



Ramsey County Regional Railroad Authority.
Records.

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Item # 2- Attachment # 2

SUBRECIPIENT GRANT AGREEMENT

Subrecipient:	Ramsey County Regional Railroad Authority (RCRRA)	SG-2011-128
Address:	RCRRA Timothy Mayasich, Director Ramsey County Regional Railroad Authority Suite 665 RCGC - West 50 West Kellogg Blvd St. Paul, MN 55102	
Workscope:	Site amenities work (FF&E and Public Art) for the renovation of the Union Depot Station as more specifically defined on Exhibit A.	
Effective Date:	Final execution by both parties	
Project Activity Period:	Effective Date through June 30, 2014	
Maximum Federal Grant:	\$1,542,760.00	Council Action:
Local Match:	\$ 385,690.00	Item: 2011-117
Federal Grant No.:	MN-04-0031	Date: 5/11/2011
CFDA No.:	20.500	

AGREEMENT

THIS AGREEMENT is made and entered into by and between the Metropolitan Council ("Council") and the Ramsey County Regional Railroad Authority ("Subrecipient") each acting by and through its duly authorized officers.

WHEREAS:

1. The Council, acting in its role as the Twin Cities Metropolitan Planning Organization, is able to receive and dispense federal funds.
2. Consistent with the requirements of 49 U.S.C. Section 5309 and the local processes, the Council submitted an application for federal assistance, which included the Subrecipient project described herein.
3. The Council received \$1,542,760 in grant funds on behalf of the Subrecipient's request from the U.S. Department of Transportation ("USDOT"), Federal Transportation Administration ("FTA") pursuant to grant number MN-04-0031.
4. The Subrecipient will authorize \$385,690 in regional railroad authority funds as the required local match for the \$1,542,760 in FTA grant funds.
5. This Agreement is intended to memorialize the terms under which the Subrecipient is to receive the FTA grant funds.

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

I. WORKSCOPE; APPROVED BUDGET AND MATERIAL REPRESENTATIONS

1.01 Workscope. The Subrecipient agrees to perform and complete the Workscope specified on **Exhibit A** ("FTA Grant Application Information/Approved Budget") in accordance with the terms and conditions of this Agreement. The Workscope details the activities to be completed by the Subrecipient and a proposed schedule for the completion of the Workscope. All Workscope activities must be consistent with the approved scope of work and the approved budget. Any proposed change in the Workscope must be submitted to the Council's Project Manager for written approval. A change in the Workscope is not effective until the Subrecipient receives written approval from the Council's Project Manager.

1.02 Approved Budget. The Subrecipient agrees to complete the Workscope in accordance with the Approved Budget specified on **Exhibit A**. The Approved Budget details the cost associated with each scope of work activity. Any requests for re-budgeting in excess of twenty percent (20%) of the Approved Budget must be approved in writing by the Council's Project Manager. Re-budgeting of project funds among the existing Approved Budget lines of the scope of work are allowable without prior approval if the amount of project funds to be transferred is less than twenty percent (20%) of the Approved Budget.

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

II. AUTHORIZED USE OF GRANT AND MATCHING FUNDS; ELIGIBILITY OF COSTS

2.01 Authorized Use of Grant and Matching Funds. The Subrecipient is only authorized to use the grant funds awarded under this Agreement and the Subrecipient's matching funds for costs directly incurred for the Workscope during the Project Activity Period as specified in Section 6.01, and in accordance with the Approved Budget.

2.02 Eligibility of Costs. All expenses are subject to FTA regulations including:

- **FTA Master Agreement**
(www.fta.dot.gov/documents/TEAM_Master_Agreement_2011_17-Master.pdf-2010-11-03)
- **Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**, 49 CFR Part 18
(http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/03_DOTComRul_49CFR18.html)
- **Grant Management Guidelines**, FTA Circular 5010.1D
(http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf)
- **Third Party Contracting Requirements**, FTA Circular 4220.1F,
(http://www.fta.dot.gov/documents/C_4220_1F.pdf)

The Subrecipient acknowledges that the federal requirements in this article and throughout this Agreement are subject to change and agrees that the most recent of these requirements shall govern this Agreement at any particular time.

III. AWARD AMOUNT, MATCH AND PAYMENT

3.01 Estimated Project Amount. The total estimated cost of the Workscope is \$1,928,450, consisting of the Maximum Federal Grant Amount and the Subrecipient required match for each of the Federal Grants as set forth below.

3.02 Maximum Federal Grant Amount. The Council awards to the Subrecipient one grant of up to \$1,542,760 for the Workscope. In no event will the Council's obligation under this agreement exceed the lesser of the following:

- A. The Maximum Federal Grant Amount; or
- B. 80% of the total Workscope expenditures.

The Council shall bear no responsibility for cost overruns that may be incurred by the Subrecipient in performance of the Workscope.

3.03 Subrecipient Match. The Subrecipient must provide a twenty percent (20%) local match against the Maximum Federal Grant Amount, i.e., not less than \$385,690 from sources other than federal funds. If the final expenses for the Workscope are less than the Estimated Project Amount, then local match shall be reduced to twenty percent (20%) of the final Workscope amount. If the final expenses for the Workscope exceed the Estimated Project Amount, the Subrecipient is responsible for providing the funds to cover the final costs and expenses.

3.04 Reimbursement. Expenses will be reimbursed by the Council for 80% of total invoiced expenditures based on submission of quarterly invoices from the Subrecipient using the form attached hereto as **Exhibit B** ("Subrecipient Invoice Form"). Invoices should be submitted in triplicate on the approved form with the following attachments on each copy:

- A. Copies of all receipts for expenses paid during the period; and
- B. Monthly DBE report for each third party contract using the approved form attached hereto as **Exhibit C** ("DBE Progress/Project Report Form").
- C. A signed certification that the subrecipient is providing the local match for the invoiced expenditures, identifying the source of the local funds.

The Subrecipient shall submit any additional data and/or information requested by the Council to support the Subrecipient's reimbursement request and shall submit any additional data and/or information that may be required by the federal government for reporting to the FTA.

Upon the Council's review and approval of the Subrecipient's reimbursement request, the Council will distribute to the Subrecipient the approved reimbursement amount. The Council may deny part or all of any reimbursement request if it believes that it is not a supportable

Workscope expense. No reimbursement will be made which would cause the distribution of grant funds to exceed, cumulatively, through such payment, the limits in section 3.02. The Council may withhold payment if the Subrecipient is not current in its reporting requirements under Article V. Distribution of any funds or approval of any report is not to be construed as a Council waiver of any Subrecipient noncompliance with this Agreement.

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

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

3.07 Grant Contingent on Federal Funding. The Subrecipient acknowledges and agrees that the Council's payment of funds under this Agreement is contingent on the Council receiving grant funds from the FTA. If, for any reason, the FTA reduces the amount of the Council's FTA Grant, or otherwise fails to pay any part of the cost or expense of the Workscape in this Agreement, only outstanding incurred costs shall be eligible for reimbursement. The Subrecipient and its contractors and subcontractors further agree to pay any and all lawful claims arising out of or incidental to the performance of the Workscape covered by this Agreement in the event that the FTA does not pay the same and, in all events, agree to hold the Council harmless from those claims and from any claims arising out of this Agreement. In the event the FTA rescinds funding for the FTA Grant, the Council may immediately terminate this Agreement by written notice to the Subrecipient pursuant to Section 6.03.

IV. ACCOUNTING AND RECORDKEEPING REQUIREMENTS

4.01 Documentation of Workscape Costs. All costs charged to the Workscape, whether paid with grant funds or charged as the Subrecipient's match, must be supported by proper documentation, including properly executed payrolls, effort reporting or time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

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

- A. Six (6) years following the term of this Agreement; or
- B. If any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.

4.03 Audit. The accounts and records of the Subrecipient relating to the Workscope shall be audited in the same manner as all other accounts and records of the Subrecipient are audited. During the time of maintenance of information under paragraph 4.02, authorized representatives of the Council, the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, section 16C.05, subdivision 5, the United States Secretary of Transportation, the FTA Administrator, and the United States Comptroller General will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. The Subrecipient will provide proper facilities for such access and inspection.

V. REPORTING AND MONITORING REQUIREMENTS

5.01 Quarterly Milestone Progress Reports. The Subrecipient shall submit quarterly milestone progress reports to the Council. The Council shall provide the Subrecipient with an electronic version of the milestone progress report that the Subrecipient must complete. Each quarterly progress report must include a detailed summary of the completed Workscope activities and a report on the Workscope schedule. Both the Council and the Subrecipient must approve each quarterly milestone progress report. The quarterly progress reports are due as follows:

- **January 15 for quarter October 1 - December 31**
- **April 15 for quarter January 1 - March 31**
- **July 15 for quarter April 1 - June 30**
- **October 15 for quarter July 1 - September 30**

5.02 Final Reports. Upon completion of the Workscope and not later than sixty (60) calendar days after the end of the Project Activity Period, the Subrecipient must submit a final progress report and a final financial status report of expenditures for the full Workscope and containing a final accounting of the grant and matching expenditures. The final report must include inventory of Workscope property as required by Article VIII of this Agreement.

5.03 Content of Reports; Copies. The Subrecipient agrees to report completely and to provide the Council with any additional or follow-up information as may be requested by the Council. The Subrecipient agrees to provide copies of the reports specified in paragraphs 5.01 and 5.02 to organizations and individuals upon request during the term of this Agreement in accordance with the terms of the Minnesota Government Data Practices Act.

5.04 Monthly DBE Reporting Requirements. The Subrecipient shall provide the Council with monthly reports on all DBE activity (see Section 10.05 E) on third party agreements in the form attached hereto as **Exhibit C** and based on the procurement process established for the Subrecipient in the "Federal Procurement Basics" which is attached hereto as **Exhibit D** ("Federal Procurement Basics").

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

5.06 Changed Conditions. The Subrecipient agrees to notify the Council immediately of any development that has or will have a significant impact on performance of the Workscope, including, but not limited to, any problems, delays or adverse conditions that materially impair the ability to meet the objectives of the Workscope in accordance with the terms of this Agreement. The notice shall include a statement of the action taken or contemplated and any assistance needed to resolve the situation.

5.07 Special Reporting Requirements. The Council is required to report to the FTA regarding the FTA Grant Program activities. Accordingly, the Subrecipient agrees to provide the Council with any additional or follow-up information reasonably requested by the Council, in order to meet the Council's FTA reporting requirements.

VI. PROJECT ACTIVITY PERIOD; TERM; TERMINATION

6.01 Project Activity Period. The Subrecipient agrees to complete all Workscope activities during the period from the Effective Date of this Agreement to June 30, 2014 ("Project Activity Period"). Except as provided in Section 6.02, grant funds may not be used to reimburse costs for any Workscope activities taking place before the beginning or after the end of the Project Activity Period.

6.02 Term. The term of this Agreement shall extend from the Effective Date of this Agreement to a date sixty (60) calendar days following the end of the Project Activity Period to permit close out of this Agreement. If outstanding claims related to work occurring during the Project Activity Period still exist sixty (60) calendar days following the end of the Project Activity Period, the Term of this Agreement shall automatically extend for an additional ninety (90) calendar days in order to resolve any and all outstanding claims.

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

6.04 Termination for Noncompliance. If there has been a material failure to comply with the provisions of this Agreement by either party (a "breach"), the other party may terminate this Agreement at any time following seven (7) calendar days written notice to the party in breach and upon failure of the party in breach to cure the noncompliance within the seven-day period. A material failure of the Subrecipient to make reasonable progress toward completion of the Workscope without good cause and without providing the notice required by Section 5.06 constitutes a breach. At the Council's option, the Council may withhold payment of invoices during any period in which the Subrecipient is materially non-compliant with this Agreement. If the Council finds that the Subrecipient's noncompliance is willful and unreasonable, the Council may terminate or rescind this Agreement and require the Subrecipient to repay the grant funds in full or in a portion determined by the Council, except that Subrecipient shall not be required to repay grant funds that Council has reviewed, approved and distributed except as provided for in Sections 3.05 and 3.06. Nothing herein shall be construed so as to limit the Council's legal remedies to recover grant funds in accordance with Sections 3.05 and 3.06.

6.05 Effect of Workscope Closeout or Termination. The Subrecipient agrees that Workscope closeout or termination of this Agreement does not invalidate continuing obligations imposed on the Subrecipient by this Agreement. Project closeout or termination of this Agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Subrecipient's obligation to return any funds due to the Council as a result of later refunds, corrections, or other transactions.

VII. CONTACT PERSONS; PROJECT MANAGER

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

The Council:

Name: Joseph H. Edwards, P.E., FCSI, CCS
Title: Lead Project Manager
Mailing Address: 560 Sixth Avenue North, Minneapolis, MN 55411-4398
Phone: 612-349-7676
E-mail: joe.edwards@metc.state.mn.us

The Subrecipient:

Name: Steve Morris
Title: Transit Projects Manager
Mailing Address: Ramsey County Regional Railroad Authority, 50 West Kellogg Blvd
St. Paul, MN 55102
Phone: 651.296.1365
E-mail: steve.morris@co.ramsey.mn.us

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

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

7.03 Subrecipient Project Manager. The Subrecipient's Project Manager for purposes of administration of this Agreement is the contact person listed in Section 7.01, or such other person as may be designated in writing by the Subrecipient. Nothing, however, in this Agreement will be deemed to authorize the Subrecipient's Project Manager to execute amendments to this Agreement on behalf of the Subrecipient.

VIII. GRANT PROPERTY

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

- **Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments** 49 C.F.R. Parts 18.31, 18.32, and 18.33
http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/03_DOTComRul_49CFR18.html)
- **Grant Management Guidelines**, FTA Circular 5010.1D
http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf)

The listed documents are incorporated by reference into this Agreement. Copies of these documents are available at the internet websites indicated or, upon request by the Subrecipient, from the Council.

IX. GENERAL CONDITIONS

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

9.02 Assignment Prohibited. The Subrecipient shall not assign, subgrant, sublet, or transfer any Workscope activities without receiving the express written consent of the Council. The Council may condition such consent on compliance by the Subrecipient with terms and conditions specified by the Council.

9.03 Liability. Each party shall be responsible for its own acts and omissions, the acts and omissions of its employees and the results thereof to the extent authorized by law. The parties expressly agree that they do not contractually waive any limitations on liability or other immunities or defenses available to them by statute or common law, for activities undertaken pursuant to this Agreement.

9.04 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Subrecipient and the Council, nor create third party beneficiary rights against Council or Subrecipient, including, but not limited to, Subrecipient's contractors or subcontractors.

9.05 Indemnification. The Subrecipient assumes liability for and agrees to defend, indemnify and hold harmless the Council, its members, officers, employees and agents, from and against all losses, damages, expenses, liability, claims, suits, or demands including, without limitation, attorney's fees, arising out of, resulting from, or relating to the performance of the Workscope by Subrecipient or Subrecipient's employees, agents, or subcontractors.

9.06 Workscope Data. The Subrecipient agrees that the results of the Workscope, the reports submitted, and any new information or technology that is developed with the assistance of this grant is in the public domain and may not be copyrighted or patented by Subrecipient. The Subrecipient shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, in administering data under this Agreement.

9.07 Nondiscrimination. The Subrecipient agrees to comply with all applicable laws relating to nondiscrimination and affirmative action. In particular, the Subrecipient agrees not to discriminate against any employee, applicant for employment, or participant in this Workscope

because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age; and further agrees to take action to ensure that applicants and employees are treated equally with respect to all aspects of employment, including selection for training, rates of pay, and other forms of compensation. In undertaking the Workscope activities, the Subrecipient agrees to comply with Minnesota Statutes, Section 363A.12, regarding non-discrimination in the provision of public services.

9.08 Acknowledgment. The Subrecipient shall appropriately acknowledge the grant assistance made by the Council and the FTA under this Agreement in any promotional materials, reports and publications relating to the Workscope.

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

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

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

X. GENERAL FEDERAL REQUIREMENTS

10.01 Federal Requirements. The requirements in this Article X are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Agreement. If any requirement in this article is inconsistent with a provision found elsewhere in this Agreement and is irreconcilable with such provision, the requirement in this article shall prevail. When performing work or expending funds for Project activities, the Subrecipient agrees to comply with all applicable terms and conditions referenced herein. **The Subrecipient acknowledges that federal requirements in this Article X are subject to change and agrees that the most recent of these requirements shall govern this Agreement at any particular time.**

10.02 Incorporation of Specific Federal Requirements. Specifically, and without limitation, the Subrecipient agrees to comply with the federal requirements set forth in **Exhibit E** ("Specific Federal Requirements") and agrees to require, unless specifically exempted, sub-recipients (if authorized) and third party contractors at every tier to comply with the same. Council agrees to advise Subrecipient of any relevant changes to these requirements. These requirements include, but are not limited to, the following:

Debarment and Suspension. The Subrecipient agrees to comply, and assures the compliance of each subrecipient, lessee, or third party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Subrecipient agrees to, and assures that its subrecipients, lessees, and third party contractors will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any third subagreement, lease or third party contract. [U.S. DOT issued a new amendment to these regulations adopting the optional lower tier coverage for tiers lower than the first tier below a covered nonprocurement transaction. *See*, 71 *Fed. Reg.* 62394, October 25, 2006.]

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

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

The Subrecipient certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Subrecipient for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Subrecipient in connection with this project is incorporated in, and made a part of, this contract.

The Subrecipient further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the projects funded by the funds allocated to the Subrecipient in this Agreement, the Subrecipient shall complete and submit to the Council, Standard Form-LLL, "*Disclosure Form to Report Lobbying*," in accordance with its instructions.

The Subrecipient certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this Agreement, and that all subcontractors shall certify and disclose accordingly to the

Subrecipient. All certifications and disclosures shall be forwarded to the Council by the Subrecipient.

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

10.03 Federal Certifications and Assurances; Execution and Incorporation. The Subrecipient agrees to comply with and to certify compliance annually with the most current version of the *Federal Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements*, a copy of which is attached hereto as **Exhibit F** and incorporated herein by this reference ("C & A"). The Subrecipient must certify compliance with all applicable provisions by signing the C & A and returning the same to the Council as part of the execution of this Agreement. Also, the Subrecipient must, during the term of this Agreement or the term of any other agreement or subgrant where the Subrecipient has received funds from the FTA, and for the useful life of all assets that have been purchased using federal grant funds: (i) annually execute the most current C & A and return the same to the Council by April 1; and (ii) annually participate in a minimum of six hours of federal compliance training hosted by the Council.

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

- **FTA Master Agreement**
(www.fta.dot.gov/documents/TEAM_Master_Agreement_2011_17-Master.pdf-2010-11-03)
- **Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**, 49 CFR Part 18
http://www.nhtsa.gov/nhtsa/whatsup/TEA21/GrantMan/HTML/03_DOTComRul_49CFR18.html)
- **Grant Management Guidelines**, FTA Circular 5010.1D
http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf)
- **Third Party Contracting Requirements**, FTA Circular 4220.1F,
http://www.fta.dot.gov/documents/C_4220_1F.pdf)

The listed documents are incorporated by reference into this Agreement. Copies of these documents are available at the internet websites indicated or, upon request by the Subrecipient, from the Council.

10.05 Compliance with Federal Procurement Requirements. Subrecipient will comply with all applicable federal law, rules, and guidance relating to such procurement including, without limitation, the provisions of *Third Party Contracting Requirements*, FTA Circular 4220.1F, which document is incorporated by reference into this Agreement. A copy of this document is available at the FTA internet website, www.fta.gov/indicated or, upon request

by the Subrecipient, from the Council. The "Federal Procurement Basics" is attached hereto as **Exhibit D** to provide the Subrecipient process for procurements under this Agreement.

- A. **Certification of Subrecipient's Procurement System.** Subrecipient certifies that its procurement system complies with the standards described in the previous paragraph.
- B. **Council Approval of Contracts.** The Subrecipient shall not execute any third party contract or otherwise enter into a binding agreement for any procurement of \$50,000 or more until it has first received written approval from the Council's Project Manager.
- C. **Subrecipient Contract Initiation Memo.** Subrecipient shall use the Contract Initiation Memo attached hereto as **Exhibit G** ("Subrecipient Contract Initiation Memo") for all procurements of \$50,000 or more. It is understood, that no procurement shall be split in order to fall beneath this threshold.
- D. **Inclusion of Provisions in Lower Tier Contracts.** The Subrecipient agrees to include adequate provisions to ensure compliance with applicable federal requirements in each lower tier third party contract financed in whole or in part with financial assistance under this Agreement including all applicable provisions of this Agreement.
- E. **Disadvantaged Business Enterprise Requirements.** For all work performed under this Agreement, Subrecipient will comply with the Council's Disadvantaged Business Enterprise (DBE) Program. In particular, Subrecipient agrees to comply with the requirements of the Council's "Disadvantaged Business Enterprise (DBE) Program" document which is attached to and incorporated into this Agreement as **Exhibit H** ("Disadvantage Business Enterprise (DBE) Program").

