

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB29

ORDINANCE NUMBER: 2018-29

TITLE: AN ORDINANCE APPROVING THE FTA SECTION 5311 GRANT AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSIT AND RAIL AND THE CITY OF BLACK HAWK

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. The City of Black Hawk hereby approves the FTA Section 5311 Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.


Section 2. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 14th day of November, 2018.

ATTEST:


Melissa A. Greiner, CMC, City Clerk


David D. Spellman, Mayor



STATE OF COLORADO
Colorado Department of Transportation
Division of Transit and Rail
FTA Section 5311 Grant Agreement
with
CITY OF BLACK HAWK

TABLE OF CONTENTS

1. PARTIES	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY	1
3. RECITALS	2
4. DEFINITIONS.....	2
5. TERM	4
6. STATEMENT OF WORK / CONTRACT OBJECTIVE PLAN.....	4
7. PAYMENTS TO GRANTEE	5
8. REPORTING - NOTIFICATION.....	6
9. GRANTEE RECORDS.....	7
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	8
11. CONFLICTS OF INTEREST	8
12. REPRESENTATIONS AND WARRANTIES	9
13. INSURANCE.....	9
14. BREACH	10
15. REMEDIES.....	11
16. NOTICES and REPRESENTATIVES	13
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	13
18. GOVERNMENTAL IMMUNITY.....	13
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM	13
20. GENERAL PROVISIONS	14
21. COLORADO SPECIAL PROVISIONS	16
22. SIGNATURE PAGE.....	18
23. EXHIBIT A.....	19
24. EXHIBIT B	23
25. EXHIBIT C	24
26. EXHIBIT D.....	28
27. EXHIBIT E	33

1. PARTIES

This Grant ("Grant") is entered into by and between CITY OF BLACK HAWK ("Grantee"), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Transit and Rail ("State" or "CDOT"). Grantee and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee ("Effective Date"). Except as provided in Section 7(B)(ii), the State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c) as amended, and funds have been budgeted, appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149 and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

In accordance with 49 USC §5311, the purpose of this Grant is to provide capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000, where many residents often rely on public transit to reach their destinations. The work to be completed under this Grant by the Grantee is more specifically described in **Exhibit A**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and **Exhibits A, B, C, D, and E**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work and Budget), **Exhibit B** (Verification of Payment), **Exhibit C** (Supplemental Federal Provisions for Federally Funded Contracts, Grants, and Purchase Orders-FFATA), **Exhibit D** (Supplemental Federal Provisions for Federal Awards) and **Exhibit E** (Required Third Party Contract/Agreement Clauses).

D. Federal Funds

“Federal Funds” means the funds provided by the Federal Transit Administration (“FTA”) to fund performance of the work.

E. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein.

G. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

H. Grantee

“Grantee” for the purposes of this Grant means the Grantee named in Section 1.

I. Local Funds

“Local Funds” means funds provided by any city, county, or entity (public or private) for performance of the Work and includes in-kind contribution.

J. Master Agreement

“Master Agreement” means the FTA document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.

K. Other than Urbanized (Non-urbanized) Area

“Other than Urbanized (Nonurbanized) Area” means any area outside of an urbanized area. The term “nonurbanized area” includes Rural Areas and urban areas under 50,000 in population not included in an Urbanized Area.

L. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

M. Project

“Project” means Work identified in **Exhibit A**.

N. Public Transportation

“Public Transportation” for purposes of the federal transit program, has the same meaning as “transit,” and “mass transportation,” and:

- (1) Includes transportation by a conveyance that provides regular and continuing:
 - a. General transportation to the public, or
 - b. Special transportation to the public, but
- (2) Does not include:
 - a. School bus transportation,
 - b. Charter transportation
 - c. Sightseeing transportation,
 - d. Intercity bus transportation, or
 - e. Intercity passenger rail transportation provided by Amtrak or a successor to the entity described in 49 USC chapter 243 (Amtrak).

O. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6, §19** and **Exhibit A**.

P. Rural Area

“Rural Area” means an area with low population and density outside the boundaries of an urban area. However, the term “rural” is commonly used to refer to all areas other than urbanized areas and is so used in this Grant.

Q. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

R. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

S. Third Party Participant

“Third Party Participant” means, unless FTA determines otherwise in writing, all participants in the Grantee’s Project that are not CDOT or FTA, such as:

1. Subgrantees,
2. Lessees,
3. Third party contractors,
4. Third party subcontractors, and
5. Other participants in the Grantee’s Project.

T. Urban Area

“Urban Area” means an area that includes a municipality or other built-up place that the Secretary of Commerce, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in a locality.

U. Urbanized Area

“Urbanized Area” means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the Secretary of

Commerce. "Small urbanized areas" as used in the context of FTA formula grant programs are urbanized areas with a population of at least 50,000 but less than 200,000.

