibit	Description
A	Grant Project Description
B	FTA CMAQ Grant Agreement
C	Specific Federal Clauses
D	Federal Fiscal Year 2005 Annual List of Certifications and Assurances
E	Disadvantaged Business Enterprise (DBE) Pass Through Agreement and Program

EXHIBIT A
GRANT PROJECT DESCRIPTION

1. Grant funds will be used to assist with preparation, implementation and evaluation of a TDM plan and program that will establish the Grantee as a TMO within the community, promote its services, and create on-going relationships.
2. The work of the Grantee shall be directed by and be consistent with the management plan adopted by the Grantee and approved by the Council. The management plan shall be a detailed work plan which includes:
 - goals set for each TDM alternative and strategy, including carpooling, vanpooling, bus, teleworking, biking, and flex work hours;
 - a description of program objectives;
 - a description of work tasks to achieve the goals;
 - work products; and
 - a timetable for completion of work tasks.
3. All data that identifies participating employers, their primary contacts, employee commuter requests for TDM services and identification of those using alternatives will be recorded on the RidePro database of the Council's Metro Commuter Services work unit.
4. The Grantee shall actively participate in regional promotions and programs provided by Metro Commuter Services such as Commuter Challenge, Commuter Choice Awards, Guaranteed Ride Home, Interactive Ridematching, etc.

EXHIBIT B
FTA CMAQ GRANT AGREEMENT

EXHIBIT C SPECIFIC FEDERAL CLAUSES

(For the purposes of this exhibit, the term “CONTRACTOR” shall refer to the “Grantee”)

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:

- A. 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.
- B. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
 - 1. 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.

2. 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.

3. 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.

C. 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”).

A. 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.

B. 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 49 CFR section 18.36 and FTA Circular 4220.1D, dated April 15, 1996, 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

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.

EXHIBIT D
FEDERAL FISCAL YEAR 2005 ANNUAL LIST OF CERTIFICATIONS AND ASSURANCES
FOR FEDERAL TRANSIT ADMINISTRATION GRANTS AND COOPERATIVE
AGREEMENTS

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