On a monthly basis, the subrecipient will submit a report that includes all DBE activity on their third party agreements. Subrecipient invoices will not be reimbursed until this report is submitted.
- F. The Subrecipient shall not accept any bid or award any contract to any firm that has prepared or contributed to the drafting of any invitation for bid, bidding documents and/or contracts for any portion of the Grant Project or the overall Union Depot project.

10.06 No Federal Obligation. This grant is financed by federal funds. However, payments to the Subrecipient will be made by the Council. The United States is not a party to this Agreement and no reference in this Agreement to the United States, USDOT, FTA, or any representatives of the federal government makes the United States a party to this Agreement. The Subrecipient shall include this clause in any contracts or agreements under this Agreement.

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

**RAMSEY COUNTY REGIONAL RAILROAD
AUTHORITY**

By: _____

Its: _____

Date: _____

METROPOLITAN COUNCIL

Date _____

By

Regional Administrator

Approved as to form:

Metropolitan Council
Office of General Counsel

LIST OF EXHIBITS

Exhibit	Description
A	FTA Grant Application Information/Approved Budget
B	Subrecipient Invoice Form
C	DBE Progress/Project Report Form
D	Federal Procurement Basics
E	Specific Federal Requirements
F	Certifications and Assurances
G	Subrecipient Contract Initiation Memo
H	Disadvantaged Business Enterprise (DBE) Program

EXHIBIT A

PROJECT DETAILS

Project Title: The Union Depot Project – Site Amenities Work
Agency Name: Ramsey County Regional Railroad Authority
Agency Project Manager: Steve Morris
Grant Start Date: Effective date of the Agreement
Grant End Date: June 30, 2014
Grant Award Amount: \$ 1,542,760.00

Purpose: To provide Site Amenities Work at The Union Depot, located in St. Paul, MN, as part of the renovations to the existing Depot facilities to provide a multi-modal transportation facility.

Background: The Ramsey County Regional Railroad Authority (RCRRA) is undertaking the renovation of The Union Depot facility to serve as a multi-modal transportation facility. The facility will connect to city bus lines, light rail transit, taxis, inter-city bus lines, and Amtrak. Design has been completed; bid packages are being/have been developed; portions of the work have been bid and constructed/are under construction; and portions of the work have yet to be bid and constructed. The entire project is being funded by a variety of funds, including grants from the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), and the State of Minnesota with local share being provided by RCRRA. This Site Amenities Work project will use monies from an FTA grant with local share being provided by RCRRA.

Project Elements: The Site Amenities Work project will include:

1. The furnishing and installation of furniture, fixtures, and equipment (FF&E) generally consisting of office furniture for RCRRA offices (desks, files, seats, tables, system furniture), furniture for use in public areas (benches, seats, tables) and trash/recycling equipment for use throughout the multi-modal Union Depot facility, and
2. Public artwork as recommended in an October 2011 report "Union Depot *Public Art Implementation Plan*", prepared by David Allen for Ramsey County Regional Railroad Authority.

Schedule: The following schedule is projected:

FF&E

- Advertise for Bids – January 2012
- Receive Bids – February 2012
- Award Contract – March 2012
- Start Construction – April 2012
- Complete Construction - December 31, 2012

Public Artwork

- Start Artist Selection Process – January 2012
- Complete Artist Selection Process – June 2012
- Complete Art Development - December 31, 2013

Budget: Site Amenities Work

Item Description or Purpose	Estimated Quantity	Estimated Unit Cost	Estimated Line Total
Furniture, Fixtures & Equipment			
Trash/Recycling Containers	118	\$25 to \$1,500	\$ 88,000
Office Furniture	93	\$200 to \$8,000	\$ 120,000
Public Areas Furniture (Seats, Tables)	383	\$250 to \$1,500	\$ 325,000
Public Art	5		\$ 1,010,000

EXHIBIT B

Subrecipient Invoice

Remit to: _____

Address: _____

Federal Grant No.: _____

Met Council Contract No.: _____

Grant period: _____

Is this the FINAL invoice? Yes _____ No _____

Invoice # _____

Dates covered by invoice: _____

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

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

Amount of Reimbursement requested: _____ (total expense less match)

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

Authorized Signature: _____ Date: _____

* Copies of invoices for all non-recurring expenses should be included as attachments to this invoice.

EXHIBIT C

INSTRUCTIONS
for use of
Form DBE - DBE Progress/Project Report

Form DBE

1. Form DBE is for use by all contractors and consultants with a contract that has a DBE participation requirement associated with it.
2. Information **CANNOT** be entered into a yellow-colored cell.
3. Enter the total contract-specific information into the white rectangles for Item No.s 1 - 10, 12, and 14.
4. Information for Item No.s 11, 13, and 15 will calculate automatically.
5. Insert the DBE Utilization Goal percentage.
6. Insert the time period this report covers.
7. Check whether the report is an Interim Report or a Final Report.
8. In Column A), list the DBE firm retained by the prime contractor.
9. In Column B), list the \$\$ value of the sub-contract the DBE has received from the prime contractor.
10. If the listed DBE has sub-contracted some of its work to non-DBEs, list each non-DBE on a separate line in Column C).
11. For each non-DBE, list (in Column D)) the \$\$ value of their work sub-contracted from the DBE. This \$\$ value is to also include all DBE Change Order amounts passed along to the non-DBE.
12. In Column E), list the value of all Change Orders provided to the DBE.
13. Column F) will automatically generate the appropriate data.
14. In Column G), enter the amount the DBE is to be paid with this pay request.
15. In Column H), enter the amount the DBE has been paid as of the date of this report.
16. Column I) will automatically generate the appropriate data.
17. If additional space is required in order to list all DBEs and their non-DBE sub-contractors, go to sheet 2.
18. Explanations or comments may be placed on sheet 1. If additional space is needed, use an additional sheet.
19. Print the sheets.
20. Sign, insert your title, and date Sheet 1 of the report.
21. Submit the completed form to the CAR monthly with the pay request. If a monthly pay request is **NOT** submitted, this form **MUST** still be submitted by no later than the 15th of the month.

Form DBE

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

Utilization Goal: DBE %						Interim Report		
Reporting Period: From _____ to _____						Final Report		
A) DBE Subcontractor (SEE INSTRUCTION 1)	B) \$\$ Amount of Original DBE Contract	C) Non-DBE Sub- contractor (to DBE) (SEE INSTRUCTION 2)	D) \$ Amount to Non- DBE Sub (SEE INSTRUCTION 3)	E) \$ Amount in Change Orders to DBE Contract	F) Total DBE Contract \$\$ Amount	G) \$\$ Amount DBE Paid This Pay Request	H) \$\$ Amount Paid To DBE To Date	I) DBE %
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
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					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	
Total DBE Contract \$\$ Amount as % of Total Contract Amount (#11):								#DIV/0!
\$\$ Amount Paid to DBE To Date as % of Total Contract Amount Paid To Date (#14):								#DIV/0!
Explanation if DBE Goal Not Being Met or Other Comments:								Total DBE %

Signature:		Date:		
Title:				

1. List each DBE sub-contractor only once. Insert appropriate information in Columns A), B), E), G), and H).
2. Complete Columns C) and D) only for each Non-DBE sub hired by the DBE sub.
3. Column D) shall include all DBE Change Order amounts passed along to Non-DBE.

Form DBE

Last Revised: 7/1/99

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EXHIBIT D

Federal procurement basics

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

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

1. A determination that the price is fair and reasonable as attested to in the invoice certification statement.
2. Micro purchases of construction services valued at greater than \$2,000 require the application of Davis-Bacon Act federal prevailing wage rates.
3. All micro purchases for architectural and engineering services require compliance with requirements of the Brooks Act.

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

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

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

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

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

7. Copies of executed Metropolitan Council and Subrecipient contracts are kept by Council's Project Manager and Council Purchasing.
8. Metropolitan Council and Subrecipient Contract changes require prior review and approval by the Council's Project Manager, Council Purchasing and ODEO.

Billing and invoicing

The Subrecipient submits an invoice monthly on a cost reimbursement basis. All invoices for reimbursement must contain the standard certification that all attached invoices are for a reasonable price, based on market prices offered by the vendors to the general public. The Subrecipient invoice form is provided as an attachment to this document.

EXHIBIT E

SPECIFIC FEDERAL REQUIREMENTS

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

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

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

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

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

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

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

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(l) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

b. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, pertaining to

employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

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

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

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

FTA-13 Clean Air. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

1. **Buy America Requirements.** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. **Solicitation Specification Requirements.** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

EXHIBIT F

Calendar Year 2011 FTA Certifications and Assurances Signature Page
(Required of all Metropolitan Council Grant Sub-Recipients of FTA and other federal funding sources)

Name of Grant Sub-Recipient: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Grant Sub-Recipient, I declare that the Grant Sub-Recipient has duly authorized me to make these certifications and assurances and bind the Grant Sub-Recipient's compliance. Thus the Grant Sub-Recipient agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the attached page applicable to each federally funded grant it receives from the Metropolitan Council in calendar year 2011.

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

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

Signature _____ Date _____

Name _____
Authorized Representative of Grant Sub-Recipient

Affirmation of Grant Sub-Recipient's Attorney

For (Name of Grant Sub-Recipient) _____

As the undersigned Attorney for the above name Grant Sub-Recipient, I hereby affirm to the Grant Sub-Recipient that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as required by the FTA. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Grant Sub-Recipient.

I further affirm to the Grant Sub-Recipient that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of federally funded projects.

Signature _____ Date _____

Name _____
Attorney for Grant Sub-Recipient

**2011 Calendar Year Certification and Assurance For
Federal Transit Administration Assistance Grants**

Name of Metropolitan Council's Grant Sub-Recipient: _____

The Grant Sub-Recipient understands and agrees to comply with any applicable provision of Categories 01-24.

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

**FEDERAL FISCAL YEAR 2011 CERTIFICATIONS AND ASSURANCES FOR
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

PREFACE

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2011. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of \$100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests each Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

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

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the FTA Master Agreement MA(17) for Federal Fiscal Year 2011 at the FTA Web site <http://www.fta.dot.gov/documents/17-Master.pdf>. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

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

FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at <http://ftateamweb.fta.dot.gov>. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients."

01. ASSURANCES REQUIRED FOR EACH APPLICANT

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

A. Assurance of Authority of the Applicant and Its Representative

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

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

B. Standard Assurances

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

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of

Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

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

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

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

assurance; and

- (6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

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

F. Suspension and Debarment

In accordance with the terms of U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180:

- (1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals, including its first tier subrecipients:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; violation of any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification;
 - (d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.

- (2) The Applicant (Primary Participant) certifies that it and its principals, including its first tier subrecipients, will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds \$25,000, (b) is for audit services, or (3) requires the consent of a Federal official, as a covered contract for purposes of 2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2 CFR Part 1200 and 2 CFR Part 180, and will assure that the each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;
- (3) The Applicant (Primary Participant) certifies that if, later, it or its principals, including any of its first tier subrecipients, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information to FTA;
- (4) If the Applicant (Primary Participant) or any of its principals, including any of its first tier subrecipients or lower tier participants, is unable to certify to the statements within paragraphs (1), (2), and (3) above, the Applicant shall indicate so on its Signature Page or a Page attached in FTA's TEAM system providing a written explanation to FTA.

G. U.S. OMB Assurances

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

- (1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;
- (2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
- (3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
- (4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;
- (5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
 - (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
 - (b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;
 - (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

- (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
 - (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;
 - (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;
 - (h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and
 - (i) Any other nondiscrimination statute(s) that may apply to the project;
- (6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
- (a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
 - (b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
 - (c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
 - (d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
 - (e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;
 - (f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

- (g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;
 - (h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and
 - (i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;
- (7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;
 - (8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
 - (9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;
 - (10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;
 - (11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;
 - (12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;
 - (13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;
 - (14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:
 - (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order

- No. 11514, as amended, 42 U.S.C. 4321 note;
- (b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;
 - (c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;
 - (d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;
 - (e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;
 - (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;
 - (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;
 - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and
 - (i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);
 - (j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and
 - (k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;
- (15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;
 - (16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;
 - (17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal

assistance;

- (18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable U.S. OMB A-133 Compliance Supplement provisions for the U.S. DOT; and
- (19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. LOBBYING CERTIFICATION

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

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding \$100,000:
 - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
 - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352.

The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

03. PROCUREMENT COMPLIANCE

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

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

04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

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

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

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

05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service

is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."

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

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

06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

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

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

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

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

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

- (1) It will not use Federal assistance authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

- (2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. BUS TESTING

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

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

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

09. CHARTER SERVICE AGREEMENT

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

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

of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

10. SCHOOL TRANSPORTATION AGREEMENT

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

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

11. DEMAND RESPONSIVE SERVICE

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

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the

Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

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

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

13. INTEREST AND OTHER FINANCING COSTS

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

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

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

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

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

15. URBANIZED AREA FORMULA PROGRAM

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

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

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

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

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

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

opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;
- J. In compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of existing or planned public transportation; and
- K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this Federal fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the total amounts the Designated Recipients receive each Federal fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those

funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. CLEAN FUELS GRANT PROGRAM

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

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

- A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
- B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
- C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
- D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;
- E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
- F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to

undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- J. The Applicant certifies it will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

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

Before FTA may award Elderly Individuals and Individuals with Disabilities Formula Grant Program assistance and, if applicable, Elderly Individuals and Individuals with Disabilities Pilot Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5310. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on

behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and section 3012 of SAFETEA-LU, respectively. The State is thus requested to select Category "17."

- A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Grant Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by subsections 3012(b)(3) and (4) of SAFETEA-LU, for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and
 - (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310;

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

18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

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

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5311. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications and assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "18."

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

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

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."

- A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307

applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:

- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;
 - (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (6) In compliance with 49 U.S.C. 5316(f)(1) and 49 U.S.C. 5307(d)(1)(F), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct a statewide solicitation for applications, and make awards on a competitive basis; and that these activities will be carried out in a manner that complies with or will comply with 49 U.S.C. 5307(c);
 - (7) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(h) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
 - (8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); and
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under

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

20. NEW FREEDOM PROGRAM

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

- A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:
 - (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

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

21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

Each State, tribal area, or local government authority that is an Applicant for Paul S. Sarbanes Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to

provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications by selecting Category "21."

- A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Paul S. Sarbanes Transit in Parks Program to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
- (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including the safety and security aspects of that project;
 - (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
 - (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
 - (4) In compliance with 49 U.S.C. 5307(d)(1)(E), in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
 - (5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C. 5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
 - (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
 - (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
 - (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and

- (7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:
 - (1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;
 - (2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and
 - (3) Consult with the appropriate Federal land management agency during the planning process.

22. TRIBAL TRANSIT PROGRAM

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

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

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

23. TIFIA PROJECTS

Each Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6, is required to provide the following

certifications. FTA may not award TIFIA credit assistance to the Applicant until the Applicant provides these certifications by selecting Category "23."

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

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

24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of

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

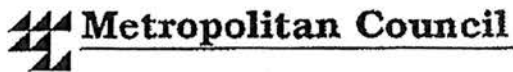
The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation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

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

##

Selection and Signature Page(s) follow.

EXHIBIT G



Subrecipient Contract Initiation Memo

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

Subrecipient Project Manager: Phone:		Date:	
Project Title:		MC Project #:	
Proposed Services:		Estimated Cost:	
Period of Performance:	From		To:
Subcontracting:	Indicate whether or not there is a reasonable opportunity for subcontracting of this procurement		Yes ☐ No ☐

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

Signature _____ Date: _____

Council Project Manager Approval

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

Signature _____ Date: _____
Title _____

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

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

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

Comments:

Council Grant Approval – Federal Grant Number: _____ FTA-assisted contracts

Council Grants Manager Signature _____	Date _____	Council Finance Officer Signature _____	Date _____
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Funding Approval – Subrecipient financial officer.

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

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

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

2. Proposed means of publicizing the availability of the contract

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

3. Proposed process to select contractor

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

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

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

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

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

Reviewed by:

Date:

Section 5 – Authorization

By Subrecipient in accordance with its organizational structure.

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

Date: _____

Signature of Authorized Signer

Title of Authorized Signer

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

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

EXHIBIT H

**METROPOLITAN COUNCIL
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

1.0 METROPOLITAN COUNCIL DBE POLICY

- 1.1 Policy Statement
- 1.2 Objectives

2.0 DBE PROGRAM DEFINITIONS

3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

- 3.1 Duties of DBE Liaison Officer
- 3.2 Responsibilities of Support Personnel
- 3.3 Reconsideration Official

4.0 ADMINISTRATIVE REQUIREMENTS (SUBPART B)

- 4.1 Financial Institutions
- 4.2 DBE Directory
- 4.3 Over-concentration of DBEs

5.0 DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS

- 5.1 Goal-Setting Methodology
- 5.2 Transit Vehicle Manufacturers (TVMs)
- 5.3 Race-Neutral Measures
- 5.4 Contract Goals
- 5.5 Good Faith Efforts
- 5.6 Counting DBE Participation
- 5.7 Quotas, Set-Asides, and Penalties

6.0 REQUIRED CONTRACT PROVISIONS

- 6.1 Assurances
- 6.2 Prompt Payment
- 6.3 Legal and Contract Remedies
- 6.4 Contractor Reporting Requirements

7.0 CERTIFICATION STANDARDS (SUBPART D)

- 7.1 Burdens of Proof
- 7.2 Group Membership Determinations
- 7.3 Social and Economic Disadvantage; Statement of Net Worth
- 7.4 Business Size Determinations
- 7.5 Ownership Determinations
- 7.6 Control Determinations
- 7.7 Considerations

8.0 CERTIFICATION PROCEDURES (SUBPART E)

- 8.1 Unified Certification Program
- 8.2 Initial Certification Procedures
- 8.3 Recertification Procedures
- 8.4 Denials and Re-Application Procedures
- 8.5 De-Certifications
- 8.6 Certification Appeals

9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT

- 9.1 Bidders List
- 9.2 Monitoring Payments to DBEs
- 9.3 Reporting to DOT
- 9.4 Availability of Records
- 9.5 Confidentiality of Information
- 9.6 Cooperation of DBEs
- 9.7 Intimidation and Retaliation Prohibited

Appendix

- A.1 Individuals Responsible for Program Implementation
- A.2 Goal Methodology
- A.3 Public Participation & Outreach

1.0 METROPOLITAN COUNCIL DBE POLICY

1.1 Policy Statement

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

The Metropolitan Council recognizes that creating a "level playing field" for DBEs can only be achieved through the energetic implementation of this plan and the commitment of all Metropolitan Council employees, committees and contractors to the goals of equal opportunity.

This policy statement will be circulated throughout the Metropolitan Council's organization, and to the DBE and non-DBE business communities that perform work on the Metropolitan Council's DOT-assisted contracts. It will be printed and made available through the Metropolitan Council's Regional Data Center and will be mailed free upon request to any individual.

In addition, it is the policy of the Metropolitan Council to not:

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

1.2 Objectives

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

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Metropolitan Council's financial assistance programs.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
3. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet this programs eligibility standards are permitted to participate as DBEs.
5. To remove barriers to the participation of DBEs in DOT-assisted contracts.

6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
7. To utilize the flexibility accorded by Federal financial assistance to establish and provide opportunities for DBEs.

2.0 METROPOLITAN COUNCIL PROGRAM DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RACE-CONSCIOUS MEASURE OR PROGRAM One that is focused specifically on assisting only DBEs, including women-owned DBEs.

RACE-NEUTRAL MEASURE OR PROGRAM One that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

REBUTTABLE PRESUMPTION A fact related to DBE eligibility criteria that is held to meet the standards of eligibility unless proven otherwise.

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

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

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

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SECRETARY The secretary of transportation or his/her designee.