V. Work

"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**, including the performance of the Services and delivery of the Goods.

W. Work Product/Deliverable

"Work Product" or "Deliverable" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

This Agreement shall commence on **January 01, 2019**, and funds shall be expended by **December 31, 2019** (the "End Date") as detailed under the Project Schedule in **Exhibit A**. If the Work shall be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit A**. This Grant shall terminate on **December 31, 2019** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in §16, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK / CONTRACT OBJECTIVE PLAN

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before **December 31, 2019**. Except as provided in §7(B)(ii), the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantee(s) shall be considered Grantee's or Subgrantee's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

D. Federal Laws, Rules and Regulations

If the Grant Funds involves federal funding, Grantee understands and agrees that federal laws, rules and regulations will control the Work and its implementation. Unless a written waiver is granted, Grantee agrees to comply with all required federal laws, rules and regulations applicable to the Work, in addition to all State requirements.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$112,890.00**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**.

B. Payment

i. Matching Funds

The Subrecipient shall provide matching funds as provided in §7 and **Exhibit A**. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Subrecipient and paid into the Subrecipient's treasury or bank account.

The Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in **Exhibit A** has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. The Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Subrecipient. The Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

ii. Retroactive Payments

The State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State. As authorized by the FTA, such Grantee share (local funds) may include costs or expenses incurred or performance by the Grantee prior to the Effective Date.

iii. Reimbursement of Subrecipient Costs

The State shall reimburse the Subrecipient's allowable costs, not exceeding the maximum total amount described in **Exhibit A** and §7. The State shall reimburse the Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit A**. However, any costs incurred by the Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of preaward costs and indication that the Federal Award funding is retroactive. Allowable costs shall be:

a) Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

b) Net Cost

Actual net cost to the Subrecipient (i.e. the price paid minus any items of value received by the Subrecipient that reduce the cost actually incurred).

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal

funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

v. Invoicing

Any advance payment allowed under this Grant shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

vi. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

vii. Closeout

The Subrecipient shall close out this Grant within 90 days after the End Date. Grant close out entails submission to the State by the Subrecipient of all documentation defined as a Deliverable in this Agreement, and Subrecipient's final reimbursement request. The State shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by [Federal awarding agency] within 1 year and 90 days after the End Date due to Subrecipient's failure to submit required documentation that the State has requested from the Subrecipient, then the Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation has been submitted and accepted.

viii. Erroneous Payments

The closeout of a federal award does not affect the right of [Federal Awarding Agency] or [PTE] to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in the Manual and/or Exhibits A, C, D, and E.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and State laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

E. Performance and Final Status

Party shall submit, all financial, performance, and other reports to State no later than 90 calendar days after the End Date or sooner termination of this Agreement containing an Evaluation and Review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

F. Violations Reporting

Subrecipient must disclose, in a timely manner, in writing to the State and to the Federal Awarding Agency responsible for issuance of the Federal Award, all violations of Federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Grant. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) for a period of three years following the date of submission to the State of the final expenditure report, or if this Grant is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to the Grant starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101 *et seq.*

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. To the extent permitted by law, the Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Subrecipient shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Subrecipient's obligations hereunder. Such a conflict of interest would arise when a Subrecipient's employee, officer or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or receives a tangible personal benefit from Subrecipient's receipt of the Federal Award and/or entry into this Grant Agreement. Officers, employees and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Subrecipient acknowledges that with respect to this Grant Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations to the State hereunder. If a conflict or the appearance of a conflict exists, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict of interest exists, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant Agreement.

Document Builder Generated

FTA5311 Grant.03.Feb12 – originated from approved OSC Grant template Rev 1/12/11

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subgrantees that are not "public entities".

B. Grantee and Subgrantees

Grantee shall require each Grant with Subgrantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Subgrantee employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability Insurance policy (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Subgrantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Subgrantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Subgrantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), provided however, that the State may terminate this Grant pursuant to §15(B) without a breach. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Moira Moon
Division of Transit and Rail
2829 W. Howard Place
Denver, CO 80204
303-757-9766
moira.moon@state.co.us

B. Grantee:

Tom Isbester
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO, 80422
303-582-1324
tisbester@cityofblackhawk.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Grantee agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Government and State purposes. All Work Product shall be delivered to the State by Grantee upon completion or termination hereof.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and

Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 USC 2671 *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties:

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment to this Grant, properly executed and approved in

accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. **Exhibit C** (Supplemental Federal Provisions for Federally Funded Contracts, Grants, and Purchase Orders-FFATA),
- ii. **Exhibit D** (Supplemental Federal Provisions for Federal Awards)
- iii. **Exhibit E** (Required Third Party Contract/Agreement Clauses),
- iv. Colorado Special Provisions,
- v. The Provisions of the main body of this Grant,
- vi. **Exhibit A** (Scope of Work and Budget),
- vii. **Additional Exhibits** in the order in which they appear.

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

21. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1)

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5)

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits will be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4

[Not applicable to intergovernmental agreements]

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]

Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 *et seq.*, the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 *et seq.*, and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.

<p>GRANTEE CITY OF BLACK HAWK</p> <p>By: <u>David D. Spellman</u> Print Name of Authorized Individual</p> <p>Title: <u>Mayor</u> Print Title of Authorized Individual</p> <p><u>[Signature]</u> *Signature</p> <p>Date: <u>11/14/18</u></p>	<p>STATE OF COLORADO John W. Hickenlooper, Governor Colorado Department of Transportation Michael P. Lewis – Executive Director</p> <p>By: <u>David Krutsinger, Director</u> <u>Division of Transit & Rail</u> Signatory avers to the State Controller or delegate that, except as specified herein, Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: <u>11/28/2018</u></p>
<p>2nd Grantee Signature if Needed</p> <p>By: _____ Print Name of Authorized Individual</p> <p>Title: _____ Print Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u>[Signature]</u> Colorado Department of Transportation</p> <p>Date: <u>12/7/18</u></p>
--

23. EXHIBIT A - SCOPE OF WORK AND BUDGET

Project Description*	CY2019 FTA 5311 Operating		
Federal Awarding Agency	Federal Transit Administration		
Federal Regional Contact	Cindy Terwilliger		
Federal Award Date	To Be Determined		
FAIN	To Be Determined	CFDA#	20.509
CFDA Title	Formula Grants for Rural Areas		
Subrecipient	City of Black Hawk	DUNS	008384836
Contact Name	Tom Isbester	Vendor Number	2000406
Address	PO Box 68 Black Hawk, CO 80422	Phone #	(303) 582-1324
Email	tisbester@cityofblackhawk.org	Indirect Rate	None
Total Project Budget	Operating Costs		
**WBS Element	19-11-4039.BHWK.300		
ALI	30.09.01		
Federal Funds		50%	\$112,890
Local Funds		50%	\$112,890
Total Project Budget Amount	\$225,780		
Total Project Amount Encumbered via This Grant Agreement	\$225,780		

*This grant is not a research and development project.

**The grants and line item WBS numbers may be replaced without changing the amount of the grant at CDOT's discretion.

A. Project Description

City of Black Hawk (Subrecipient) shall maintain the existence of public transportation services through the following goals:

1. Enhance access to health care, education, employment, public services, recreation, social transactions, and other basic needs
2. Assist in the maintenance, development, improvement and use of public transportation in their Transportation Planning Region (TPR) through participation in DRCOG.
3. Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in their TPR through the coordination of programs and services
4. Encourage mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development

Section 5311 funding is provided to support the services described in the Project Description above for calendar year 2019 (January 1 – December 31).

B. Performance Standards

1. Performance will be reviewed throughout the Grant Agreement. City of Black Hawk will report to the CDOT Project Manager when one or more of the following occurs:
 - a. Budget or schedule changes
 - b. Scheduled milestone or completion dates were not met
 - c. Identification of problem areas and how the problems will be solved
 - d. Expected impacts and the efforts to recover from delays
2. Performance will be reviewed based on:
 - a. Completion of 5311 Program Measure Reports/Quarterly Reports in COTRAMS (Colorado Transit and Rail Awards Management System), and
 - b. Completion of annual National Transit Database (NTD) Report.

3. Program Measure Reports/Quarterly Reports will be submitted in COTRAMS by the following due dates:
 - a. Quarter 1 due April 28th
 - b. Quarter 2 due July 28th
 - c. Quarter 3 due October 28th
 - d. Quarter 4 due January 28th

4. Milestones

Milestone Name	Milestone Description	Completion Date
MILE-075109	Submit Reimbursement Request in COTRAMS	Monthly
MILE-075110	Submit Progress Reports	Quarterly
MILE-075111	Submit Final Reimbursement Request in COTRAMS	March 1, 2020
IMPORTANT NOTE: All milestones in this scope of work must be completed (except for the final reimbursement request) no later than the contract expiration date of December 31, 2019.		