SET-ASIDE A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

SMALL BUSINESS ADMINISTRATION OR SBA The United States Small Business Administration.

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

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

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

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

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

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

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

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

3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

1. The Chair of the Metropolitan Council has overall responsibility for the DBE program, and performs the role of providing policy leadership regarding the involvement of DBEs in the activities of the Metropolitan Council.
2. The Regional Administrator has responsibility for establishing and maintaining a program to promote the Metropolitan Council's DBE program. This responsibility will be carried out in conjunction with the DBE Liaison Officer.
3. In accordance with 49 CFR section 26.25, the Metropolitan Council has designated its Manager, Office of Diversity and Equal Opportunity as its DBE Liaison Officer, responsible for implementing all aspects of the DBE program. The DBE Liaison Officer shall have direct and independent access to, and direct communication with, the Regional Administrator concerning DBE program matters.
4. Department directors, division directors and managers of operating elements have responsibility for effectively carrying out this policy within their particular departments. The manager of each program shall work in cooperation with the DBE Liaison Officer for the promotion of DBEs in his or her department. Each department director will include DBE contracting efforts as a factor in regular contract review activities.

3.1 Duties of DBE Liaison Officer

The responsibilities of the DBE Liaison Officer include:

1. Providing information and recommendations to the Regional Administrator of the Metropolitan Council regarding its obligations for compliance with current applicable federal and state law, regulations and local ordinances.
2. Provide information and recommendations directly to the General Manager. This includes:
 - a. Analyzing and revising the DBE Program policies and procedures as necessary.
 - b. Surveying the DBE community for development of goal-setting data and conducting outreach in order to increase business opportunities to DBEs.
 - c. Analyzing Metropolitan Council contract opportunities available of DBEs, and developing annual DBE goals.
 - d. Establishing contract-specific goals.
 - e. Conducting periodic training of Metropolitan Council managers on DBE responsibilities.
3. Maintaining and updating the Metropolitan Council's DBE directory as provided for in Section 4.2 of this program.

4. Implementing DBE outreach activities as described in Section 5.3 of this program.
5. Monitoring contractor/grantee compliance with DBE commitments, maintaining accurate records, demonstrating DBE efforts and accomplishments, and determining compliance. This includes:
 - a. Issuing periodic reports to the Metropolitan Council's Contracts & Procurement Unit concerning DBE compliance or non-compliance of contractors and staff with the requirements of this program.
 - b. Attending meetings of the Metropolitan Council at which time these matters are considered; and responding to queries from Metropolitan Council members.
 - c. Compiling DBE statistical and narrative reports for the DOT, the Metropolitan Council, and other public agencies.
 - d. Analyzing and recommending revisions to the DBE policies and procedures for granting and denying DBE certification; monitoring contractors' compliance with DBE requirements; and recommending sanctions for violation of these requirements.
 - e. Reviewing contractor's good faith efforts to meet the DBE goal committed to in the bid or proposal throughout the performance of the contract.
 - f. Reviewing and recommending to the Council's Authorized Representative (CAR) and Project Manager the approval or disapproval of a prime contractor's request to substitute a DBE.
 - g. Reviewing contractor's violation of DBE utilization requirements; recommending any appropriate administrative sanctions to be imposed in accordance with 49 CFR part 26; and coordinating imposition of administrative sanctions with the Metropolitan Council's General Counsel, Contracts & Procurement Unit/Procurement Unit, and CAR.
6. Coordinating development and implementation of policies and procedures for DBE participation on joint development projects with the Metropolitan Council's Community Development Department and participating in the proposal evaluation process.
7. Participating on Proposal/Bid Evaluation Teams (PETs).
8. Evaluating bids and proposals for compliance with DBE requirements, including bidder's good faith efforts.
9. Monitoring contractor's compliance with DBE utilization goals.
10. Coordinating dispute resolution through process established in partnering workshops with contract representatives, vendors and others regarding DBE program.
11. Ensuring the placement of legal and public notices of the Metropolitan Council's annual DBE goals pursuant to Section 5.1 of this program.

3.2 Responsibilities of Support Personnel

Metropolitan Council personnel from other Departments share the responsibility for ensuring the effective implementation of the DBE program. They shall give their full cooperation and active support to the DBE Liaison and his/her designee(s) in this effort. The performance of all personnel in support of the DBE Program will be evaluated by their superiors as part of their annual performance appraisal. The following are the support personnel.

- ☐ Legal-General Counsel
- ☐ Director of Finance/Controller
- ☐ Director of Internal Audit
- ☐ Grants Manager
- ☐ Contract & Procurement Unit
- ☐ Procurement Unit
- ☐ Council Authorized Representative
- ☐ Metropolitan Council Project Managers

3.2.1 Legal-General Counsel

The responsibilities of the Legal-General Counsel in support of the DBE Program include:

1. Addressing legal matters relating to DBE program implementation.
2. Rendering legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
3. Advising the DBE Liaison Officer and the Contract & Procurement Unit/Procurement Unit regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
4. Representing the Metropolitan Council in all litigation matters involving DBE issues.
5. Providing the DBE Liaison Officer with legal opinions relevant to DBE certification.

3.2.2 Director of Finance/Controller

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

1. Ensuring the submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals.
2. Conferring with the DBE Liaison Officer to maximize investment of Metropolitan Council funds with DBE financial institutions, and periodically report the progress to the Metropolitan Council.
3. Assisting the DBE Liaison Officer in compiling data to develop the federal funding base for calculation of the annual DBE goals pursuant to Section 5.1 of this program.

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4. Ensuring maximum participation by DBE financial advisors, investment bankers, and bond counsel through the sale of Revenue Anticipation Notes, Equipment Trust Certificates, and other investment instruments.

3.2.3 Director of Internal Audit

The responsibilities of Director of Internal Audit in support of the DBE Program include:

1. Providing audit or investigation assistance to the Manager, Office of Diversity and Equal Opportunity in particularly complex or difficult cases involving potential fraud or false statements on the part of certified DBEs in order to obtain certification.
2. Providing audit or investigation assistance to the Manager, Office of Diversity and Equal Opportunity in particularly complex or difficult cases involving potential fraud or false statements on the part of Metropolitan Council contractors and subcontractors in carrying out their DBE contract obligations.

3.2.4 Grants Manager

The responsibilities of the Grants Manager in support of the DBE Program include:

1. Ensuring the submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals.
2. Ensuring that DBE Liaison Officer is notified when DOT programs or funding levels are revised.

3.2.5 Contract Procurement Unit

The responsibilities of the Contract Documents Unit in support of the DBE Program include:

1. Ensuring the timely forward of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining the Bidders List of prime and subcontractors in accordance with 49 CFR section 26.11 and Section 9.1 of this program.
3. Ensuring that the Contract Initiation Memo (CIM) from the requesting department has been properly routed to the DBE Liaison Officer for determination of contract-specific DBE goals.
4. Providing the DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications (RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.
5. Providing the DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.

6. Incorporating DBE goals and appropriate DBE and contract compliance language into IFBs, RFPs, and RFIQs.
7. Informing the DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the DBE Liaison Officer.
9. Placing IFB, RFP, RFIQ, and PO notices in minority-focused newspapers.
10. Notifying the DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
11. Maintaining a computerized vendor listing by commodity codes, race, ethnicity and gender data to assist Procurement and DBE staff in identifying potential DBE vendors/contractors.
12. Ensuring that the DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.
13. Forwarding copies of bids/proposals to the DBE Liaison Officer for evaluation of compliance with DBE requirements.
14. Incorporating analysis prepared by the DBE Liaison Officer concerning bidders' and proposers' conformance with DBE requirements into Metropolitan Council executive summaries (business items) for all contracts or procurements with DBE goals.
15. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly DOT and other DBE progress reports.
16. Allocating appropriate resources (budget and staff) to participate with Office of Diversity and Equal Opportunity representatives at trade fairs targeted for DBEs.
17. Ensuring that all department staff:
 - a. Receive adequate orientation on DBE policies and procedures.
 - b. Refer all potentially eligible vendors to apply for DBE certification.
 - c. Utilize the Metropolitan Council's DBE Directory to seek potential vendors.
 - d. Solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
18. Incorporating applicable DBE provisions into all contracts.
19. Ensuring that RFPs, RFIQs, and IFBs do not contain requirements that may unnecessarily restrict or eliminate DBEs from competing.

20. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.
21. Notifying DBE Liaison Officer when the project scope, funding or other changes affecting the attainment of a DBE goal, is made.

3.2.6 Procurement Units

The responsibilities of the Procurement Unit in support of the DBE Program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining Bidders List of prime and subcontractors in accordance with 49 CFR section 26.11 and Section 9.1 of this program.
3. Ensuring that the Contract Initiation Memo (CIM) from the requesting department has been properly routed to the DBE Liaison Officer for determination of contract-specific DBE goals.
4. Providing the DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications (RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.
5. Providing the DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.
6. Incorporating DBE goals and appropriate DBE and contract compliance language into IFBs, RFPs, and RFIQs.
7. Informing the DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the DBE Liaison Officer.
9. Placing IFB, RFP, RFIQ, and PO notices in minority-focused newspapers.
10. Notifying the DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
11. Maintaining a computerized vendor listing by commodity codes, race, ethnicity and gender data to assist Procurement and DBE staff in identifying potential DBE vendors/contractors.
12. Ensuring that the DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.

13. Forwarding copies of bids/proposals to the DBE Liaison Officer for evaluation of compliance with DBE requirements.
14. Incorporating analysis prepared by the DBE Liaison Officer concerning bidders' and proposers' conformance with DBE requirements into Metropolitan Council executive summaries (business items) for all contracts or procurements with DBE goals.
15. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly DOT and other DBE progress reports.
16. Allocating appropriate resources (budget and staff) to participate with Office of Diversity and Equal Opportunity representatives at trade fairs targeted for DBEs.
17. Ensuring that all department staff:
 - a. Receive adequate orientation on DBE policies and procedures.
 - b. Refer all potentially eligible vendors to apply for DBE certification.
 - c. Utilize the Metropolitan Council's DBE Directory to seek potential vendors.
 - d. Solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
18. Incorporating applicable DBE provisions into all contracts.
19. Ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
20. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.

3.2.7 Council's Authorized Representative (CAR)

The responsibilities of Council's Authorized Representative (CAR) in support of the DBE Program include:

1. Becoming familiar with the Metropolitan Council's DBE policies and procedures, including but not limited to, attending orientation sessions conducted by the Office of Diversity and Equal Opportunity and Contract Documents Unit/Procurement Unit staff concerning contract procurement and administration, and DBE policies and procedures.
2. For contracts with DBE goals, ensuring that:
 - a. DBEs maintain current DBE certification by verifying their status with the contract compliance function of the Office of Diversity and Equal Opportunity.
 - b. DBEs are utilized in accordance with the terms of the contract.

- c. Potential DBE utilization problems are immediately referred to the DBE Liaison Officer.
- d. The prime contractor continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.
- e. Referring all requests for DBE substitution to the DBE Liaison Officer and conferring with him or her in granting or denying the request.

3.2.8 Metropolitan Council Project Managers

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

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Becoming familiar with the Metropolitan Council's DBE policies and procedures, including but not limited to, attending orientation sessions conducted by the Office of Diversity and Equal Opportunity and Contract & Procurement Unit/Procurement Unit staff concerning contract procurement and administration, and DBE policies and procedures.
3. Providing the Contracts Documents Unit with a completed Contract Initiation Memo, and providing the Procurement Unit with a completed Purchase Requisition, as required.
4. Utilizing the DBE directory to search for potential DBE vendors.
5. Providing maximum opportunity to DBEs by initiating informal competitive procurement procedures for DBEs to compete for contracts within their respective areas that do not require solicitation of formal, public bids or proposals.
6. Referring all potentially eligible firms to apply for DBE certification.
7. For contracts with DBE goals; ensuring that:
 - a. DBEs maintain current DBE certification by verifying their status with the contract compliance function of the Office of Diversity and Equal Opportunity.
 - b. DBEs are utilized in accordance with the terms of the contract.
 - c. Potential DBE utilization problems are immediately referred to the DBE Liaison Officer.
 - d. The prime contractor continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.

- e. Referring all requests for DBE substitution to the DBE Liaison Officer and conferring with him or her in granting or denying the request.
- 8. Packaging individual contracts in a manner to maximize the ability of DBEs to compete favorably and ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
- 9. Informing the DBE Liaison Officer of the scheduled pre-construction conference.
- 10. Informing the DBE Liaison Officer of any potential problems concerning DBE utilization during contract administration.

3.2.9 Chief Information Officer

The responsibilities of the Director of Information System Management in support of the DBE Program are:

- 1. Ensuring the development of long and short range information management strategies to meet DBE recordkeeping and reporting requirements.
- 2. Designing and developing technical systems and processes to support vendor utilization tracking and agency progress towards attainment of its DBE goal.

3.3 Reconsideration Official

In accordance with the reconsideration process pursuant to 49 CFR section 26.53, and described in Section 5.5 of this program, the Metropolitan Council will, when appropriate, appoint a person to serve as its reconsideration official. The reconsideration official will be:

- a. Familiar with the Metropolitan Council's DBE program and its requirements; and
- b. Not have any involvement in any decisions that a bidder's good faith efforts were inadequate for which they are serving as reconsideration official.

4.0 ADMINISTRATIVE REQUIREMENTS

4.1 Financial Institutions

The Metropolitan Council has thoroughly investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community.

The Metropolitan Council has identified one minority owned bank in the state of Minnesota. Two branches of the bank are located adjacent to the region served by the Metropolitan Council. The Metropolitan Council will encourage prime contractors to use the services of these institutions by communicating their existence prior to contract award. These institutions are:

Woodlands National Bank
PO Box 190
Hinkley, Minnesota 55037

Woodlands National Bank
PO Box 187
Sturgeon Lake, MN 55783

The surveys offered by these institutions include checking and savings accounts, certificates of deposits, individual retirement accounts and loans.

In accordance with 49 CFR section 26.27, the Metropolitan Council will continue to investigate the full extent of services offered by, and making reasonable efforts to use, financial institutions owned and controlled by socially and economically disadvantaged individuals in our community as they are identified.

4.2 DBE Directory

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

4.3 OVERCONCENTRATION OF DBEs.

- a. If Metropolitan Council determines that DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, Metropolitan Council will devise appropriate measures to address this over-concentration.

- b. Metropolitan Council governing board may, either alone or in concert with other recipients, institute additional measures which by way of example may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designated to assist DBEs in performing work outside of the specific field in which Metropolitan Council has determined that non-DBEs are unduly burdened. Metropolitan Council may also consider varying its use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- c. Metropolitan Council will obtain the approval of the DOT's administering agency for Metropolitan Council's determination of over-concentration and the measures Metropolitan Council devises to address it. Once approved, the measures become part of the Plan.

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

5.1 Goal-Setting Methodology

Pursuant to 49 CFR section 26.45, the Metropolitan Council will establish an annual overall DBE goal through a two-step process consisting of (a) establishing a base figure; and (b) adjusting the base figure. (See Appendix A2)

1. The following departments will assist the DBE Liaison Officer in the development of the annual goal by providing budget, financial, procurement, and other relevant information which will be used to develop the federal funding base against which the annual DBE goals are calculated:
 - a. Offices of the Director of Finance and the Controller.
 - b. Grants Manager.
 - c. Offices of the Contract & Procurement Unit and the Procurement Unit.
 - d. All departments that intend to purchase goods and services during the reporting period.
2. Data sources used to develop the annual overall DBE goal may include, but not be limited to, the following:
 - a. The Metropolitan Council's fiscal year budget.
 - b. Grant-funded capital lists, specific Capital Projects, Financial Plan and Schedule.
 - c. Past results of contracting agencies such as the Metropolitan Council with similar contracting opportunities, and the reasons for the level of such results.

- d. Demographics and business activity of the geographical area in which the Metropolitan Council will solicit bids or proposals.

FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

3. The Metropolitan Council will conduct public participation in setting the overall goal. This participation will include the following:
 - a. Consultation with women, minority and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Metropolitan Council's efforts to establish a level playing field for the participation of DBEs.
 - b. A published notice announcing the Metropolitan Council's proposed overall goal, informing the public that the proposed goal, and its rationale are available for inspection during normal business hours at the Metropolitan Council's principal office for 30 days following the date of the notice, and informing the public that the Metropolitan Council and the DOT will accept comments on the goals for 45 days from the date of the notice. The notice will include the addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications.

5.1.1 Establishing the DBE Base Figure

1. The Base Figure will reflect the "relative availability" of DBEs based on demonstrable evidence of ready, willing and able DBEs relative to all ready, willing and able firms available to participate in DOT-assisted contracts. The Metropolitan Council will establish the Base Figure through the use of one of the following five options:
 - a. DBE directories and Census Data.
 - b. Bidders Lists.
 - c. Data from Disparity Studies.
 - d. Goals of other recipients.
 - e. As calculated through alternative means, subject to review and approval by the Operating Administration.

5.1.2 Adjusting the DBE Base Figure

1. In order to consider additional evidence to narrowly tailor the DBE program, the Metropolitan Council will conduct a survey of available data to determine what evidence is available to use in adjusting the Base Figure that demonstrates the capacity of available firms to work on DOT-assisted projects for the Metropolitan Council.

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2. The annual overall DBE goal will provide for participation by all certified DBEs and not be subdivided into group-specific goals.
3. The overall goal will include a calculation of the percentage of the goal that will be made through race-neutral measures and through contract-specific goals.

5.1.3 Reporting Goals

1. Pursuant to 49 CFR section 26.45, the Metropolitan Council's annual overall DBE goal will be submitted to the FTA for approval 60 days prior to. The overall goal submission will include the following:
 - a. A description of the methodology used to establish the goal, including the Base Figure and the evidence by which it was calculated.
 - b. A description of the adjustments made to the Base Figure and the evidence relied on for the adjustments, including a summary of the relevant available evidence in the Metropolitan Council's jurisdiction. Where applicable, this will include an explanation of why the Metropolitan Council did not use that evidence in adjusting the Base Figure.
 - c. A projection of the relative portions of the overall goal that the Metropolitan Council expects to meet through race-neutral and race-conscious means.
2. The annual goals will be submitted to the Metropolitan Council for approval and will become part of all DOT financial assistance agreements.
3. Concurrent with DBE goal submittal, the Metropolitan Council will publish a notice in majority and minority-focused newspapers announcing the goals, and providing the public an opportunity to review the annual goals and submit comments to the Metropolitan Council and/or the DOT.

5.2 Transit Vehicle Manufacturers (TVMs) Participation and Certification

In accordance with 49 CFR section 26.45, the Metropolitan Council requires that each transit vehicle manufacturer (TVM) certify, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements that it has complied with the requirements of this section. FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

5.3 Race-Neutral Measures

In accordance with 49 CFR section 26.51, the Metropolitan Council will use the following guidelines for the utilization of race-neutral measures to attain the annual overall DBE goal, and contract-specific goals. Race-neutral measures to attain the overall DBE goal, as allowed by state and local law, may include, but not be limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBEs and other small businesses. For example:
 - a. Unbundling large projects to make them more accessible to small businesses.
 - b. Requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own work forces.
 - c. Ensuring that contract solicitations do not contain unnecessarily restrictive requirements.
 - d. Waiving or allowing incremental bonding.
 - e. Providing assistance to overcome limitations such as the inability to obtain bonding or financing.
 - f. Providing services to help DBEs, and other small businesses, to obtain bonding and financing; and the administration of a surety bond guarantee and working capital loan program for DBE prime contractors and subcontractors.
2. Providing technical assistance and other services, including but not limited to:
 - a. Assisting potentially eligible firms in applying to the contract compliance function of the Office of Diversity and Equal Opportunity for DBE certification.
 - b. Referring DBEs to appropriate minority business development centers for more in-depth "hands on" technical and financial assistance (i.e. preparing bids, proposals, business plans, financial statements, and accessing working capital and bonding).
 - c. Assisting in preparation of bid submissions to assure bids are technically correct.
 - d. Explaining terms, conditions and specifications of bidding documents and procurement regulations that may apply.
 - e. Providing instructions on job performance requirements to those DBEs contacted to submit proposals.
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities, including but not limited to:
 - a. Ensuring the inclusion of DBEs and other small businesses on the Metropolitan Council's mailing lists for bidders.
 - b. Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
 - c. Providing for the provision of information in languages other than English, where appropriate.