C. Project Budget

1. The Total Project Budget is \$225,780. The State will pay no more than 50% of the eligible, actual operating costs up to the maximum amount of \$112,890. City of Black Hawk shall be solely responsible for all costs incurred in the Project in excess of the amount paid by the State from funds for the share of eligible, actual costs. For CDOT accounting purposes, the Federal Operating Funds of \$112,890 (50%), and matching Local Operating Funds of \$112,890 (50%) will be encumbered by this Grant Agreement.
2. City of Black Hawk's share, together with the Federal share, shall be in an amount sufficient to assure payment of the net Project cost. The State will administer funds for this Project under the terms of this Grant Agreement, provided that the share of FTA funds to be administered by the State are made available and remain available. In no event shall the State have any obligation to provide State funds or provide FTA funds for the City of Black Hawk's share of the Project. City of Black Hawk shall initiate and prosecute to completion all actions necessary to enable City of Black Hawk to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs.
3. No refund or reduction of the amount of the City of Black Hawk's share to be provided will be allowed unless there is at the same time a refund or reduction of the share of a proportionate amount.
4. City of Black Hawk may use funds for the local share, but those funds cannot be from other Department of Transportation (DOT) programs. The City of Black Hawk's share, together with the share, must be enough to ensure payment of Total Project Budget.

D. Allowable Costs

1. City of Black Hawk shall agree to adhere to the provisions for allowable and unallowable costs cited in the following regulations: 2 CFR 200.420 through 200.475; FTA C 5010.1E Chapter VI; Financial Management; Master Agreement, Section 6 "Non-Federal Share;" and 2 CFR 200.102. Other applicable requirements for cost allowability not cited previously, shall also be considered.
2. City of Black Hawk's operating expenses are those costs directly related to system operations. City of Black Hawk at a minimum, should consider the following items as operating expenses: fuel, oil, drivers' salaries and fringe benefits, dispatcher salaries and fringe benefits, and licenses.
3. If City of Black Hawk elects to take administrative assistance, eligible costs may include but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.

Document Builder Generated

FTA5311 Grant.03.Feb12 – originated from approved OSC Grant template Rev 1/12/11

E. Reimbursement Eligibility

1. City of Black Hawk must submit invoice(s) monthly via COTRAMS. Reimbursement will apply only to eligible expenses that are incurred within the period of performance (January 1 – December 31) of this Grant Agreement.
2. Reimbursement requests must be within the limits of Section D, Allowable Costs, of this Grant Agreement. City of Black Hawk will be reimbursed based on the ratio of Federal Share and Local Share set forth in Project Budget above.
3. City of Black Hawk must submit the final invoice within 60 days of December 31, 2019 and complete a Grant Closeout and Liquidation (GCL) Form in COTRAMS, within 15 days of final reimbursement payment.

F. Special Conditions

1. City of Black Hawk will comply with the Federal Transit Administration (FTA) Drug and Alcohol Regulations, to include on time submission to FTA's Drug and Alcohol Management Information System (DAMIS).
2. City of Black Hawk shall maintain and report all information required by the National Transit Database (NTD) and any other financial, fleet, service data.
3. Any costs reimbursed to City of Black Hawk for this project, from other grant program funds may not be listed as a cost to be shared by FTA on a reimbursement request (i.e., no double billing).
4. If City of Black Hawk is unable to perform the activities described under Paragraph A., Project Description, or must significantly change its level of service described herein, the Subrecipient shall notify the State in writing.
5. City of Black Hawk must obtain prior State approval if FTA funds are intended to be used for payment of a lease or for third-party contracts.
6. City of Black Hawk shall document any loss, damage, or theft of FTA/State-funded property, equipment or rolling stock in COTRAMS.
7. City of Black Hawk will work cooperatively with CDOT to market and/or publicize this project as requested by CDOT. Such efforts may include ribbon cuttings, news articles, photos, and/or other media to be supplied by City of Black Hawk as appropriate.
8. City of Black Hawk must permit CDOT and its auditors to have access to City of Black Hawk's records and financial statements as necessary for CDOT to meet the requirements.
9. City of Black Hawk shall ensure that it does not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability.
10. City of Black Hawk shall seek to ensure non-discrimination in its programs and activities by developing and maintaining a Title VI Program in accordance with the "Requirements for FTA Subrecipients" in CDOT's Title VI Program Plan and Federal Transit Administration Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients." The Party shall also facilitate FTA's compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with FTA Circular 4703.1 "Environmental Justice Policy Guidance for Federal Transit Administration Recipients."
11. City of Black Hawk will provide comparable transportation services to persons with disabilities according to the Americans with Disabilities Act of 1990, as applicable. City of Black Hawk shall agree to produce and maintain documentation that supports compliance with the Americans with Disabilities Act to CDOT upon request.
12. City of Black Hawk shall ensure that it will comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FTA guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

Document Builder Generated

FTA5311 Grant.03.Feb12 – originated from approved OSC Grant template Rev 1/12/11

In any contract utilizing funds, land, or other aid, the City of Black Hawk shall require its -aid recipients and/or contractors to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

13. City of Black Hawk shall develop and maintain an ADA Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, FTA Circular 4710.1, and any additional requirements established by CDOT for FTA Subrecipients.
14. City of Black Hawk shall provide CDOT with an equity analysis if the project involves choosing a site or location of a facility in accordance to FTA Circular 4702.1B.
15. City of Black Hawk shall update its COTRAMS agency profile of any alterations to existing construction or any new construction in accordance with FTA Circular 4710.1.
16. City of Black Hawk shall include nondiscrimination language and the DBE assurance in all contracts and solicitations in accordance with DBE regulations, 49 CFR part 26 and CDOT's DBE program.
17. Record retention shall adhere to the requirements outlined in 2 CFR 200.333 and FTA C 5010.1E.