- d. Publishing and distributing a comprehensive guide which contains information about the Metropolitan Council's DBE procurement policies and procedures, name and telephone numbers of key contact persons, and a listing of all Metropolitan Council types of goods and services they may purchase.
 - e. Linking interested DBEs with appropriate buyers, contract administrators and project managers to inquire about short and long-range needs of the Metropolitan Council for procurement of goods and services within their areas of specialization.
 - f. Ensuring adequate lead-time in advertisements to allow DBE firms sufficient opportunity to develop bid packages.
 - g. opportunities in written form by direct mail to those DBE firms that are certified with the Metropolitan Council and organizations that work in support of DBE firms.
4. Conducting outreach to DBEs to inform them of upcoming contract opportunities through the following methods:
- a. Trade fairs
 - b. Newsletters
 - c. Seminars
 - d. One-on-one
 - e. Minority and women business associations
 - f. Business development centers
 - g. Vendor relations programs
 - h. Advertisements in minority and majority publications
5. Ensuring distribution of the Metropolitan Council's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

5.3.1 Supportive Services

- 1. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses. This may include but not be limited to facilitating the debriefing of unsuccessful DBE proposer by his/her proposal evaluation team to discuss strengths and weaknesses of his/her proposal.
- 2. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. This may include but not be limited to encouraging consortiums and co-ventures of businesses owned and controlled by DBEs.
- 3. Establishing a program to assist new, start-up firms, and particularly in fields in which DBE participation has historically been low.
- 4. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

5.4 Contract Goals

In order to achieve the percentage of the annual overall DBE goal not attainable by race-neutral means, the Metropolitan Council will set contract-specific goals as follows:

1. The DBE Liaison Officer will receive from the requesting department a Contract Initiation Memo (CIM) for each purchase requisition over \$25,000.
2. The DBE Liaison Officer will consult with the requester, CAR, project manager and Contracts & Procurement Unit/Procurement Unit, to determine the level and type of subcontracting opportunities for goal setting.
3. The DBE Liaison Officer will conduct an in-depth analysis of the DBE availability within the identified contract.
4. The DBE Liaison Officer will recommend the contract-specific goal to the Contract & Procurement Unit/Procurement Unit, and the requestor, for incorporation into the appropriate solicitation documents.

5.5 Good Faith Efforts

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

1. For all contracts where goals are set, regardless of contract size, prime contractors will be required to propose the participation of specific DBEs to either (a) meet the goal; or (b) demonstrate good faith efforts to meet the goal in their bid or proposal.
2. Bidders must submit with their bids/proposals, written confirmation of their commitment to use DBEs subcontractor(s), whose participation it submits to meet a contract-specific goal; and identify in their Bid (on the List of Proposed DBEs) all DBEs proposed to participate in the contract, regardless of their percent of participation. The List of Proposed DBEs will include:
 - a. A description of how DBE firms will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation in the contract as a prime contractor, joint venture partner, subcontractor, trucker, or supplier.
 - b. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the bidder intends to credit toward the DBE goal. The complete legal business name as used for DBE certification shall be identified on the form.
 - c. A description of the work to be performed or materials to be supplied by each DBE.
 - d. The estimated dollar value of each DBEs participation in the contract.

- e. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR section 26.55, and described in Section 5.6 of this program.
3. All bidders must submit in their bid/proposal written confirmation from the DBE(s) participating in the contract as provided in the prime contractor's commitment.
 4. If the List of Proposed DBEs does not demonstrate meeting the contract-specific goal, bidders must complete and submit a Good Faith Efforts Summary form (Exhibit B) with the bid/proposal.
 5. The DBE Liaison Officer will determine whether a contractor made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto. The bidder must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs. The bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - e. A bidder using good business judgement would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the

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

- f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
 - i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
 - j. The performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
6. Any of the following conditions will constitute failure to meet the goal:
- a. The total percentage participation by DBE firms reflected on the List of Proposed DBEs is less than the DBE goal set forth in the procurement.
 - b. Firms on the List of Proposed DBEs whose participation are being credited toward meeting the DBE goal, but are not certified by the Metropolitan Council as DBEs as of the execution of the contract.
7. If the Metropolitan Council determines that the apparent successful bidder has failed to meet the Good Faith Efforts requirements of this program, it will, before contract award, provide the bidder an opportunity for administrative reconsideration. The bidder will have the opportunity to:
- a. Provide a written documentation or argument concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.

- b. Meet in person with the Metropolitan Council or its reconsideration official (as required in Section 3.3 of this program) to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
- 8. The Metropolitan Council will send the bidder a written decision on its reconsideration, explaining the basis of whether it met the goal or made adequate good faith efforts to do so.
- 9. In accordance with 49 CFR section 26.53, the result of the Metropolitan Council's reconsideration process is not subject to administrative appeal to the Department of Transportation.
- 10. In "design-build" or "turnkey" contracting situations where the Metropolitan Council lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, the Metropolitan Council will set a goal for the project. The master contractor then must establish contract-specific goals, as appropriate, for all subcontracts it lets. The Metropolitan Council will monitor the master contractor's activities to ensure that they are consistent with the requirements of the program.
- 11. The Metropolitan Council requires that prime contractors not terminate for convenience a DBE subcontractor listed on the List of Proposed DBEs (or an approved substitute DBE) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent of the Metropolitan Council's DBE Liaison Officer.
- 12. If a DBE subcontractor is terminated or fails to complete its work on a contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract-specific goal.
- 13. These good faith efforts requirements also apply to DBE bidders/proposers for prime contracts. The work proposed to be performed with its own work force as well as work committed to DBE subcontractors and suppliers will count toward the contract-specific goal.

5.6 Counting DBE Participation

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

- 1. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR section 26.87(I).

2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
3. The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
4. When a DBE participates in a contract, the value of the work actually performed will be counted as follows:
 - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR part 26.55 that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided that the Metropolitan Council determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, the Metropolitan Council will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. The Metropolitan Council will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
 - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Metropolitan Council will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - d. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - e. The Metropolitan Council's decisions on matters of whether a DBE performs a commercially useful functions are subject to review by the concerned operating administration, but is not subject to an administrative appeal to DOT.
7. The Metropolitan Council will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on its contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - f. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from

working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. The Metropolitan Council will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
 - a. The Metropolitan Council will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
 - b. The Metropolitan council will count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
9. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
10. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
11. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR section 26.55(e)(2).
12. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Metropolitan Council will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Metropolitan Council has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Metropolitan Council will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

5.7 Quotas, Set-Asides and Penalties

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

6.0 REQUIRED CONTRACT PROVISIONS

6.1 Assurances

1. In accordance with 49 CFR section 26.13, each financial assistance agreement that the Metropolitan Council signs with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required under 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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

6.2 Prompt Payment

In accordance with 49 CFR section 26.29, the Metropolitan Council has established:

1. A contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 5 days from receipt of each payment that the Metropolitan Council makes to the prime contractor. This clause requires the return of retainage payments from the prime contractor to the subcontractor within 10 days after the contractor receives payment from the Metropolitan Council. This clause also provides for:
 - a. Appropriate penalties for failure to comply, in accordance with terms and conditions set by the Metropolitan Council.
 - b. That any delay or postponement of payment among the parties may take place only for good cause, with the Metropolitan Council's prior written approval.
2. The Metropolitan Council has also established as part of its DBE program, the following additional mechanisms to ensure prompt payment:
 - a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes as referred to in Section 3.1 of this program.
 - b. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
3. The Metropolitan Council may, consistent with the regulations and applicable state and local law, implement other mechanisms at its discretion, to ensure that DBEs and other contractors are fully and promptly paid.

6.3 Legal and Contract Remedies

1. In accordance with 49 CFR section 26.37, the Metropolitan Council will implement appropriate mechanisms to ensure compliance by all participants with program requirements, including that DBE commitments are actually performed by DBEs. This monitoring includes the review of monthly Summary of Subcontract Awards and Paid Report (Exhibit C), and a provision that DBE participation is counted toward overall or contract goals only when payments are actually made to DBEs. The Metropolitan Council

will apply all legal and contract remedies available under Federal, state, and local law as described in Section 6.3.1 of this program.

2. The contract compliance function of the Office of Diversity and Equal Opportunity will implement the monitoring aspect of the DBE program.
3. Non-compliance by the contractor with the requirements of the DBE regulations constitute a breach of contract and may result in termination of the contract, liquidated damages or other appropriate remedy as set forth in Section 6.3.1 of this program.
4. Prior to execution of all contracts containing DBE goals the prime contractor will be directed to the contract specification for the Metropolitan Council's specific DBE reporting and record keeping requirements, as described in Section 6.4 of this program.

6.3.1 Administrative Sanctions

1. All contractors deemed to be in non-compliance will be informed in writing, by certified mail, by the **[Contracts & Procurement Unit/Procurement Unit]** that sanctions shall be imposed for failure to meet DBE utilization goals and/or submit documentation of good faith efforts. The Contractor will be given five (5) working days from the date of the notice to file a written appeal to the Regional Administrator. Failure to respond within the five-(5) day period shall constitute a waiver of appeal. The notice will state the specific sanction to be imposed.
2. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the Metropolitan Council.
3. Sanctions may include, but not be limited to:
 - a. Liquidated damages;
 - b. Suspension of payment to the contractor of any monies held by Metropolitan Council as retained on the contract;
 - c. The denial to the contractor (including its principal and key personnel) of the right to participate in future contracts of the Metropolitan Council for a period of up to three years; and
 - d. Contract termination.
 - e. The DBE Liaison Officer will recommend which sanction to apply.

6.4 Contractor Reporting Requirements

1. During the term of the contract, the contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform in the contract, and that the contractor meets its DBE goal. These efforts shall include but not be limited to the following:
 - a. Negotiating in good faith to attempt to finalize a subcontract agreement with DBEs committed to prior to contract award;
 - b. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contract;
 - c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Metro Metropolitan Council approval to substitute the DBE;
 - d. As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers;
 - e. Timely submittal of complete and accurate DBE monthly reports in accordance with paragraph 3 below; and
 - f. Informing the Metropolitan Council's contract compliance function within the Office of Diversity and Equal Opportunity in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid.
2. If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor must exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor subject to the approval of Metropolitan Council.
3. The contractor will submit monthly progress reports to the Metropolitan Council, in conformance with the currently approved schedule, reflecting its DBE participation. A Summary Subcontracts Award and Paid Report (Exhibit C) shall be submitted to comply with this reporting requirement. Failure to submit this report in a timely manner will result in the imposition of administrative sanctions pursuant to Metropolitan Council's DBE policy and DOT regulations.
4. Staff will review the contractor's monthly progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the contractor as stated in its bid or proposal.
5. If it is determined that the contractor's DBE utilization during performance of the contract is not consistent with the commitment thereto, the contractor will be requested, in writing, to submit evidence of its good faith efforts to meet the goal. The contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the contractor in non-compliance, subject to sanctions as provided in the section on Administrative Sanctions below.
6. The contractor's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. Staff shall make a determination as to the adequacy of the contractor's good faith efforts documentation and so inform the contractor. If it is

determined that the contractor's good faith efforts documentation is acceptable, the contractor will be deemed to be in compliance with the DBE utilization goals. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will be notified and be deemed to be in non-compliance with the DBE utilization goals.

7. The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which DBEs participation has been committed to in the bid, will be commensurately added to or subtracted from the total contract base figure used to compute actual dollars paid to DBEs. Revised total contract dollar values shall be reflected in the monthly progress report submitted to Metropolitan Council and referenced above.
8. Failure to carry out these requirements constitutes a breach of contract and, and after notification to the U.S. Department of Transportation, may result in termination of the contract by Metropolitan Council or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR section 23.43(c). For purposes of this section, timely submittal means received in the contract compliance function of the Office of Diversity and Equal Opportunity by the close of business on the fifteenth (15th) of the following month.

7.0 CERTIFICATION STANDARDS (SUBPART D)

7.1 Burdens of Proof

In accordance with 49 CFR section 26.61, the Metropolitan Council will apply the following standards to determine DBE eligibility:

1. The firm seeking certification has the burden of demonstrating to the Metropolitan Council, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26, Subpart D (sections 26.61-26.73) concerning group membership or individual disadvantage, business size, ownership, and control.
2. The Metropolitan Council will rebuttably presume that members of the designated groups identified in 49 CFR section 26.67(a) are socially and economically disadvantaged. This means that they do not have the burden of proving to the Metropolitan Council that they are socially and economically disadvantaged. However, applicants have the obligation to provide the Metropolitan Council information concerning their economic disadvantage.
3. Individuals who are not presumed to be socially and economically disadvantaged, and individuals whose presumption of disadvantage has been rebutted, have the burden of proving to the Metropolitan Council, by a preponderance of evidence, that they are socially and economically disadvantaged in accordance with Appendix B of 49 CFR Part 26.
4. The Metropolitan Council will determine whether individuals and firms have met their burden of demonstrating group membership, business size, individual disadvantage, ownership, and control by considering all the facts in the record, viewed as a whole.

7.2 Group Membership Determinations

In accordance with 49 CFR section 26.63, the Metropolitan Council will utilize the following guidelines to determine group membership status for purposes of DBE eligibility.

1. If there is reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, the Metropolitan Council will require the individual to demonstrate, by a preponderance of evidence, that he or she is a member of the group.
2. In making such a determination, the Metropolitan Council will consider whether the person has held him or herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The Metropolitan Council may require the applicant to produce appropriate documentation of group membership.
3. If the Metropolitan Council determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis in accordance with the guidelines of Section 7.3.4 of this program.
4. The Metropolitan Council's decisions concerning membership in a designated group are subject to the certification appeals procedure of 49 CFR part 26.89, and as described in Section 8.6 of this program.

7.3 Social and Economic Disadvantage; Statement of Net Worth

In accordance with 49 CFR section 26.67, the Metropolitan Council will utilize the following guidelines to determine social and economic disadvantage for purposes of DBE eligibility.

7.3.1 Presumption of disadvantage

1. The Metropolitan Council will rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. The Metropolitan Council will require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
2. The Metropolitan Council requires each individual applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.
3. In determining net worth, the Metropolitan Council will exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). Furthermore, contingent liability will not reduce an individual's net worth

for these purposes. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation:

- a. Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
- b. Stock (including stock issued or distributed by an ANC as a dividend or distribution on stock);
- c. A partnership interest;
- d. Land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and
- e. An interest in a settlement trust.

7.3.2 Rebuttal of presumption of disadvantage

1. If the statement of personal net worth that an individual submits under paragraph III-C above shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. The Metropolitan Council is not required to have a proceeding in order to rebut the presumption of economic disadvantage in such cases.
2. If the Metropolitan Council has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the Metropolitan Council may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Such proceedings will follow the procedures of 49 CFR part 26.87, as described in Section 8.5 of this program.
3. In such proceedings, the Metropolitan Council has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The Metropolitan Council may, at its discretion, require the individual to produce information relevant to the determination of his or her disadvantage.
4. When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this program unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

7.3.3 SBA 8(a) and SDB Firms

1. If a firm applying for certification has a current, valid certification from or is recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an

SDB certification based on the firm's self-certification as an SDB), the Metropolitan Council may accept the firm's 8(a) or SDB certification in lieu of conducting its own certification proceeding. The Metropolitan Council may, at its discretion, accept the certification of another DOT recipient for this purpose.

7.3.4 Individual determinations of social and economic disadvantage

1. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. The Metropolitan Council will make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a review, the applicant firm has the burden of demonstrating to the Metropolitan Council, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, the Metropolitan Council will use the guidelines found in Appendix E of 49 CFR part 26; and the Metropolitan Council will require that applicants provide sufficient information to permit determinations under the guidelines referenced herein.

7.4 Business Size Determinations

In accordance with 49 CFR section 26.65, the Metropolitan Council will utilize the following guidelines to determine business size for purposes of DBE eligibility.

1. An eligible DBE (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The Metropolitan Council will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform on DOT-assisted contracts.
2. Even if the firm meets these requirements, a firm will not be certified as an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA standards, in excess of \$16.6 million.

7.5 Ownership Determinations

In accordance with 49 CFR section 26.69, the Metropolitan Council will utilize the following guidelines to determine social and economic disadvantage for purposes of DBE eligibility:

1. Eligible DBE firms must be at least 51% owned by socially and economically disadvantaged individuals, as follows:
 - a. In a corporation, eligible individuals must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.

- b. In a partnership, 51% of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
 - c. In a limited liability company, at least 51% of each class of member interest must be owned by socially and economically disadvantaged individuals.
- 2. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. To be eligible, the disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- 3. All securities that constitute ownership of a firm must be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of ownership of a firm, if:
 - a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
 - b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the disadvantaged individual is the sole grantor, beneficiary, and trustee.
- 4. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other institutions that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- 5. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership; the owner's expertise must be:
 - a. In a specialized field;
 - b. Of outstanding quality;
 - c. In area's critical to the firm's operations;
 - d. Indispensable to the firm's potential success;
 - e. Specific to the type of work the firm performs; and
 - f. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

6. The individual whose expertise is relied upon must have a significant financial investment in the firm.
7. For purposes of determining ownership, all interests in a business or other assets obtained by the individual in the following manners will be considered as held by a socially and economically disadvantaged individual:
 - a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b. Through inheritance, or otherwise because of the death of the former owner.
8. For purposes of determining ownership, the Metropolitan Council does not count all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:
 - a. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - b. Involved in the same or a similar line of business; or
 - c. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
9. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the Metropolitan Council, by clear and convincing evidence, that:
 - a. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - b. The disadvantaged individual actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
10. The Metropolitan Council will apply the following rules in situations in which marital assets form a basis for ownership of a firm:
 - a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

- b. A copy of a document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
11. The Metropolitan Council may consider the following factors in determining the ownership of a firm. However, the Metropolitan Council will not regard a contribution of capital as failing to be real or substantial, or find a firm ineligible, solely because –
- a. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 7 above.
 - b. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
 - c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, the Metropolitan Council will give close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

7.6 Control Determinations

In accordance with 49 CFR part 26.71, the Metropolitan Council will utilize the following guidelines to determine control for purposes of DBE eligibility:

- 1. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In considering the independence of the potential DBE, the Metropolitan Council will:
 - a. Scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - b. Consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
 - c. Examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
 - d. Consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

2. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR section 26.69(j)(2).
3. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - a. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - b. In a corporation, disadvantaged owners must control the board of directors.
 - c. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
4. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operations of the firm.
5. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the Metropolitan Council can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
6. The eligible owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The eligible owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. However, the eligible owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions about the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping

functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

7. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and/or control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the Metropolitan Council will not deny certification solely on the ground that the person lacks the license or credential. However, the Metropolitan Council may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
8. The Metropolitan Council will consider differences in the remuneration between the eligible owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practices concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The Metropolitan Council may determine that a firm is controlled by its eligible owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-eligible individual formerly controlled the firm, and an eligible individual now controls it, the Metropolitan Council may consider a difference between the remuneration of the former and current person who controls the firm as a factor in determining who controls the firm, particularly when the non-eligible individual remains involved with the firm and continues to receive greater compensation than the eligible individual.

9. In order to be viewed as controlling a firm, an eligible owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time that it is operating.
10. An eligible individual may control a firm even though one or more of the individual's immediate family members (who themselves are not eligible individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this section, the Metropolitan Council will make a judgement about the control the eligible owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

If the Metropolitan Council cannot determine that the eligible owners- as distinct from the family as a whole- control the firm, then the eligible owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

11. Where a firm was formerly owned and/or controlled by a non-eligible individual (whether or not an immediate family member), ownership and/or control were transferred to an eligible individual, and the non-eligible individual remains involved with the firm in any capacity, the eligible individual now owning the firm must demonstrate, by clear and convincing evidence, that:
 - a. The transfer of ownership and/or control to the eligible individual was made for reasons other than obtaining certification as a DBE; and
 - b. The eligible individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-eligible individual who formerly owned and/or controlled the firm.
12. In determining whether a firm is controlled by its eligible owners, the Metropolitan Council may consider whether the firm owns equipment necessary to perform its work. However, the Metropolitan Council will not determine that a firm is not controlled by eligible owners solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
13. The Metropolitan Council will grant certification to a firm only for specific types of work in which the eligible owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate to the Metropolitan Council that its eligible owners are able to control the firm with respect to that type of work. The Metropolitan Council will not, in this situation, require that the firm be re-certified or submit a new application for certification, but must verify the eligible owner's control of the firm in the additional type of work.
14. A business operating under a franchise or license agreement may be certified as a DBE if it meets the standards in 49 CFR Part 26, Subpart D and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliations exists, the Metropolitan Council will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
15. In order for a partnership to be controlled by eligible individuals, any non-eligible partners must not have the power, without the specific written concurrence of the eligible partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
16. The eligible individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the eligible individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and

otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

7.7 Other Considerations

In accordance with 49 CFR section 26.73, the Metropolitan Council will utilize the following additional guidelines to determine DBE eligibility:

1. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in this section, the Metropolitan Council will not consider commercially useful function issues in making decisions about whether to certify a firm as a DBE.
2. The Metropolitan Council may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating involvement in attempts to evade or subvert the intent or requirements of the DBE program.
3. The Metropolitan Council will evaluate the eligibility of a firm on the basis of present circumstances. The Metropolitan Council will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by eligible individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor will the Metropolitan Council refuse to certify a firm solely on the basis that it is a newly formed firm.
4. DBE firms and firms seeking DBE certification must cooperate fully with requests by the Metropolitan Council and DOT for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.
5. Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by eligible individuals, are not eligible to be certified as DBEs.
6. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm- even a DBE firm- cannot be an eligible DBE.
 - a. If eligible individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the Metropolitan Council may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - b. The Metropolitan Council may certify such a subsidiary only if there is cumulatively 51% ownership of the subsidiary by eligible individuals.

7. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by eligible individuals.
8. A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians, as individuals, may be eligible for certification. Such a firm must meet the size standards of Section 26.65; and such a firm must be controlled by eligible individuals, as provided in Section 26.71.

8.0 CERTIFICATION PROCEDURES (SUBPART E)

8.1 Unified Certification Program

In accordance with 49 CFR section 26.81, the Metropolitan Council will participate with other DOT recipients in Minnesota in a Unified Certification Program (UCP) as follows.

1. The Metropolitan Council and other recipients in Minnesota will sign an agreement establishing the UCP for Minnesota and submit the agreement to the Secretary for approval no later than March 4, 2002. The Secretary may, on the basis of extenuating circumstances shown by the recipients in Minnesota, extend this deadline for no more than one additional year.
2. The UCP agreement must provide for the establishment of a UCP that meets all the requirements of 49 CFR section 26.81, and as summarized in this section. The agreement must specify the following:
 - a. That the UCP will follow all certification procedures and standards of this part, on the same basis as recipients;
 - b. That the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations;
 - c. That the UCP shall implement DOT directives and guidance concerning certification matters; and
 - d. Commit UCP participants to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
3. Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
4. The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement that is not disapproved or remanded within 180 days of its receipt by the Secretary will be deemed to be accepted.

5. If the Metropolitan Council and other Minnesota recipients fail to meet the deadlines set forth in this section, they will have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond the control of the Minnesota recipients. If the Minnesota recipients fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct them to complete the required action by a date certain. If the Metropolitan Council and the other Minnesota recipients fail to carry out this direction in a timely manner, they will be collectively in noncompliance with this part.
6. The UCP shall make all certification decisions on behalf of all DOT recipients in Minnesota with respect to participation in the DOT DBE Program. Specifically:
 - a. Certification decisions by the UCP shall be binding on all DOT recipients within the state.
 - b. The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
 - c. All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
7. All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
8. The Minnesota UCP will not be required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
9. Subject to DOT approval as provided in 49 CFR section 26.81, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
10. Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by 49 CFR section 26.81. The Minnesota UCP may also grant reciprocity to other recipient's certification decisions.
11. The Minnesota UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by 49 CFR part 26.31. The UCP will make the directory available to the public electronically, on the internet, as well as in print; and will update the electronic version of the directory by including additions, deletions, and other changes routinely.

12. Except as otherwise specified in this section, all provisions of this 49 CFR Part 26, Subpart E and subpart D of this part pertaining to recipients also applies to UCPs.

8.2 Initial Certification Procedures

In order to ensure that only firms certified as eligible DBEs under 49 CFR Part 26, Subpart D participate as DBEs in its program, the Metropolitan Council will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR Part 26, Subpart D. When a UCP is formed, the UCP must meet all the requirements of 49 CFR Part 26, Subpart D and Subpart E that recipients are required to meet.

The Metropolitan Council will take all the following steps in determining whether a DBE firm meets the standards of 49 CFR Part 26, Subpart D as follows.

1. Require potential DBEs to complete and submit an appropriate application form. The Metropolitan Council will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. Subject to the approval of the concerned operating administration as part of the its DBE program, the Metropolitan Council may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
2. The Metropolitan Council will review all information on the form prior to making a decision about the eligibility of the firm. This review will include the following:
 - a. Perform an on-site visit to the offices of the firm. The Metropolitan Council must interview the principal officers of the firm and review their resumes and/or work histories; and must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. The Metropolitan Council may rely upon the site visit report of any other recipient with respect to a firm applying for certification.
 - b. If the firm is a corporation, analyze the ownership of stock in the firm.
 - c. Analyze the bonding and financial capacity of the firm.
 - d. Determine the work history of the firm, including contracts it has received and work it has completed.
 - e. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
 - f. Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.

3. When another DOT recipient has certified a firm, the Metropolitan Council has the discretion to take any of the following actions:
 - a. Certify the firm in reliance on the certification decision of the other recipient;
 - b. Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information the Metropolitan Council requires the applicant to provide; or
 - c. Require the applicant to go through the Metropolitan Council's application process without regard to the action of the other recipient.
4. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information that the Metropolitan Council has obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), the Metropolitan Council will promptly make the information available to the other recipient.
5. The Metropolitan Council must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
6. Once the Metropolitan Council has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of 49 CFR section 26.87. The Metropolitan Council may not require DBEs to reapply for certification as a condition of continuing to participate in this program during this three-year period, unless the factual basis on which the certification was made changes.
7. DBEs must inform the Metropolitan Council or UCP in writing of any change in the circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26, Subpart D or any material change in the information provided in the Metropolitan Council's application form.
 - a. Changes in management responsibility among members of a limited liability company are covered by this requirement.
 - b. DBEs must attach supporting documentation describing in detail the nature of such changes.
 - c. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 30 days of the occurrence of such change. If the DBE fails to make timely notification of such a change, they will be deemed to have failed to cooperate under Section 26.109(c).

8. DBEs must provide to the Metropolitan Council every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the Metropolitan Council such as those described in this section. The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of 49 CFR Part 26, Subpart D, documenting this affirmation with supporting documentation of the firm's size and gross receipts. If a DBE fails to provide this affidavit in a timely manner, they will be deemed to have failed to cooperate under 49 CFR section 26.109(c).
9. The Metropolitan Council will make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. This time period may be extended once, for no more than 60 days, upon written notice to the firm, explaining fully and specifically reasons for the extension. Failure by the Metropolitan Council to make a decision by this deadline will be deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to DOT under 49 CFR section 26.89.

8.3 Recertification Procedures

Firms that are certified as DBEs by the Metropolitan Council may renew their certification by applying for recertification and demonstrating their continued eligibility.

1. Not less than 3 months prior to expiration of the initial certification date, the Metropolitan Council will send a letter to the DBE firm notifying it of its responsibility to submit an application for recertification.
2. The Metropolitan Council may, at its discretion, require any and all documentation required of an initial certification in order to recertify a firm as a DBE.
3. All other procedures for recertification shall be the same as those for initial certification.

8.4 Denials and Re-Application Procedures

1. When the Metropolitan Council denies a request by a firm not currently certified with the Metropolitan Council to be certified as a DBE, the Metropolitan Council will provide the firm a written explanation of the reason for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.
2. When the Metropolitan Council denies a firm DBE certification, it may reapply after one year. The time period for reapplication begins to run on the date the explanation required by paragraph 1 above is received by the firm.

3. When the Metropolitan Council makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under 49 CFR section 26.89.

8.5 Decertifications

8.5.1 Ineligibility complaints

1. Any person may file with the Metropolitan Council a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Metropolitan Council is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainant's identities must be protected as provided in 49 CFR section 26.109(b).
2. The Metropolitan Council will review its records concerning the firm, any material provided by the firm, and the complainant, and other available information. The Metropolitan Council may request additional information from the firm or conduct any other investigation that it deems necessary.
3. If the Metropolitan Council determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, the Metropolitan Council will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Metropolitan Council determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issues of reasonable cause must specifically reference the evidence in the record on which each reason is based.

8.5.2 Recipient-initiated proceedings

1. If, based on notification by the firm of a change in its circumstances or other information that comes to the attention of the Metropolitan Council, it determines that there is reasonable cause to believe that a currently certified firm is ineligible, the Metropolitan Council will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

8.5.3 DOT directive to initiate proceeding

1. If the concerned operating administration determines that information in the Metropolitan Council's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm that the Metropolitan Council certified does not meet the eligibility criteria of this part, the concerned operating administration may direct the Metropolitan Council to initiate a proceeding to remove the firm's certification.

2. The concerned operating administration will provide the Metropolitan Council and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
3. The Metropolitan Council will immediately commence and prosecute a proceeding to remove eligibility as provided in this section.

8.5.4 Hearing

1. When the Metropolitan Council notifies a firm that there is reasonable cause to remove its eligibility, as provided in this section, the Metropolitan Council will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
2. In such proceeding, the Metropolitan Council shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
3. The Metropolitan Council will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under 49 CFR part 26.89, the Metropolitan Council will provide a transcript of the hearing to DOT and, on request, to the firm. The Metropolitan Council will retain the original record of the hearing; and may charge the firm only for the cost of copying the record.
4. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the Metropolitan Council will bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

8.5.5 Separation of functions

1. The Metropolitan Council will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
2. The decision-maker must be an individual who is knowledgeable about the certification requirements of the Metropolitan Council's DBE program and of the requirements of 49 CFR Part 26.

8.5.6 Grounds for decision

1. The Metropolitan Council will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of certification of the firm. The Metropolitan Council may base such a decision only on one or more of the following:

2. Changes in the firm's circumstances since the certification of the firm by the Metropolitan Council that renders the firm unable to meet the eligibility standards of this part.
 - a. Information or evidence not available to the Metropolitan Council at the time the firm was certified.
 - b. Information that was concealed or misrepresented by the firm in previous certification actions by the Metropolitan Council.
 - c. A change in the certification standards or requirements of the Department since the Metropolitan Council certified the firm.
 - d. A documented finding that the Metropolitan Council's determination to certify the firm was factually erroneous.

8.5.7 Notice of decision

1. Following its decision, the Metropolitan Council will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the Metropolitan Council's decision and of the availability of an appeal to the Department of Transportation under 49 CFR part 26.89. The Metropolitan Council will send copies of the notice to the complainant or the concerned operating administration that had directed the Metropolitan Council to initiate the proceeding.

8.5.8 Status of firm during proceeding

1. A firm remains an eligible DBE during the time that the Metropolitan Council's proceeding to remove its eligibility is pending.
2. The firm does not become ineligible until the issuance of the notice provided for in this section.

8.5.9 Effects of removal of eligibility

When it removes a firm's eligibility, the Metropolitan Council will take the following action:

1. When a prime contractor has made a commitment to using the ineligible firm, or the Metropolitan Council has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in this section, the ineligible firm does not count toward the contract goal or overall goal. The Metropolitan Council will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so, in accordance Section V.
2. If a prime contractor has executed a subcontract with the firm before the Metropolitan Council has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the Metropolitan Council has let a prime

contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the Metropolitan Council issued the notice of its ineligibility shall not count toward the Metropolitan Council's overall goal, but may count toward the contract goal.

8.5.10 Exception

1. If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the Metropolitan Council may continue to count its participation on that contract toward overall and contract goals.

8.5.11 Availability of Appeal

1. When the Metropolitan Council finalizes an administrative removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under 49 CFR section 26.89.

8.6 Certification Appeals

1. Firms denied certification or whose eligibility is removed by a recipient, may make an administrative appeal to the Department.
 - a. A complainant in an ineligibility complaint to the Metropolitan Council (including the concerned operating administration in the circumstances provided in 49 CFR section 26.87(c), may appeal to the Department if the Metropolitan Council does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
 - b. Appeals should be sent to: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 2401, Washington, D.C. 20590.
2. Pending the Department's decision in the matter, the Metropolitan Council's decision remains in effect. The Department does not stay the effect of the Metropolitan Council's decision while it is considering an appeal.
3. If a firm wants to file an appeal, it must send a letter to the Department within 90 days of the date of the Metropolitan Council's final decision, including information and arguments concerning why the Metropolitan Council's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.
 - a. An appellant who is a firm that has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, must include in its letter the name and address of any other recipient which currently certifies the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending.

Failure to provide this information may be deemed a failure to cooperate under 49 CFR section 26.109(c).

- b. An appellant other than one described above, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in the paragraph above. Failure to provide this information may be deemed a failure to cooperate under 49 CFR section 26.109(c).
4. When it receives an appeal, the Department will request a copy of the Metropolitan Council's complete administrative record in the matter. The Metropolitan Council will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of the Metropolitan Council's showing of good cause. To facilitate the Department's review of a recipient's decision, such administrative records must be well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to the Metropolitan Council to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
5. The Department will make its decision based solely on the entire administrative record. The department will not make a *de novo* review of the matter, nor conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
6. When the Metropolitan Council provides supplementary information to the Department, it will also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
 - a. The Department affirms the Metropolitan Council's decision unless it determines, based on the entire administrative record, that its decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
 - b. If the Department determines, after reviewing the entire administrative record, that the Metropolitan Council's decision was unsupported by substantial evidence or procedural provisions of this part concerning certification, the Department will reverse the Metropolitan Council's decision and directs it to certify the firm or remove its eligibility, as appropriate. The Metropolitan Council is required to take the action directed by the Department's decision immediately upon receiving written notice of it.
 - c. The Department will not be required to reverse the Metropolitan Council's decision if the Department determines that a procedural error did not result in

fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

- d. If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to the Metropolitan Council with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to the Metropolitan Council for further proceedings consistent with Department instructions concerning the proper application of provisions of this part.
 - e. The Department does not uphold the Metropolitan Council's decision based on grounds not specified in your decision.
 - f. The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
 - g. The Department provides written notice of its decision to the Metropolitan Council, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
 - h. The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- 7. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.
 - 8. If the Metropolitan Council's action is subject to an appeal under Section 26.89 is taken, the decision is binding. It is not binding on other recipients.
 - 9. If it is subject to a DOT determination under 49 CFR section 26.89, the Metropolitan Council must the following action:
 - a. If the Department determines that the Metropolitan Council erroneously certified a firm, it must remove the firm's eligibility on receipt of that determination, without further proceedings on the Metropolitan Council's part. Effective on the date of the Metropolitan Council's receipt of the Department's determination, the consequences of a removal of eligibility set forth in 49 CFR section 26.87(l) take effect.
 - b. If the Department determines that the Metropolitan Council erroneously failed to find reasonable cause to remove the firm's eligibility, it must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR section 26.87.

- c. If the Department determines that the Metropolitan Council erroneously declined to certify or removed the eligibility of the firm, it must certify the firm, effective on the date of your receipt of the written notice of Department's determination.
 - d. If the Department determines that the Metropolitan Council erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, it must take appropriate corrective action as determined by the Department.
 - e. If the Department affirms the Metropolitan Council's determination, no further action is necessary.
10. Where DOT has upheld the Metropolitan Council's denial of certification to or removal of eligibility from a firm or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR section 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility of a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT

9.1 Bidders List

- 1. Pursuant to 49 CFR section 26.11(c), the Metropolitan Council will create and maintain a bidder's list, consisting of firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. The Bidders List will include the following minimum information for each firm:
 - a. Firm name;
 - b. Firm address;
 - c. Firm's status as a DBE or non-DBE;
 - d. The age of the firm; and
 - e. The annual gross receipts of the firm.

9.2 Monitoring Payments to DBEs

- 1. In accordance with the requirements of Section 6.3 of this program, the Metropolitan Council will require all prime contractors to submit on a monthly basis, evidence of actual payments to each DBE listed on the contract.
- 2. This evidence shall take the form of the Summary Subcontracts Award and Paid Report.

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3. The Metropolitan Council will review and monitor the amount actually paid to each DBE and non-DBE in accordance with the requirements of Section 6.3 of this program.

9.3 Reporting to DOT

1. The Metropolitan Council will continue to provide data on its DBE program to the Department as directed by the DOT Operating Administration. The Metropolitan Council shall submit a quarterly report by the last day in January, April, July and October describing the activities undertaken toward progress achieved in meeting the goal of greater DBE participation in its procurement and financial assistance programs during the preceding federal quarter. These reports shall discuss at least the following:
2. Data on the level of DBE participation in contracting and subcontracting activities of the Metropolitan Council and recipients of financial assistance both in terms of number of DBE contracts awarded and the identities of DBEs and the dollar value of work being so contracted.
3. A statistical breakdown and methods of awards to DBEs, for example, open competition, small business set-aside, competitive DBE set-asides, and subcontracts.
4. Data reported by prime contractors under subcontracting as required by federal procurement regulations.
5. A description of any participation or attendance in seminars, conferences, or workshops on DBEs by the Metropolitan Council.
6. A brief description of any problems encountered in the general area of DBEs, or specific contracts or projects.
7. Specific efforts to identify and award contracts to DBEs.
8. A summary of the extent to which percentages have been met.
9. All reports and records will be categorized separately by type of work (by Primary Industry Classification code) for all DBE and other firms. Reports will be made available to the public and DBE reports will be submitted to the Metropolitan Council's board.

9.4 Availability of Records

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program where not prohibited by Federal law.

The Metropolitan Council will safeguard against disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, State, and local law.

9.5 Confidentiality of information

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

9.6 Cooperation of DBEs

All participants in the DBE program are required to cooperate fully and promptly with DOT and Metropolitan Council compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so will be grounds for appropriate action against the party involved.

9.8 Intimidation and Retaliation Prohibited

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

**METROPOLITAN COUNCIL
DBE PROGRAM SECTION-TO-REGULATIONS REFERENCE**

Section	Regulatory Basis
1.0 METROPOLITAN COUNCIL DBE POLICY	
1.1 Policy Statement	26.3; 26.7; 26.21; 26.23
1.2 Objectives	26.1
2.0 DBE PROGRAM DEFINITIONS	26.5
3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION	
3.1 Duties of DBE Liaison Officer	26.25
3.2 Responsibilities of Support Personnel	
3.3 Reconsideration Official	26.53(d)(2)
4.0 ADMINISTRATIVE REQUIREMENTS (SUBPART B)	
4.1 Financial Institutions	26.27
4.2 DBE Directory	26.31
5.0 DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS	
5.1 Goal-Setting Methodology	26.45
5.2 Transit Vehicle Manufacturers (TVMs)	26.49
5.3 Race-Neutral Measures	26.51
5.4 Contract Goals	26.51
5.5 Good Faith Efforts	26.53; Appendix A
5.6 Counting DBE Participation	26.55
5.7 Quotas, Set-Asides, and Penalties	26.43; 26.47
6.0 REQUIRED CONTRACT PROVISIONS	
6.1 Assurances	26.13
6.2 Prompt Payment	26.29
6.3 Legal and Contract Remedies	26.37; Appendix B
6.4 Contractor Reporting Requirements	26.55 (counting)

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Section	Regulatory Basis
7.0 CERTIFICATION STANDARDS (SUBPART D)	
7.1 Burdens of Proof	26.61
7.2 Group Membership Determinations	26.63
7.3 Social and Economic Disadvantage; Statement of Net Worth	26.67; Appendix E
7.4 Business Size Determinations	26.65
7.5 Ownership Determinations	26.69
7.6 Control Determinations	26.71
7.7 Other Considerations	26.73
8.0 CERTIFICATON PROCEDURES (SUBPART E)	
8.1 Unified Certification Program	26.81
8.2 Initial Certification Procedures	26.83
8.3 Recertification Procedures	26.83
8.4 Denials and Re-Application Procedures	26.85
8.5 De-Certifications	26.87
8.6 Certification Appeals	26.89; 26.91
9.0 RECORD KEEPING, MONITORING AND ENFORCEMENT	
9.1 Bidders List	26.11
9.2 Monitoring Payments to DBEs	26.37
9.3 Reporting to DOT	26.11
9.4 Availability of Records	
9.5 Confidentiality of Information	
9.6 Cooperation of DBEs	
9.7 Intimidation and Retaliation Prohibited	

To comment on the Council's proposed DBE program, you can:

- e-mail your comments to: data.center@metc.state.mn.us
- call your comments in to Velma Korbel at 651-602-1042
- fax your comments to Velma at 651-602-1031, or
- mail them to: Velma Korbel, Office of Diversity, Metropolitan Council, 230 E. 5th Street, St. Paul, MN 55101.