G. Training

In an effort to enhance transit safety, City of Black Hawk shall make a good faith effort to ensure that appropriate training of agency personnel is occurring and that personnel are up to date in appropriate certifications. In particular, City of Black Hawk shall ensure that driving personnel are provided professional training in defensive driving, training on the handling of mobility devices, and training on transporting older adults and people with disabilities.

H. Restrictions on Lobbying

City of Black Hawk is certifying that it complies with 2 CFR 200.450 by entering into this Grant Agreement.

24. EXHIBIT B - VERIFICATION OF PAYMENT

This checklist is to assist the Grantee in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change by CDOT. CDOT shall provide notice of any such changes to Grantee. All items may not apply to your particular entity. CDOT's goal is to reimburse Grantees as quickly as possible and a well organized and complete billing packet helps to expedite payment.

☐ Verification of Payment –

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger
 - In-Kind (must be pre-approved by CDOT) and/or cash match
 - Date of the report
 - Accounting period
 - Current period transactions
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable:
 - copies of checks
 - check registers
 - paycheck stub showing payment number
 - showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
- ✓ CDOT needs to ensure that expenditures incurred by the local agencies have been paid by the local agency *before* CDOT is invoiced by the local agency.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

☐ In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by CDOT prior to any work taking place.

- ✓ If in-kind or cash match is being used for the local match, the in-kind or cash match portion of the project must be included in the project application and the scope of work attached to the contract or purchase order. FTA does not require pre-approval of in-kind or cash match, but CDOT does.
- ✓ General ledger must also show the in-kind and/or cash match.

☐ Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by CDOT prior to applying it to the reimbursements.

- ✓ If indirect costs are being requested, an approved indirect letter from CDOT or your cognizant agency must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

☐ Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from cognizant agency that verifies fringe benefit or
- ✓ Submit the following fringe benefit rate proposal package to CDOT Audit Division:
 - Copy of Financial Statement
 - Personnel Cost Worksheet
 - State of Employee Benefits
 - Cost Policy Statement

**25. EXHIBIT C - SUPPLEMENTAL FEDERAL PROVISIONS FOR FEDERALLY FUNDED
CONTRACTS, GRANTS, and PURCHASE ORDERS-FFATA**

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
As of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached may be funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. "Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
- 1.1.1.** Grants;
 - 1.1.2.** Contracts;
 - 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4.** Loans;
 - 1.1.5.** Loan Guarantees;
 - 1.1.6.** Subsidies;
 - 1.1.7.** Insurance;
 - 1.1.8.** Food commodities;
 - 1.1.9.** Direct appropriations;
 - 1.1.10.** Assessed and voluntary contributions; and
 - 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
 - 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14.** Any award classified for security purposes; or
 - 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 1.2. "Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
- 1.3. "Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 1.4. "Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
- 1.5. "Entity"** means all of the following as defined at 2 CFR part 25, subpart C;
- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2.** A foreign public entity;
 - 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17. **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a

Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub-awards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Sub-recipient Reporting Requirements.** If Contractor is a Sub-recipient, Contractor shall report as set forth below.

- 7.1. **To SAM.** A Sub-recipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 7.1.1. Sub-recipient DUNS Number;
 - 7.1.2. Sub-recipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3. Sub-recipient Parent DUNS Number;
 - 7.1.4. Sub-recipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5. Sub-recipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6. Sub-recipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 7.2.1. Sub-recipient's DUNS Number as registered in SAM.
 - 7.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
8. **Exemptions.**
- 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
 - 8.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
 - 8.3. Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
 - 8.4. There are no Transparency Act reporting requirements for Vendors.
9. **Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

26. EXHIBIT D - SUPPLEMENTAL FEDERAL PROVISIONS FOR FEDERAL AWARDS

Supplemental Provisions for Federal Awards

Subject to

**The Office of Management and Budget Uniform Administrative Requirements,
Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1 “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 1.2 “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 1.3 “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
 - 1.4 “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 1.5 “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 1.6 “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 1.7 “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 1.8 “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 1.9 “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 1.10 “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
 - 1.11 “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.

2. **Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **Procurement Standards.**
 - 3.1 **Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
 - 3.2 **Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
4. **Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
5. **Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 75017507). 2 CFR §200.501.
 - 5.1 **Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
 - 5.2 **Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
 - 5.3 **Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:

Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- 6.2 Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 6.3 Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 6.5 Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. **Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
8. **Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F- Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.
10. **Performance Measurement.** The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

27. EXHIBIT E - REQUIRED THIRD PARTY CONTRACT/AGREEMENT CLAUSES

All FTA-Assisted Third Party Contracts and Subcontracts from the Current FTA Master Agreement [FTA MA(23)]

Section 3.I. – No Federal government obligations to third-parties by use of a disclaimer

1. No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government or CDOT expressly consents in writing, the Grantee agrees that:
 - (1) The Federal Government or CDOT do not and shall not have any commitment or liability related to the Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA, CDOT or the Grantee) to the Agreement, and
 - (2) Notwithstanding that the Federal Government or CDOT may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Agreement, the Federal Government and CDOT does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA, CDOT, or the Grantee) to the Agreement.

Section 4.f. – Program fraud and false or fraudulent statements and related acts

- f. False or Fraudulent Statements or Claims.
 - (1) Civil Fraud. The Grantee acknowledges and agrees that:
 - (a) Federal laws, regulations, and requirements apply to itself and its Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31.
 - (b) By executing the Agreement, the Grantee certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Grantee provides to the Federal Government and CDOT.
 - (c) The Federal Government and CDOT may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Grantee presents, submits, or makes available any false, fictitious, or fraudulent information.
 - (2) Criminal Fraud. The Grantee acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Grantee provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- a. Types of Records. The Grantee agrees that it will retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Grantee agrees that it will comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Agreement, and any Amendments thereto must be retained from the day the Agreement was signed by the authorized FTA or State official through the course of the Award, the accompanying Agreement, and any Amendments thereto until three years after the Grantee has submitted its last or final expenditure report, and other pending matters are closed.
- c. Access to Recipient and Third Party Participant Records. The Grantee agrees and assures that each Subgrantee, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Grantee and each of its Subgrantee,
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Grantee or Third Party Participant within books, records, accounts, or other locations, and

- (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- d. Access to the Sites of Performance. The Grantee agrees to permit, and to require its Third Party Participants to permit, FTA and CDOT to have access to the sites of performance of its Award, the accompanying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with State and the U.S. DOT Common Rules.
- e. Closeout. Closeout of the Award does not alter the record retention or access requirements of this section of the Master Agreement.

3.G – Federal Changes

- g. Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.
The Grantee agrees to comply with all applicable federal requirements and federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient's Agreement, or this Master Agreement. At the time the FTA Authorized Official (CDOT) awards federal assistance to the Grantee in support of the Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Grantee or the accompanying Agreement.

12 – Civil Rights

- c. Nondiscrimination – Title VI of the Civil Rights Act. The Grantee agrees to, and assures that each Third Party Participant, will:
 - (1) Prohibit discrimination on the basis of race, color, or national origin,
 - (2) Comply with:
 - (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
 - (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, and
 - (3) Follow:
 - (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance,
 - (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
 - (c) All other applicable federal guidance that may be issued.
- d. Equal Employment Opportunity.
 - (1) Federal Requirements and Guidance. The Grantee agrees to, and assures that each Third Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
 - (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
 - (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement,
 - (d) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients," and
 - (e) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,
 - (2) Specifics. The Grantee agrees to, and assures that each Third Party Participant will:
 - (a) Prohibited Discrimination. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, as provided in Executive Order No. 11246 and by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations,
 - (b) Affirmative Action. Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising, recruitment, and employment,
 - 2 Rates of pay and other forms of compensation,
 - 3 Selection for training, including apprenticeship, and upgrading, and
 - 4 Transfers, demotions, layoffs, and terminations, but
 - (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer,” and
- (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and
 - (b) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- h. Nondiscrimination on the Basis of Disability. The Grantee agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
- (1) Federal laws, including:
 - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities,
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities:
 - 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but
 - 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer,”
 - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
 - (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 - (e) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,
 - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
 - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
 - (d) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
 - (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
 - (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
 - (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
 - (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
 - (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194,
 - (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609,
 - (k) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance,” and
 - (l) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- a. Federal Laws, Regulations, Requirements, and Guidance. The Grantee agrees:
- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements,
 - (2) To comply with the applicable U.S. DOT Common Rules, and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

- j. Energy Conservation. The Grantee agrees to, and assures that its Subgrantees, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Applicable to Awards exceeding \$10,000

Section 11. Right of the Federal Government to Terminate.