Comments will be accepted until August 31, 1999.

Goal Methodology

The Metropolitan Council's overall Disadvantaged Business Enterprise Program goal for FY 2000 is the following:

10% of the Federal financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.

The following is a summary of the method we used to calculate this goal:

STEP ONE – BASE FIGURE "RELATIVE AVAILABILITY"

Please see attachment titled "Availability¹" for an explanation of methodology in obtaining relative availability.

STEP TWO – BASE FIGURE ADJUSTMENT

Metropolitan Council's history of DBE participation was 1.6%². Our disparity study showed the relative availability of woman-owned and minority-owned businesses is 17.55%³. This data would indicate that in the absence of discrimination, a participation rate of approximately 18% by woman-owned and minority-owned businesses could be achieved. From this data, and our assumption that approximately one-half of these firms may not be ready to bid on Metropolitan Council contracts, we have adjusted our base figure to 10%.

The Metropolitan Council will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Metropolitan Council currently uses the following race-neutral means to increase DBE participation:

- Solicitation and advertising using customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award;
- Participation in vendor and contractor fairs in the Twin Cities area;
- Use of internet, mainstream and special publications to provide information on the existence of the Metropolitan Council's DBE program.

In consideration of its past DBE participation and in anticipation our DBE participation for FY 99, Metropolitan Council estimates that in meeting its overall goal of 10% in FY 2000, the Council will obtain 4 % from race-neutral participation and 6% through race-conscious measures. Further, the Council bases the estimate of the breakout of race-neutral and race-conscious DBE participation on the expected participation as indicated in Step 2 above.

Metropolitan Council will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately.

APPENDIX A.2

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Metropolitan Council will use contract goals to meet any portion of the overall goal the organization does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goals applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The Metropolitan Council will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The Council need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of any such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work)

The Council will express its contract goals as a percentage of the federal share of a DOT-assisted contract.

APPENDIX A.2

Public Participation and Outreach

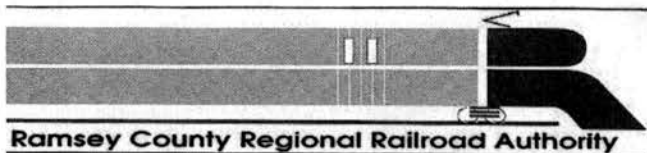
During the development of this program, the Metropolitan Council notified its governing board on June 23, 1999 and August 26, 1999 of the requirement to solicit comments from the public on its DBE program and goals.

Attached as A.3 page 1 and A.3 page 2 are copies of these meeting notifications. Also attached as A.3 page 3 is a copy of the public notice disseminated through mainstream media and media publications serving the women and minority communities.

Attached as A.3 page 4 is a copy of a letter and mailing list to community organizations and business organizations who may have an interest in the DBE program.

Individuals may continue to obtain information or comment on the Metropolitan Council's DBE program and goal by accessing our website at www.metrocouncil.org.

APPENDIX A.3



3

REQUEST FOR ACTION

Type of Agenda: ☒ Policy ☐ Discussion
☐ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 12/13/2011

Regional Railroad Authority Meeting Date: _____

SUBJECT: Approval of the 2012/2013 Ramsey County Regional Railroad Authority Budget and the 2012 Ramsey County Regional Railroad Authority Tax Levy

EXECUTIVE SUMMARY

The Ramsey County Regional Railroad Authority ("RCRRA") certified a proposed maximum levy of \$19,938,811 for 2012 on September 13, 2011. The proposed \$19,938,811 levy is a 0% increase from last year's levy of \$19,938,811.

The proposed 2012 RCRRA budget is \$15,202,568. The proposed 2013 RCRRA budget is \$17,127,615. Significant events, which influence the levy and 2012/2013 budgets are:

1. Construction of the Central Corridor light rail transit line;
2. Estimated operating costs for the Union Depot

The proposed 2012/2013 RCRRA budgets are consistent with the plan for capital improvements that the RCRRA agreed to in 2005.

ACTION REQUESTED

1. Approve the Ramsey County Regional Railroad Authority 2012 budget of \$15,202,568.
2. Approve the Ramsey County Regional Railroad Authority 2013 budget of \$17,127,615.
3. Approve that there be and hereby is levied in the year 2012 to be collected in the year 2012, a levy on all taxable properties in Ramsey County of \$19,938,811.
4. Authorize the County Manager to establish the necessary Assignments of Fund Balance, to replace the Designations of Fund Balance used in the preparation of the Comprehensive Annual Financial Reports prior to the implementation of GASB 54.

1

SUBJECT: Approval of the 2012/2013 Ramsey County Regional Railroad Authority Budget and the 2012 Ramsey County Regional Railroad Authority Tax Levy

ATTACHMENTS:

Proposed 2012/2013 RCRRA Budget

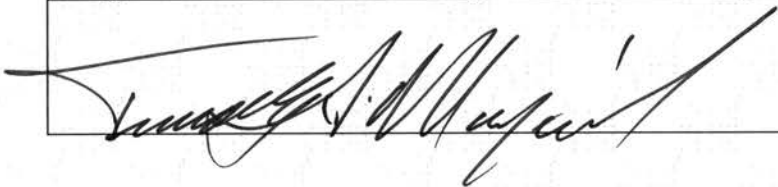
PREVIOUS ACTION:

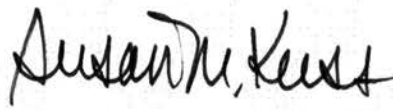
RCRRA certified a proposed maximum levy of \$19,938,811 for 2012 on September 13, 2011.

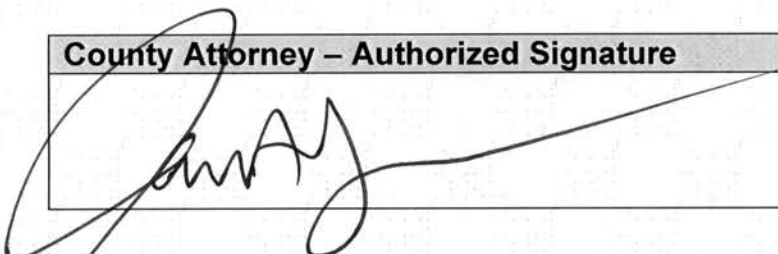
COUNTY MANAGER'S COMMENTS:

The RCRRA is required to approve the 2012/2013 RCRRA Budget and 2012 RCRRA Tax Levy.

SUBJECT: Approval of the 2012/2013 Ramsey County Regional Railroad Authority Budget and the 2012 Ramsey County Regional Railroad Authority Tax Levy

Regional Railroad Authority – Authorized Signature	Date
	12/6/11

Budgeting & Accounting – Authorized Signature	Date
	12/6/11

County Attorney – Authorized Signature	Date
	12-6-2011

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Approval of the 2012/2013 Ramsey County Regional Railroad Authority Budget and the 2012 Ramsey County Regional Railroad Authority Tax Levy

Draft Resolution

WHEREAS, The Ramsey County Regional Railroad Authority was organized by Resolution 87-230, April 20, 1987, Board of Ramsey County Commissioners, pursuant to Minnesota Statutes, 1986, Chapter 398A, as a political subdivision and local government unit of Minnesota, to exercise thereunder part of the sovereign power of the state; and

WHEREAS, The Ramsey County Regional Railroad Authority adopted the County's plan to develop and implement two year budgets beginning in 2006; and

WHEREAS, The Director of the Ramsey County Regional Railroad Authority, on September 13, 2011, submitted the 2012 – 2013 Proposed Budget and 2012 tax levy of \$19,938,811; and

WHEREAS, The Truth in Taxation Law requires the Ramsey County Regional Railroad Authority to certify a maximum net tax levy to the County Auditor on or before September 15; and

WHEREAS, The Ramsey County Regional Railroad Authority certified a maximum net tax levy of \$19,938,811 for 2012 by Resolution R11-32, on September 13, 2009, to finance the 2012 budget; and

WHEREAS, The Government Accounting Standards Board (GASB) promulgates accounting principles for all State and Local governments; and

WHEREAS, GASB has issued Statement #54 Fund Balance Reporting and Governmental Fund Type Definitions, which will use new terminology to classify Fund Balance for all Governmental Funds; and

WHEREAS, Designations of Fund Balances which are management's intent for potential use will be replaced by the new term Assigned Fund Balance; and

WHEREAS, Statement #54 requires the governing body to authorize a County Official to establish Assignments of Fund Balance; and

WHEREAS, Ramsey County Regional Railroad Authority approval will be required to use of any of the Assignments recorded by Management; and

WHEREAS, The Ramsey County Regional Railroad Authority wishes to continue to improve access to transit services in the region with other agencies, including the Metropolitan Council and other county regional railroad authorities; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the 2012 budget of \$15,202,568; and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the 2013 budget of \$17,127,615; and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves that there be and hereby is levied in the year 2012 to be collected in the year 2012, a levy on all taxable properties in Ramsey County of \$19,938,811 as summarized below:

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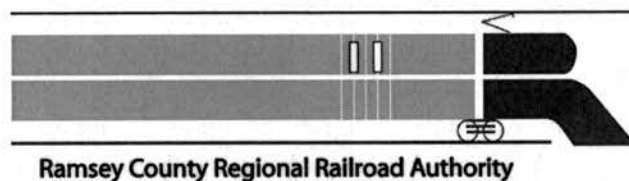
	RCRRA Operations	CIP	2012 RCRRA Total
Gross Budget	\$ 3,502,568	\$ 11,700,000	\$ 15,202,568
Less – Revenues	<u>- 121,000</u>	<u>-</u>	<u>- 121,000</u>
Subtotal	\$ 3,381,568	\$ 11,700,000	\$ 15,081,568
Plus – Fund Balance	<u>+</u>	<u>+ 4,418,492</u>	<u>+ 4,418,492</u>
Subtotal	<u>\$ 3,381,568</u>	<u>\$ 16,118,492</u>	<u>\$ 19,500,060</u>
Plus – Estimated Tax Delinquency	<u>+ 76,085</u>	<u>+ 362,666</u>	<u>\$ 438,751</u>
Total Tax Levy	\$ 3,457,653	\$ 16,481,158	\$19,938,811

And Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the County Manager to establish the necessary Assignments of Fund Balance, to replace the Designations of Fund Balance used in the preparation of the Comprehensive Annual Financial Reports prior to the implementation of GASB 54.

5

2012-2013 Proposed Budget



DEPARTMENT MISSION

REGIONAL RAILROAD AUTHORITY

Providing effective and efficient transit alternatives for Ramsey County and surrounding regions.

PROGRAMS / SERVICES

Ramsey County Regional Railroad Authority is comprised of the seven elected Ramsey County Commissioners.

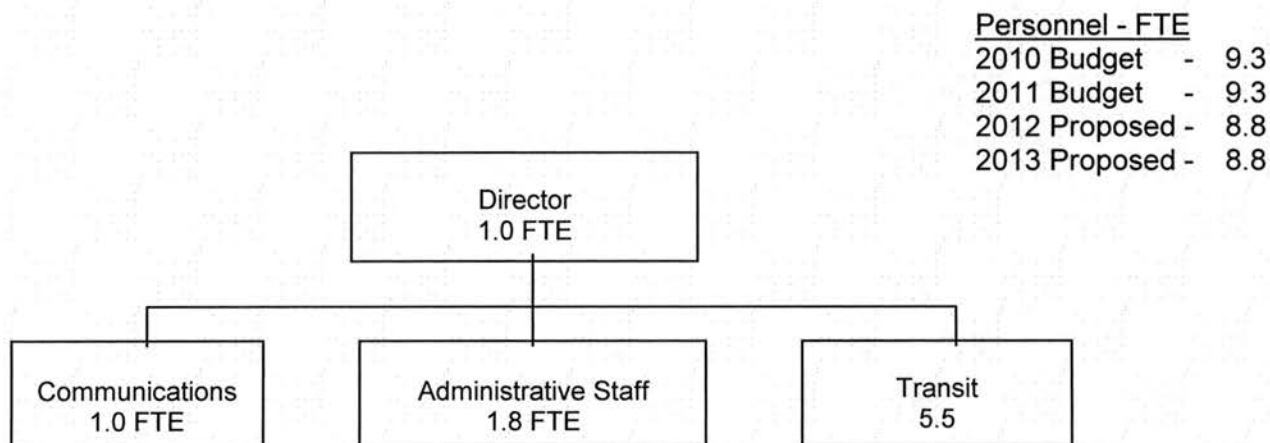
The Ramsey County Regional Railroad Authority recognizes the importance of transit to the mobility of people in the county and its importance in maintaining a strong economy in the county. For those reasons, the Railroad Authority plans, advocates, designs, communicates, educates, coordinates, implements, operates, preserves and funds transit options in Ramsey County.

The Ramsey County Regional Railroad Authority performs its activities because of the needs for mobility, to improve transportation affordability, to mitigate traffic congestion, to enhance environmental quality and because the economic health of the county depends on accessibility to jobs, services and recreation.

CRITICAL SUCCESS INDICATOR

A variety of safe and effective transportation options benefit the community.

2011 ORGANIZATION CHART



RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

BUDGET SUMMARY

	2010 Actual	2011 Approved	2012 Proposed	2013 Proposed
Expenditure/Appropriation	31,916,876	154,442,134	15,202,568	17,127,615
Revenue/Estimated Revenue	13,367,941	136,025,045	121,000	817,171
Fund Balance	951,125	1,082,971	4,418,492	3,189,616
RCRRA Tax Levy	19,500,060	19,500,060	19,500,060	19,500,060
Allowance for Uncollectible Taxes	438,751	438,751	438,751	438,751
Total RCRRA Tax Levy	19,938,811	19,938,811	19,938,811	19,938,811

Inc/(Dec) from Previous Year

% Inc/-Dec from Previous Year

Inc/(Dec) for 2 Years

% Inc/-Dec for 2 Years

TAX LEVY SUMMARY BY BUDGET

	2010 Approved	2011 Approved	2012 Proposed	2013 Proposed
OPERATING BUDGET				
Total Expenditure/Appropriation	1,399,895	2,942,134	3,502,568	5,427,615
Total Revenue/Estimated Revenue	67,941	225,045	121,000	817,171
Fund Balance	-	-	-	-
Operating Tax Levy	1,331,954	2,717,089	3,381,568	4,610,444
Allowance for Uncollectible Taxes	29,968	61,134	76,085	103,735
Total Operating Tax Levy	1,361,922	2,778,223	3,457,653	4,714,179

Inc/(Dec) from Previous Year

% Inc/-Dec from Previous Year

679,431

24.5%

1,256,526

36.3%

Inc/(Dec) for 2 Years

% Inc/-Dec for 2 Years

1,935,956

69.7%

CAPITAL PROJECTS

Total Capital Projects Appropriation	30,516,981	151,500,000	11,700,000	11,700,000
Total Revenue/Estimated Revenue	13,300,000	135,800,000	-	-
Fund Balance	951,125	1,082,971	4,418,492	3,189,616
Capital Tax Levy	18,168,106	16,782,971	16,118,492	14,889,616
Allowance for Uncollectible Taxes	408,782	377,617	362,666	335,016
Total Capital Tax Levy	18,576,888	17,160,588	16,481,158	15,224,632

Inc/(Dec) from Previous Year

% Inc/-Dec from Previous Year

(679,430)

-4.0%

(1,256,526)

-7.6%

Inc/(Dec) for 2 Years

% Inc/-Dec for 2 Years

(1,935,955)

-11.3%

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

EXPENDITURE/APPROPRIATION SUMMARY BY DIVISION

Code	Title	2010 Actual	2011 Approved	2012 Proposed	2013 Proposed
<u>OPERATING BUDGET</u>					
150101	Regional Railroad Administration	1,014,876	1,903,853	1,615,919	1,516,965
150201	Central Corridor	122,832	188,100	68,500	67,000
150301	Union Depot	144,922	286,600	280,600	2,074,565
150401	Diagonal Property - Roseville	-	5,000	5,000	5,000
150402	NE Corridor Maintenance Kellogg to Beam	50,807	82,581	77,249	72,485
150501	Rush Line Corridor	13,451	57,000	302,600	298,200
150601	Red Rock Corridor	10,933	41,000	39,900	38,800
150701	Robert Street Corridor	-	56,000	227,900	225,800
150801	Gateway Corridor	10,610	251,000	549,600	798,200
150901	High Speed Rail	31,346	56,000	301,600	298,200
151001	Riverview Corridor	118	15,000	33,700	32,400

Total Expenditure/Appropriation RCRRA	1,399,895	2,942,134	3,502,568	5,427,615
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REVENUE/ESTIMATED REVENUE & FUND BALANCE SUMMARY BY DIVISION

Code	Title	2010 Actual	2011 Approved	2012 Proposed	2013 Proposed
<u>OPERATING BUDGET</u>					
150101	Regional Railroad Administration	27,941	175,000	25,000	30,000
150301	Union Depot	25,704	36,645	81,600	772,771
150402	NE Corridor Maintenance Kellogg to Beam	14,296	13,000	14,000	14,000
150501	Rush Line Corridor	-	400	400	400
Total Revenue/Estimated Revenue		67,941	225,045	121,000	817,171

Fund Balance	-	-	-	-
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RCRRA OPERATING TAX LEVY SUMMARY

Tax Levy	1,331,954	2,717,089	3,381,568	4,610,444
Allowance for Uncollectible Tax	29,968	61,134	76,085	103,735
Net Tax Levy	1,361,922	2,778,223	3,457,653	4,714,179

Inc/(Dec) from Previous Year	679,430	1,256,526
% Inc/-Dec from Previous Year	24.5%	36.3%

Inc/(Dec) for 2 Years	1,935,956
% Inc/-Dec for 2 Years	69.7%

8

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY
17801 - CAPITAL PROJECTS

EXPENDITURE/APPROPRIATION SUMMARY BY DIVISION

Code	Title	2010 Actual	2011 Approved	2012 Proposed	2013 Proposed
CAPITAL PROJECTS					
150280	Central Corridor PE	10,769,870	2,200,000	11,200,000	11,200,000
150380	Union Depot	19,747,111	147,800,000	-	-
150480	Property Acquisition	-	1,500,000	500,000	500,000
	Total Capital Projects	30,516,981	151,500,000	11,700,000	11,700,000

Inc/(Dec) from Previous Year	(139,800,000)	-
% Inc-/Dec from Previous Year	-92.3%	-
Inc/(Dec) for 2 Years	(139,800,000)	
% Inc-/Dec for 2 Years	-92.3%	

REVENUE/ESTIMATED REVENUE & FUND BALANCE SUMMARY BY DIVISION

Code	Title	2010 Actual	2011 Approved	2012 Proposed	2013 Proposed
CAPITAL PROJECTS					
150380	Special Projects - Federal	13,300,000	135,800,000	-	-
	Total Capital Projects	13,300,000	135,800,000	-	-

Inc/(Dec) from Previous Year	(135,800,000)	-
% Inc-/Dec from Previous Year	-100.0%	-
Inc/(Dec) for 2 Years	(135,800,000)	
% Inc-/Dec for 2 Years	-100.0%	

RCRRA CAPITAL TAX LEVY SUMMARY

Subtotal Capital Budget Levy	17,216,981	15,700,000	11,700,000	11,700,000
Fund Balance	951,125	1,082,971	4,418,492	3,189,616
Tax Levy	18,168,106	16,782,971	16,118,492	14,889,616
Allowance for Uncollectible Tax	408,782	377,617	362,666	335,016
Net Tax Levy	18,576,888	17,160,588	16,481,158	15,224,632

Inc/(Dec) from Previous Year	(679,430)	(1,256,526)
% Inc-/Dec from Previous Year	-4.0%	-7.6%
Inc/(Dec) for 2 Years	(1,935,955)	
% Inc-/Dec for 2 Years	-11.3%	

PERSONNEL SUMMARY BY DIVISION

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

Permanent FTE	2010 Budget	2011 Approved	2012 Proposed	2013 Proposed
Director	1.00	1.00	1.00	1.00
Administrative Secretary II	1.00	1.00	1.00	1.00
Senior Transportation Planner	1.00	1.00	1.00	1.00
Transit Project Manager	1.00	1.00	1.00	1.00
Administrative Assistant III	0.80	0.80	0.80	0.80
Public Information Associate	1.00	1.00	1.00	1.00
Engineer IV	1.00	1.00	1.00	1.00
Engineering Technician	0.50	0.50	0.00	0.00
Planning Specialist I	1.00	1.00	1.00	1.00
*Project Manager	1.00	1.00	1.00	1.00
Total FTE	9.30	9.30	8.80	8.80

Inc/(Dec) from Previous Year

(0.50)

-

Inc/(Dec) for 2 Years

(0.50)

(0.50)

Notes:

* - Starred position.