- a. Justification. After providing written notice to the Grantee, the Grantee agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
- (1) The Grantee has failed to make reasonable progress implementing the Award,
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award, or
 - (3) The Grantee has violated the terms of the Agreement, especially if that violation would endanger substantial performance of the Agreement.
- b. Financial Implications. In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that the obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date if it determines that the Grantee has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Agreement, and require the Grantee to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- c. Expiration of the Period of Performance. Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 4. Ethics.

- b. Debarment and Suspension. The Grantee agrees to the following:
- (1) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
 - (2) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:
 - (a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200,
 - (b) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto,
 - (c) Executive Orders No. 12549, "Uniform Suspension, Debarment or Exclusion of Participants from Procurement or Nonprocurement Activity," October 13, 1994, 31 U.S.C. § 6101 note, as amended by

- Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989, 31 U.S.C. § 6101 note, and
- (d) Other applicable federal laws, regulations, or guidance regarding participation with debarred or suspended Grantees or Third Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - (4) It will include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
 - (a) Complies with federal debarment and suspension requirements, and
 - (b) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
 - (5) If the Grantee suspends, debars, or takes any similar action against a Third Party Participant or individual, the Grantee will provide immediate written notice to the:
 - (a) FTA Regional Counsel for the Region in which the Grantee is located or implements the Agreement,
 - (b) FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or
 - (c) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Grantee agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- a. Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j),

Section 39. Disputes, Breaches, Defaults, or Other Litigation.

- a. FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- b. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges, the Grantee must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Grantee is located.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) If the Grantee has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Grantee, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Grantee must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Grantee is located.
- c. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Agreement. Notwithstanding the preceding sentence, the Grantee may return all liquidated damages it receives to its Award Budget for its Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Grantee receives FTA’s prior written concurrence.

- d. Enforcement. The Grantee must pursue its legal rights and remedies available under any third party agreement, or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics.

- d. Lobbying Restrictions. The Grantee agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Agreement, including any extension or modification, according to the following:
- (1) Laws, Regulations, Requirements, and Guidance. This includes:
 - (a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,
 - (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
 - (2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Grantee's or Subgrantee's proper official channels.

Section 26. Environmental Protections - Clean Air and Clean Water

- d. Other Environmental Federal Laws. The Grantee agrees to comply or facilitate compliance and assures that its Third Party Participants will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Grantee agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- a. Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j),
- b. Cargo Preference. Preference – Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 C.F.R. part 381, and
- c. Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Grantee agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),
 - (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
 - (c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (2) Wage and Hour Requirements of:

- (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and
- (b) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
- (3) “Anti-Kickback” Prohibitions of:
 - (a) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874,
 - (b) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145, and
 - (c) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 C.F.R. part 3.
- (4) Construction Site Safety of:
 - (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and
 - (b) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. part 1910; and “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

From Section 16

- n. Bonding. The Grantee agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - (1) Construction. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - (2) Activities Not Involving Construction. For each Project or related activities implementing the Agreement not involving construction, the Grantee will not impose excessive bonding and will follow FTA guidance.

From Section 23

- b. Seismic Safety. The Grantee agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, and U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117.

Section 12 Civil Rights D.3

- (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and
 - (b) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

- b. Awards Not Involving Construction. The Grantee agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Applicable to Transit Operations

- d. Public Transportation Employee Protective Arrangements. As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Grantee agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- (1) U.S. DOL Certification. When its Awarded, the accompanying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Grantee agrees that the certification issued by U.S. DOL is a condition of the Agreement and that the Grantee must comply with its terms and conditions.
- (2) Special Warranty. When its Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Grantee agrees that its U.S. DOL Special Warranty is a condition of the Agreement and the Grantee must comply with its terms and conditions.
- (3) Special Arrangements for Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310. The Grantee agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subagreement participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- a. Prohibitions. The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other Federal Charter Service regulations, federal requirements, or federal guidance.
- b. Exceptions. Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Grantee uses that federal assistance for FTA program purposes only, and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Grantee uses that federal assistance for program purposes only.
- c. Violations. If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 C.F.R. part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- a. Prohibitions. The Grantee agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, “School Bus Operations,” 49 C.F.R. part 605, and any other applicable federal “School Bus Operations” laws, regulations, federal requirements, or applicable federal guidance.
- b. Violations. If a Grantee or any Third Party Participant has operated school bus service in violation of FTA’s School Bus laws, regulations, or requirements, FTA may require the Grantee or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Grantee or Third Party Participant from receiving federal transit assistance.

Document Builder Generated

FTA5311 Grant.03.Feb12 – originated from approved OSC Grant template Rev 1/12/11

From Section 35 Substance Abuse

b. Alcohol Misuse and Prohibited Drug Use.

- (1) Requirements. The Grantee agrees to comply and assures that its Third Party Participants will comply with:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5331,
 - (b) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. part 655, and
 - (c) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. part 40.
- (2) Remedies for Non-Compliance. The Grantee agrees that if FTA determines that the Grantee or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Grantee or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

a. General. The Grantee agrees that:

- (1) Depending on the nature of the Agreement, the Federal Government may acquire patent rights when the Grantee or Third Party Participant produces a patented or patentable invention, improvement, or discovery,
- (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement, or
- (3) When a patent is issued or patented information becomes available as described in the preceding section 17.a.(2) of this Master Agreement (FTA MA(23)), the Grantee will notify FTA immediately, and provide a detailed report satisfactory to FTA.

b. Federal Rights. The Grantee agrees that:

- (1) Its rights and responsibilities, and each Third Party Participant's rights and responsibilities, in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Grantee will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401.

c. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Grantee agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- a. Definition of "Subject Data." As used in this section, "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Agreement. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Agreement.
- b. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Agreement:
 - (1) Prohibitions. The Grantee may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) Exceptions. The prohibitions do not apply to publications or reproductions for the Grantee's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has

previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.

- c. Federal Rights in Data and Copyrights. The Grantee agrees that:
 - (1) General. It must provide a license to its "subject data" to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes, and
 - (2) U.S. DOT Public Access Plan – Copyright License. The Grantee grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Grantee herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- d. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Grantee and its Third Party Participants. Therefore, the Grantee agrees that:
 - (1) Publicly Available Report. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Agreement that FTA may publish or make available for publication on the Internet.
 - (2) Other Reports. It must provide other reports related to the Award that FTA may request.
 - (3) Availability of Subject Data. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
 - (5) Incomplete. If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes "subject data" and must be delivered as the Federal Government may direct.
 - (6) Exception. This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Grantee's use, and acquired with FTA capital program assistance.
- e. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Grantee agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income, and must be used in compliance with federal applicable requirements.
- f. Hold Harmless. Upon request by the Federal Government, the Grantee agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Grantee will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- g. Restrictions on Access to Patent Rights. Nothing in this section of this Master Agreement (FTA MA(23)) pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- h. Data Developed Without Federal Assistance or Support. The Grantee agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been

Document Builder Generated

used in connection with the Award. The Grantee agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."

- i. Requirements to Release Data. The Grantee understands and agrees that the Federal Government may be required to release data and information the Grantee submits to the Federal Government as required under:
- (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552,
 - (2) The U.S. DOT Common Rules,
 - (3) U.S. DOT Public Access Plan, which provides that the Grantee agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at: <http://ntl.bts.gov/publicaccess/howtocomply.html>, or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- e. Disadvantaged Business Enterprise (and Prompt Payment and Return of Retainage).
To the extent authorized by applicable federal laws, regulations, or requirements, the Grantee agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Agreement as follows:
- (1) Statutory and Regulatory Requirements. The Grantee agrees to comply with:
 - (a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,
 - (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement (FTA MA(23)).
 - (2) DBE Program Requirements. A Grantee that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 the requirements of 49 C.F.R. part 26.
 - (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Grantee agrees that:
 - (a) TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and
 - (b) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Grantee must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award management system. The Grantee must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
 - (4) Assurance. As required by 49 C.F.R. § 26.13(a):
 - (a) Recipient Assurance. The Grantee agrees and assures that:
 - 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26,
 - 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts,
 - 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and
 - 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of the Master Agreement (FTA MA(23)).
 - (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Grantee agrees and assures that it will include the following assurance in each subagreement and third party contract it

Document Builder Generated

FTA5311 Grant.03.Feb12 – originated from approved OSC Grant template Rev 1/12/11

signs with a Subgrantee or Third Party Contractor and agrees to obtain the agreement of each of its Subgrantees, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:

- 1 The Subgrantee, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26,
 - 2 The Subgrantee, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable,
 - 3 Failure by the Subgrantee and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of subparagraph 12.e(4)(b) (of FTA MA(23)) is a material breach of their subagreement, third party contract, or third party subcontract, as applicable, and
 - 4 The following remedies, or such other remedy as the Grantee deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subgrantee, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- (5) Remedies. Upon notification to the Grantee of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*

From Section 12. Civil Rights.

h. Nondiscrimination on the Basis of Disability. The Grantee agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

- (1) Federal laws, including:
 - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities,
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities:
 - 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but
 - 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer,”
 - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
 - (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 - (e) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
 - (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,
 - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
 - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
 - (d) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
 - (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
 - (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,

- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194,
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609,
- (k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and
- (l) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement. For Assignability

- a. Federal Laws, Regulations, Requirements, and Guidance. The Grantee agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements,
 - (2) To comply with the applicable U.S. DOT Common Rules, and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- a. Types of Information. To the extent required under federal law, the State, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project,
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized, and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals, or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.