PROGRAM / SERVICE ALLOCATION (2012 PROPOSED)

REGIONAL RAILROAD AUTHORITY

Program / Service	Mand./ Discr.	2012 Proposed			
		FTE's	Budget	Financing	Levy
Administration (RCRRA)	D	5.42	1,615,919	25,000	1,590,919
Central Corridor	M	0.08	68,500	-	68,500
Union Depot	D/M	0.54	280,600	81,600	199,000
Other Corridor Projects	D	1.37	1,537,549	14,400	1,523,149
Capital Projects					
Union Depot	D/M	0.00	-	-	-
Central Corridor	M	1.39	11,200,000	-	11,200,000
Property Acquisition	D	0.00	500,000	-	500,000
Fund Balance	D	0.00	-	(4,418,492)	4,418,492
		8.80	15,202,568	(4,297,492)	19,500,060

SUMMARY

		Levy %	FTE's	Budget	Financing	Levy
Total Mandated	M	57.8%	1.47	11,268,500	-	11,268,500
Total Mandated/Discretionary	M/D	0.0%	0.00	-	-	-
Total Discretionary/Mandated	D/M	1.0%	0.54	280,600	81,600	199,000
Total Discretionary	D	41.2%	6.79	3,653,468	(4,379,092)	8,032,560
Total Legal Obligations	LO	0.0%	0.00	-	-	-
			8.80	15,202,568	(4,297,492)	19,500,060
2011 Approved Budget			9.30	154,442,134	136,025,045	18,417,089
Inc/(Dec) from 2011 Year			(0.5)	-139,239,566	-140,322,537	1,082,971
% Inc/(Dec) from 2011 Year			-5.4%	-90.2%	-103.2%	5.9%

PROGRAM / SERVICE ALLOCATION (2012 PROPOSED)
CHANGE FROM 2011 BUDGET

REGIONAL RAILROAD AUTHORITY

Program / Service	Change from 2011 Budget			
	FTE's	Budget	Financing	Levy
Administration (RCRRA)	(0.82)	(287,934)	(150,000)	(137,934)
Central Corridor	(0.64)	(119,600)	-	(119,600)
Union Depot	(0.04)	(6,000)	44,955	(50,955)
Other Corridor Projects	(0.39)	973,968	1,000	972,968
Capital Projects				
Union Depot	0.00	(147,800,000)	(135,800,000)	(12,000,000)
Central Corridor	1.39	9,000,000	-	9,000,000
Property Acquisition	0.00	(1,000,000)	-	(1,000,000)
Debt Service	0.00	-	-	-
Fund Balance	0.00	-	(3,335,521)	3,335,521
Inc(Dec) from 2011 Year	(0.50)	(139,239,566)	(139,239,566)	-
% Inc(Dec) from 2011 Year	-4.7%	-425.7%	-845.1%	0.0%

PROGRAM / SERVICE ALLOCATION (2013 PROPOSED)

REGIONAL RAILROAD AUTHORITY

Program / Service	Mand./ Discr.	2013 Proposed			
		FTE's	Budget	Financing	Levy
Administration	D	5.12	1,516,965	30,000	1,486,965
Central Corridor	M	0.08	67,000	-	67,000
Union Depot	D/M	0.59	2,074,565	772,771	1,301,794
Other Corridor Projects	D	1.42	1,769,085	14,400	1,754,685
Capital Projects					
Union Depot	D/M	0.00	-	-	-
Central Corridor	M	1.59	11,200,000	-	11,200,000
Property Acquisition	D	0.00	500,000	-	500,000
Fund Balance	D	0.00	-	(3,189,616)	3,189,616
		8.80	17,127,615	(2,372,445)	19,500,060

SUMMARY

		Levy %	FTE's	Budget	Financing	Levy
Total Mandated	M	57.8%	1.67	11,267,000	-	11,267,000
Total Mandated/Discretionary	M/D	0.0%	0.00	-	-	-
Total Discretionary/Mandated	D/M	6.7%	0.59	2,074,565	772,771	1,301,794
Total Discretionary	D	35.5%	6.54	3,786,050	(3,145,216)	6,931,266
Total Legal Obligations	LO	0.0%	0.00	-	-	-
			8.80	17,127,615	(2,372,445)	19,500,060
2012 Proposed Budget			8.80	15,202,568	121,000	15,081,568
Inc/(Dec) from 2012 Year			-	1,925,047	-2,493,445	4,418,492
% Inc/(Dec) from 2012 Year			0.0%	12.7%	-2060.7%	29.3%

PROGRAM / SERVICE ALLOCATION (2013 PROPOSED)
CHANGE FROM 2012 PROPOSED BUDGET

REGIONAL RAILROAD AUTHORITY

Program / Service	Change from 2012 Proposed Budget			
	FTE's	Budget	Financing	Levy
Administration (RCRRA)	(0.30)	(98,954)	5,000	(103,954)
Central Corridor	-	(1,500)	-	(1,500)
Union Depot	0.05	1,793,965	691,171	1,102,794
Other Corridor Projects	0.05	231,536	-	231,536
Capital Projects				
Union Depot	-	-	-	-
Central Corridor	0.20	-	-	-
Property Acquisition	-	-	-	-
Debt Service	-	-	-	-
Fund Balance	-	-	1,228,876	(1,228,876)
Inc(Dec) from 2012 Year	0.00	1,925,047	1,925,047	-
% Inc(Dec) from 2012 Year	0.0%	3.9%	7.1%	0.0%

CRITICAL SUCCESS INDICATOR & PERFORMANCE MEASURES

A VARIETY OF SAFE AND EFFECTIVE TRANSPORTATION OPTIONS BENEFIT THE COMMUNITY

PERFORMANCE MEASURES – HIGHLIGHTS

The Railroad Authority is creating a multi-modal transit hub at the historic Union Depot. A purchase agreement with the United States Postal Service (USPS) for the purchase of the concourse area was completed in April of 2008. Conceptual engineering and an environmental assessment have been completed. Purchase of the Union Depot Headhouse took place in June, 2009. In January, 2010, Construction Manager/Design Team work began on renovation/reconstruction. In February, 2010, Transportation Investment Generating Economic Recovery (TIGER) funds were awarded to the Railroad Authority in the amount of \$35 million. In May, 2010, the Finding of No Significant Impact (FONSI) was issued, which allows the Railroad Authority to use \$45.3 million in Federal SAFETEA-LU, 1301 funds towards the project. In November, 2010, the Federal Railroad Administration awarded \$40 million to the State of Minnesota for the Union Depot. In December, 2010, \$9.8 million in State Passenger Rail Bond funds were awarded to the Union Depot project. Project design was completed in the fall of 2010. Possession of the concourse took place December 31, 2010. Construction began January, 2011 and the project will be substantially completed in late 2012.

The Railroad Authority completed an Alternatives Analysis/Draft Environmental Impact Statement for the Central Corridor light rail project in 2006. The Federal Transit Administration approved the project for preliminary engineering in December, 2006. Preliminary engineering was conducted by the Metropolitan Council with the cooperation of the Railroad Authority and other project partners. Construction work began in the fall of 2009 and will be completed in 2014. The full funding grant agreement was signed in April, 2011.

The Railroad Authority is participating in the Gateway Corridor Commission to advocate and analyze transportation and transit improvements along the I-94 corridor from the Union Depot in St. Paul to Eau Claire, Wisconsin. An Alternatives Analysis study began in late summer 2010 to study transit improvements from Minneapolis to the Union Depot in St. Paul to Eau Claire, Wisconsin. This study is expected to be completed in the spring of 2012. A Draft Environmental Impact Statement (DEIS) is anticipated to be underway late summer 2012.

Recent Railroad Authority performance continues to be consistent with the long-term funding strategy adopted by the Railroad Authority in 2005.

The 2008 Legislature authorized the metro area counties to create a Counties Transit Improvement Board (CTIB). Ramsey County is one of five counties participating in this organization. CTIB provides funding for transitway capital improvements and operations.

PERFORMANCE MEASURES

#	Performance Measures	2009	2010	2011	2012	2013
		Actual	Actual	Actual	Estimate	Estimate
1	Purchase Union Depot Head House	6/09				
2	Depot Preliminary Engineering/Final Design		1/10			
3	Union Depot renovation begins			1/11		
4	Union Depot multi-modal transit hub opens				12/12	
5	Central Corridor full funding grant agreement signed			4/11		
6	Gateway Corridor Alt. Analysis begins		9/10			
7	Gateway Corridor DEIS begins				9/12	
6	Corridor Planning		On-going			
7	Acquire Right-of-way					

CRITICAL SUCCESS INDICATOR & PERFORMANCE MEASURES

A VARIETY OF SAFE AND EFFECTIVE TRANSPORTATION OPTIONS BENEFIT THE COMMUNITY

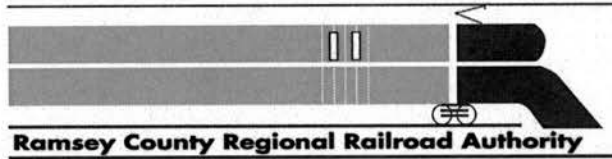
PERFORMANCE MEASURES - DISCUSSION

1. RCRRA purchased the Union Depot Head House in June, 2009.
2. Depot Preliminary engineering/final design work began in January, 2010.
3. In January, 2011, renovation work on the Union Depot began
4. The Union Depot Multi-modal transit hub will become the heart of future transportation in the east metro. In 2012, the Depot will serve Amtrak, regional and inter-city buses, bicycles, pedestrians and the Central Corridor light rail line (opening in 2014).
5. A federal full funding grant agreement was signed by the Federal Transit Administration for the Central Corridor light rail project in April, 2011.
6. An Alternatives Analysis study began in September, 2010 on the Gateway Corridor from Minneapolis to the Union Depot in St. Paul to Eau Claire, WI.
7. A DEIS on the Gateway Corridor is anticipated to begin late summer 2012. The locally preferred alternative will be determined in 2014.
8. Corridor planning work will continue on Red Rock, Rush Line, Robert Street, Intercity Passenger Rail (High Speed Rail), Riverview, and other projects to provide improved transit options for citizens.
9. Railroad right-of-way that may be needed for future transportation corridors may be acquired, if available.

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RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY
Fund Balance
12/31/10

	TOTAL
	<u>2010</u>
Fund Balance:	
Reserved for:	
Encumbrances	1,473,585
Petty Cash	100
Unreserved:	
Designated for Future Corridors	4,226,505
Designated for Union Depot	<u>19,587,953</u>
Total Fund Balance	<u>25,288,143</u>



6560 Ramsey County Government Center West
50 Kellogg Boulevard West
St. Paul, Minnesota 55102 (651) 266-2760

REGIONAL RAILROAD AUTHORITY MEETING

December 20, 2011

Immediately following the County Facilities Committee Meeting
Council Chambers - Third Floor Court House

.....
ROLL CALL and Call to Order

AGENDA of the December 20, 2011 Regional Railroad Authority Meeting is presented for approval.

MINUTES of the December 13, 2011 Regional Railroad Authority Meeting is presented for approval.

ADMINISTRATIVE AGENDA

1. Purchase Suite 200, Suite 300 and four Parking Licenses at Union Depot Head House, St. Paul, Minnesota

Board Action Requested:

- 1) Approve the final purchase agreement between Ramsey County Regional Railroad Authority and Leone Real Estate Holdings, LLC for Suite 200, Suite 300, and four parking licenses at Union Depot Building, St. Paul, Minnesota for the purchase price of \$750,000.
- 2) Approve the final lease agreement between Ramsey County Regional Railroad Authority and Leone Real Estate Holdings, LLC for Suite 300 at Union Depot Building, St. Paul, Minnesota.
- 3) Authorize the Chair to sign and deliver the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property on behalf of the County, subject to prior approval by the County Attorney's Office and Property Management.
- 4) Authorize the County Manager to execute and deliver on its behalf all necessary documents required by or deemed necessary to carry out the purposes of the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property, subject to prior approval by the County Attorney's Office.
- 5) Direct that all costs, expenses, taxes, charges or fees that Ramsey County Regional Railroad Authority is required to pay at closing, or otherwise required by the purchase agreement, will be paid from the 2011 and 2012 Ramsey County Regional Railroad Authority operating budgets.

CORRIDOR UPDATES

ADJOURNMENT

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

December 13, 2011

The Ramsey County Regional Railroad Authority met with the following members present: Bennett, Carter, Ortega, Parker, Reinhardt, Rettman, McDonough – 7. Absent: – 0. Also present were Julie Kleinschmidt, County Manager and James Mogen, Assistant County Attorney, Ramsey County Attorney's Office.

Chair McDonough called the meeting to order at 10:55 A.M.

AGENDA

Commissioner Carter moved approval of the Agenda of the December 13, 2011 Regional Railroad Authority Meeting, seconded by Commissioner Reinhardt. Roll Call: Ayes – Ortega, Parker, Reinhardt, Rettman, Bennett, Carter, McDonough – 7. Nays – 0.

MINUTES

Commissioner Carter moved approval of the Minutes of the November 22, 2011 Regional Railroad Authority Meeting, seconded by Commissioner Reinhardt. Roll Call: Ayes – Ortega, Parker, Reinhardt, Rettman, Bennett, Carter, McDonough – 7. Nays – 0.

1. Ratification of Report of Contracts

Commissioner Reinhardt moved approval of the following resolution, seconded by Commissioner Parker. Roll Call: Ayes – Ortega, Parker, Reinhardt, Rettman, Bennett, Carter, McDonough – 7. Nays – 0. (R11-46)

WHEREAS, Administrative Code 4.30.50(a) requires a report of all contracts approved by the County Manager; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the Quarterly Report of Contracts for the period of January 1, 2011 through September 30, 2011.

2. Sub-Recipient Grant Agreements with the Metropolitan Council for Federal Transit Administration funds for the Union Depot Multi-Modal Transit Hub

Commissioner Parker moved approval of the following resolution, seconded by Commissioner Carter.

Commissioner Rettman asked for explanation of the Public Art line item in Subrecipient Grant Agreement MN-04-0031 (attachment two; handwritten page 17).

Tim Mayasich, Director, Ramsey County Regional Railroad Authority (RCRRA), responded that the Public Art item is estimated at over \$1 million and it is common for projects of this magnitude to include a large public art budget.

Roll Call: Ayes – Ortega, Parker, Reinhardt, Bennett, Carter, McDonough – 6. Nays – Rettman – 1. (R11-47)

WHEREAS, The Ramsey County Regional Railroad Authority is developing the Union Depot Multi-Modal Transit Hub to benefit the citizens of Ramsey County, the region and the state; and

WHEREAS, The Congress awarded the project \$4,048,535 in Federal Transit Administration 5309 funds; and

WHEREAS, Subrecipient Grant Agreements MN-04-0019 and MN-04-0031 have been negotiated with the Metropolitan Council to provide \$2,324,754 of the funding; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority approves Subrecipient Grant Agreements MN-04-0019 for \$781,994 and MN-04-0031 \$1,542,760 with the Metropolitan Council for Federal Transit Administration funding for the Union Depot project.; And Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to execute the subrecipient agreements.

3. Approval of the 2012/2013 Ramsey County Regional Railroad Authority Budget and the 2012 Ramsey County Regional Railroad Authority Tax Levy

Commissioner Parker moved approval of the following resolution, seconded by Commissioner Ortega.

Commissioner Rettman asked if the total RCRRA Full Time Employees (FTE) of 8.80, in the Personnel Summary, include the Right of Way Specialist, who is shared in Property Management, and the Public Communications Manager. She also asked if an attorney is included in the personnel complement.

Mr. Mayasich said the Public Communications Manager position is included in the County Manager's complement and is paid for by the RCRRA; the Right of Way Specialist funding is split between the RCRRA and Property Management and is on Property Management's complement. He said he would provide a breakdown of the RCRRA FTEs to her.

Julie Kleinschmidt, Ramsey County Manager, clarified that there is no additional FTE in the complement of the RCRRA. She said, as part of the budget, the board did approve an additional FTE in the County Attorney's complement, which will not entirely be paid for by the RCRRA, but rather by other revenue for anything that the County Attorney's Office can bill under our policy. There are sufficient funds in the RCRRA budget to pay for the additional hours that they expect to purchase from the County Attorney's Office.

Roll Call: Ayes – Ortega, Parker, Reinhardt, Rettman, Bennett, Carter, McDonough – 7. Nays – 0. (R11-48)

WHEREAS, The Ramsey County Regional Railroad Authority was organized by Resolution 87-230, April 20, 1987, Board of Ramsey County Commissioners, pursuant to Minnesota Statutes, 1986, Chapter 398A, as a political subdivision and local government unit of Minnesota, to exercise thereunder part of the sovereign power of the state; and

WHEREAS, The Ramsey County Regional Railroad Authority adopted the County's plan to develop and implement two year budgets beginning in 2006; and

WHEREAS, The Director of the Ramsey County Regional Railroad Authority, on September 13, 2011, submitted the 2012 – 2013 Proposed Budget and 2012 tax levy of \$19,938,811; and

WHEREAS, The Truth in Taxation Law requires the Ramsey County Regional Railroad Authority to certify a maximum net tax levy to the County Auditor on or before September 15; and

WHEREAS, The Ramsey County Regional Railroad Authority certified a maximum net tax levy of \$19,938,811 for 2012 by Resolution R11-32, on September 13, 2009, to finance the 2012 budget; and

WHEREAS, The Government Accounting Standards Board (GASB) promulgates accounting principles for all State and Local governments; and

WHEREAS, GASB has issued Statement #54 Fund Balance Reporting and Governmental Fund Type Definitions, which will use new terminology to classify Fund Balance for all Governmental Funds; and

WHEREAS, Designations of Fund Balances which are management's intent for potential use will be replaced by the new term Assigned Fund Balance; and

WHEREAS, Statement #54 requires the governing body to authorize a County Official to establish Assignments of Fund Balance; and

WHEREAS, Ramsey County Regional Railroad Authority approval will be required to use of any of the Assignments recorded by Management; and

WHEREAS, The Ramsey County Regional Railroad Authority wishes to continue to improve access to transit services in the region with other agencies, including the Metropolitan Council and other county regional railroad authorities; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the 2012 budget of \$15,202,568; and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the 2013 budget of \$17,127,615; and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority hereby approves that there be and hereby is levied in the year 2012 to be collected in the year 2012, a levy on all taxable properties in Ramsey County of \$19,938,811 as summarized below:

	RCRRA Operations	CIP	2012 RCRRA Total
Gross Budget	\$ 3,502,568	\$ 11,700,000	\$ 15,202,568
Less – Revenues	- 121,000	-	- 121,000
Subtotal	\$ 3,381,568	\$ 11,700,000	\$ 15,081,568
Plus – Fund Balance	+ 4,418,492	+ 4,418,492	+ 4,418,492
Subtotal	\$ 3,381,568	\$ 16,118,492	\$ 19,500,060
Plus – Estimated Tax Delinquency	+ 76,085	+ 362,666	\$ 438,751
Total Tax Levy	\$ 3,457,653	\$ 16,481,158	\$19,938,811

And Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the County Manager to establish the necessary Assignments of Fund Balance, to replace the Designations of Fund Balance used in the preparation of the Comprehensive Annual Financial Reports prior to the implementation of GASB 54.

CORRIDOR UPDATES

No updates were reported.

ADJOURNMENT

There being no further business, Chair McDonough declared the meeting adjourned at 11:05 A.M.

EXECUTIVE SESSION

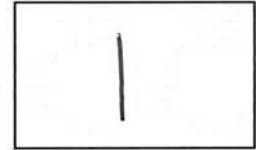
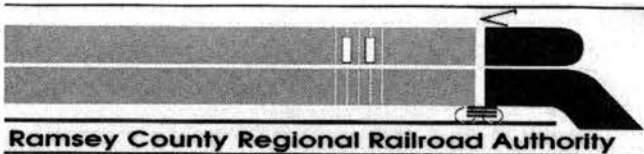
The Ramsey County Regional Railroad Authority Executive Session was called to order at 11:20 A.M., with the following members present: Bennett, Carter, Ortega, Parker, Reinhardt, Rettman, and Chair McDonough – 7. Also present were: Julie Kleinschmidt, County Manager; James Mogen, Assistant County Attorney; Tim Mayasich, Director, Ramsey County Regional Railroad Authority; Jolly Mangine, Director, Ramsey County Property Management.

Re: Union Depot Offices

Commissioner Reinhardt moved approval of the following resolution, seconded by Commissioner Ortega. Roll Call: Ayes – Bennett, Carter, Ortega, Parker, Reinhardt, McDonough – 6. Nays – Rettman – 1. (R11-49)

NOW, THEREFORE, BE IT RESOLVED, The Board of the Ramsey County Regional Railroad Authority authorizes its staff to proceed with the matter discussed in this Executive Session.

The Executive Session was adjourned at 11:30 A.M.



REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date:

Regional Railroad Authority Meeting Date: 12/20/11

SUBJECT: Purchase Suite 200, Suite 300 and four Parking Licenses at Union Depot Head House, St. Paul, Minnesota

EXECUTIVE SUMMARY

On November 1, 2011, in an executive session, the Ramsey County Regional Railroad Authority authorized staff to negotiate the purchase of Suite 200, Suite 300, and four parking licenses at Union Depot Head House, St. Paul, Minnesota ("Property"). On December 13, 2011, in an executive session, staff returned to the Ramsey County Regional Railroad Authority with the results of the negotiations and requested direction. The Ramsey County Regional Railroad Authority directed staff to return to the Ramsey County Regional Railroad Authority Board on December 20, 2011, with the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property for Board approval.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

1. Approve the final purchase agreement between Ramsey County Regional Railroad Authority and Leone Real Estate Holdings, LLC for Suite 200, Suite 300, and four parking licenses at Union Depot Building, St. Paul, Minnesota for the purchase price of \$750,000.
2. Approve the final lease agreement between Ramsey County Regional Railroad Authority and Leone Real Estate Holdings, LLC for Suite 300 at Union Depot Building, St. Paul, Minnesota.
3. Authorize the Chair to sign and deliver the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property on behalf of the County, subject to prior approval by the County Attorney's Office and Property Management.
4. Authorize the County Manager to execute and deliver on its behalf all necessary documents required by or deemed necessary to carry out the purposes of the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property, subject to prior approval by the County Attorney's Office.
5. Direct that all costs, expenses, taxes, charges or fees that Ramsey County Regional Railroad Authority is required to pay at closing, or otherwise required by the purchase agreement, will be paid from the 2011 and 2012 Ramsey County Regional Railroad Authority operating budgets.

SUBJECT: Purchase Suite 200, Suite 300 and four Parking Licenses at Union Depot Head House, St. Paul, Minnesota

(Executive Summary Continued)

The Regional Railroad Authority and Property Management, working in conjunction with the County Attorney's Office, have included the following terms into the final purchase and lease agreements with Leone Real Estate Holdings, LLC. (Attachment 1 and 2):

Purchase Agreement

- Purchase price of \$750,000.
- Down payment of \$5,000 due on date of execution of the Purchase Agreement.
- Contingent upon acceptable title commitment and determination that the Property is acceptable to purchaser.
- Closing on or before January 11, 2012.

Lease Agreement

- Lease Suite 300 to Leone Real Estate Holdings, LLC "Lessee" for a term of 90 days.
- No rent shall be charged.
- Lessee shall make the following:
 - \$1,000 security deposit.
 - Pay all utility costs.
 - Pay all common area maintenance costs.

The closing is scheduled to occur quickly to allow the Ramsey County Regional Railroad Authority the opportunity to remodel the space for the Regional Railroad Authority Office relocation from RCGC-West. Due to the closing, a Lease Agreement for Suite 300 will allow Leone Real Estate Holdings, LLC's continuity of business for an additional 90 days.

The Regional Railroad Authority and Property Management are requesting the Ramsey County Regional Railroad Authority to authorize and approve the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property and appropriate authorities to complete the purchase and lease.

SUBJECT: *Purchase Suite 200, Suite 300 and four Parking Licenses at Union Depot Head House, St. Paul, Minnesota*

ATTACHMENTS:

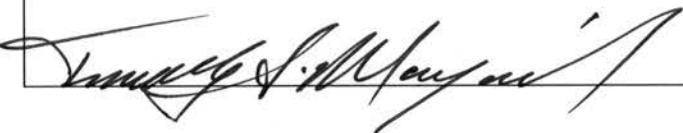
1. Final Purchase Agreement for 2nd and 3rd Office Space, Union Depot Head House.
2. Final Lease Agreement RCRRRA Union Depot Suite 300.

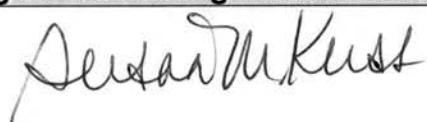
PREVIOUS ACTION:

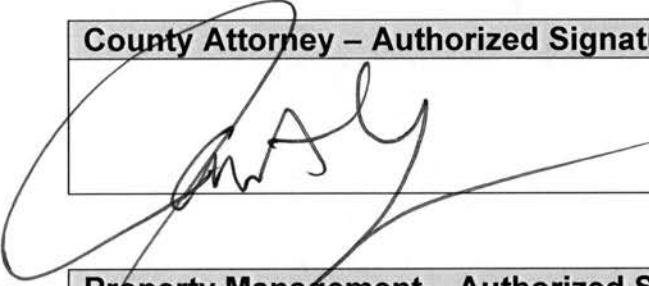
COUNTY MANAGER'S COMMENTS:

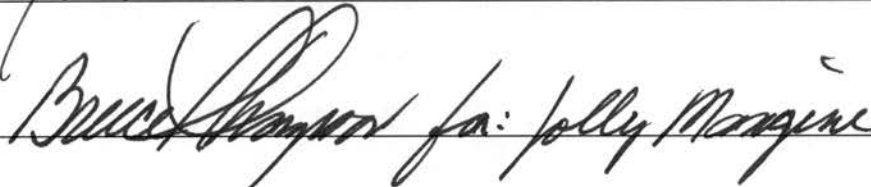
The Regional Railroad Authority and Property Management are requesting the Ramsey County Regional Railroad Authority to authorize and approve the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property and appropriate authorities to complete the purchase and lease.

**SUBJECT: Purchase Suite 200, 300 and 4 Parking Licenses at Union Depot Head House,
St. Paul, Minnesota**

Regional Railroad Authority – Authorized Signature	Date
	12/14/11

Budgeting & Accounting – Authorized Signature	Date
	12/14/11

County Attorney – Authorized Signature	Date
	12-13-2011

Property Management – Authorized Signature	Date
	12/15/11

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Purchase Suite 200, Suite 300 and four Parking Licenses at Union Depot Head House, St. Paul, Minnesota

Draft Resolution

WHEREAS, On November 1, 2011, in an executive session, the Ramsey County Regional Railroad Authority authorized staff to negotiate the purchase of Suite 200, Suite 300, and four parking licenses at Union Depot Head House, St. Paul, Minnesota ("Property"); and

WHEREAS, On December 13, 2011, in an executive session, staff returned to the Ramsey County Regional Railroad Authority with the results of the negotiations and requested direction; and

WHEREAS, The Ramsey County Regional Railroad Authority directed staff to return to the Ramsey County Regional Railroad Authority Board on December 20, 2011, with the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property for Board approval; and

WHEREAS, The Regional Railroad Authority and Property Management, working in conjunction with the County Attorney's Office, have included the following terms into the final purchase and lease agreements with Leone Real Estate Holdings, LLC. (Attachment 1 and 2):

Purchase Agreement

- Purchase price of \$750,000.
- Down payment of \$5,000 due on date of execution of the Purchase Agreement.
- Contingent upon acceptable title commitment and determination that the Property is acceptable to purchaser.
- Closing on or before January 11, 2012.

Lease Agreement

- Lease Suite 300 to Leone Real Estate Holdings, LLC "Lessee" for a term of 90 days.
- No rent shall be charged.
- Lessee shall make the following:
 - \$1,000 security deposit.
 - Pay all utility costs.
 - Pay all common area maintenance costs; and

WHEREAS, The closing is scheduled to occur quickly to allow the Ramsey County Regional Railroad Authority the opportunity to remodel the space for the Regional Railroad Authority Office relocation from RCGC-West; and

WHEREAS, Due to the closing, a Lease Agreement for Suite 300 will allow Leone Real Estate Holdings, LLC's continuity of business for an additional 90 days; and

WHEREAS, The Regional Railroad Authority and Property Management are requesting the Ramsey County Regional Railroad Authority to authorize and approve the final purchase and lease agreements related to the purchase and lease of Leone Real Estate Holdings, LLC's Property and appropriate authorities to complete the purchase and lease; Now, Therefore, Be It

5

46 RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the final
47 purchase agreement between Ramsey County Regional Railroad Authority and Leone Real
48 Estate Holdings, LLC for Suite 200, Suite 300, and four parking licenses at Union Depot Building,
49 St. Paul, Minnesota for the purchase price of \$750,000; and Be It Further

50 RESOLVED, The Ramsey County Regional Railroad Authority hereby approves the final
51 lease agreement between Ramsey County Regional Railroad Authority and Leone Real Estate
52 Holdings, LLC for Suite 300 at Union Depot Building, St. Paul, Minnesota; and Be It Further

53 RESOLVED, The Ramsey County Regional Railroad Authority hereby authorizes the Chair
54 to sign and deliver the final purchase and lease agreements related to the purchase and lease of
55 Leone Real Estate Holdings, LLC's Property on behalf of the County, subject to prior approval by
56 the County Attorney's Office and Property Management; and Be It Further

57 RESOLVED, The Ramsey County Regional Railroad Authority hereby authorizes the
58 County Manager to execute and deliver on its behalf all necessary documents required by or
59 deemed necessary to carry out the purposes of the final purchase and lease agreements related
60 to the purchase and lease of Leone Real Estate Holdings, LLC's Property, subject to prior
61 approval by the County Attorney's Office; and Be It Further

62
63 RESOLVED, The Ramsey County Regional Railroad Authority hereby directs that all
64 costs, expenses, taxes, charges or fees that Ramsey County Regional Railroad Authority is
65 required to pay at closing, or otherwise required by the purchase agreement, will be paid from the
66 2011 and 2012 Ramsey County Regional Railroad Authority operating budgets.

Attachment # 1

PURCHASE AGREEMENT 2nd and 3rd Office Space, Union Depot Head House

THIS PURCHASE AGREEMENT (AgreementA) is made and entered into as of December __, 2011 (the eEffective DateE), by and between the County of Ramsey, Minnesota, a municipal corporation and political subdivision of the State of Minnesota ("Purchaser") and Leone Real Estate Holdings, LLC, a Minnesota limited liability company ("Seller").

In consideration of the covenants and agreements contained herein, the parties agree as follows:

1. Property To Be Purchased. Subject to compliance with the terms and conditions of this Agreement, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the following (collectively, the "Property"):
 - a. The fee simple title to the real property described in Exhibit A attached hereto, together with all easements, tenements, hereditaments, and appurtenances belonging thereto(the "Real Property"), constituting a portion of the St. Paul Union Depot Head House (t Union Depoto);
 - b. All improvements, if any, located on the Real Property (the "Improvements");
 - c. All items of Seller's personal property located at or installed on the Real Property, except those items identified in Exhibit B, shall be retained and removed by Seller before the Closing Date. The items identified in Exhibit B (the i Personal PropertyP) shall be part of the Property purchased by Purchaser in accordance with this Agreement. Seller shall leave the premises in a broom swept condition as of Closing Date;
 - d. All service contracts, permits, licenses, warranties, contract rights and intangibles, if any, to the extent assignable, shall be assigned to Purchaser;
 - e. All parking licenses, facilities, fixtures and improvements constructed, located on, or serving, the Property, which are owned by Seller.
2. Purchase Price. The purchase price for the Property ("Purchase Price") shall be \$750,000 (Seven Hundred Fifty Thousand and No/100 Dollars). The Purchase Price shall be allocated as follows:
 - a. \$285,000 attributed towards the Property, Improvements, Personal Property and all related service contracts, permits, licenses, warranties, contract rights and intangibles located on the Second Floor;
 - b. \$390,000 attributed towards the Property, Improvements, Personal Property and all related service contracts, permits, licenses, warranties, contract rights and intangibles located on the Third Floor; and
 - c. \$75,000 towards four Parking Licenses.
3. The Purchase Price shall be paid as follows:

- a. At execution of this Purchase Agreement, Purchaser shall deposit earnest money in the amount of \$5,000.00 (Five Thousand and No/100 Dollars) with Commercial Partners Title, LLC, 200 South Sixth Street, Suite 1300, Minneapolis, MN 55402 (the STitle Company), which shall be subject to the terms and conditions of this Agreement.
 - b. The balance of the Purchase Price (subject to prorations as provided below) will be paid by wire transfer, certified check or other immediately available funds on the Closing Date (as hereinafter defined).
4. Title to Be Delivered. Seller agrees to convey marketable fee simple title in the Property to Purchaser subject only to the Permitted Exceptions (defined in Section 12(a)).
 - a. As soon hereafter as reasonably possible and in any event within ten (10) days after the Effective Date, Seller shall cause to be issued and delivered to Purchaser a commitment for an ALTA Form B extended coverage owner's title insurance policy (the "Title Commitment") issued by the Title Company wherein said Title Company agrees to issue to Purchaser upon the recording of the warranty deed and other conveyance documents referred to herein an ALTA Form B Owner's Title Insurance Policy (the "Title Policy") in the full amount of the Purchase Price with a zoning endorsement and so-called owner's extended coverage endorsement. The Title Commitment will be accompanied by copies of all recorded documents affecting the Property.
 - b. Purchaser shall have five (5) business days after receipt of the Title Commitment and Survey to render objections to title ("Objections") in writing to Seller and Seller shall have ten (10) days from the date it receives such Objections to have the same removed or cured to Purchaser's reasonable satisfaction. If Seller shall fail to have such Objections removed or cured within that time, Purchaser may, in its sole discretion, either (a) terminate this Agreement without any liability on its part and receive a refund of the Earnest Money, or (b) if the Objections are such that they may be removed by the expenditure of sums of money, take title to the Property, discharge such Objections, and receive a credit against the Purchase Price for the sums so expended, or (c) if the Objections are such that they may not be removed by the expenditure of sums of money, waive the Objections and take title subject to such Objections. Seller agrees to use its best efforts to promptly satisfy any such Objections, but failure to cure any Objections shall not be a default hereunder.
5. Delivery of Documents Upon Execution. Seller shall deliver to Purchaser within five (5) days after the Effective Date, all of the following (collectively, the "Property Data"):
 - a. Title insurance policy;
 - b. Copies of any prior "as-built" or other surveys of the Property in Seller's possession;

- c. Copies of any and all utility, grading, street development and other plans and specifications for the Property in Seller's possession;
 - d. Copies of any documentation pertaining to the physical condition of the Real Property or the Improvements in Seller's possession;
 - e. Copies of any easements, permits and licenses in effect at the Property, and
 - f. Any other information relating to the Property reasonably requested by Purchaser.
6. Inspections. Purchaser, its counsel, accountants, agents and other representatives, shall have full and continuing access to the Property and all parts thereof upon reasonable notice to the Seller in order to obtain sufficient lead time to address the Property Data referred to in Section 5, and all other records and documents Purchaser desires to obtain as they relate to the title, physical condition, development and operation of the Property. Purchaser and its agents and representatives shall also have the right to enter upon the Property at any time upon reasonable notice to Seller after the Effective Date for any purpose whatsoever, including inspecting, surveying, engineering, testing, performance of environmental tests and such other work as Purchaser shall consider appropriate and shall have the further right to make such inquiries of governmental agencies and utility companies, etc., and to make such feasibility studies and analyses as it considers appropriate, provided Purchaser may not perform any invasive or destructive testing (collectively, the "**Inspections**"). Any damage to the Property caused by Purchaser or its agents shall be immediately repaired by Purchaser at Purchaser's sole cost and expense. Purchaser hereby agrees to defend, indemnify and hold Seller harmless from any and all liens, losses, claims, demands, suits, actions, causes of action and related damages (including reasonable attorneys fees) directly relating to and caused by the presence of Purchaser, its agents, employees or contractors on the Property and the exercise by Purchaser of Purchaser's rights under this Agreement to inspect, examine, appraise and perform studies of the Property. The indemnity provisions of this Section 6 shall survive the Closing or other termination of this Agreement.
7. Risk of Loss. Until the Closing Date (as hereinafter defined), Seller shall have the full responsibility and the entire liability for any and all damages or injury of any kind whatsoever to the Real Property, the Improvements thereon, any and all persons, whether employees or otherwise, and all property from and connected to the Property. If, prior to the Closing, the Property is damaged or the Improvements are destroyed (other than by an act of Purchaser or its agents) or the Real Property shall be the subject of an action in eminent domain or a proposed taking by a governmental authority, whether temporary or permanent, Seller shall immediately notify Purchaser of such damage, destruction or proposed taking, and Purchaser, at its sole discretion, shall have the right to terminate this Agreement upon ten (10) days notice to Seller without liability on its part by so notifying Seller, in which event the Earnest Money and all other sums heretofore paid by Purchaser shall be refunded to Purchaser. If the Real Property and/or Improvements are damaged (other than by an act of Purchaser or its agents) but Purchaser does not exercise its right of termination, Seller shall proceed forthwith to repair the damage to the Real Property and/or Improvements, and any and all proceeds of insurance arising out of any such damage or destruction, or any and all proceeds of any such eminent domain taking, shall be held in

trust by Seller for the benefit of such repair and paid over to the parties performing such repairs, if such repairs are completed prior to the Closing Date, or paid to Purchaser on the Closing Date if the repairs are not completed as of such date. In no event shall the Purchase Price be increased by the amount of any such proceeds. Seller agrees to keep the Property continually insured during the term of this Agreement under a policy of fire and extended coverage insurance with an actual replacement cost endorsement.

8. Operation of Property Prior to Closing. Until the Closing Date, Seller shall have the full responsibility for the continued maintenance of the Property. Prior to the Closing Date:
 - a. Seller shall not cause any new liens, leases, contracts or encumbrances to be created by Seller against the Property without Purchaser's prior written consent.
 - b. Seller shall continue to comply with all of its duties and obligations as set forth in any leases, contracts, permits or licenses in effect at the Property.
9. Possession following Closing. On the closing date, possession shall transfer to Purchaser, except as provided herein:
 - a. Seller will be granted possession of the Third Floor for a period not to exceed 90 days for the sole purpose to winding-up operations of the business activities located thereon. The parties will enter into a lease agreement substantially similar to Exhibit C. No rent will be charged for the 90 day lease, but Seller will be responsible for all costs of operation and utilities.
 - b. In the event the purchase is not able to be closed on the Closing Date, Purchaser will be awarded possession and access for the purposes of installing tenant improvements for the planned use as office space for Ramsey County Regional Railroad Authority staff. The improvements will be constructed in a workmanlike manner, and will be forfeited in the event that this Purchase Agreement is cancelled for any reason.
10. Representations and Warranties of Seller. In order to induce Purchaser to enter into this Agreement and to purchase the Property, Seller hereby represents and warrants to Purchaser as follows:
 - a. To Seller's actual knowledge, no action in condemnation, eminent domain or public taking proceedings are now pending or contemplated against the Real Property;
 - b. To Seller's actual knowledge, no ordinance or hearing is now before any local governmental body which either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Real Property;
 - c. Seller is a limited liability company duly formed under the laws of the State of Minnesota. The individuals executing this Agreement on behalf of Seller have the requisite authority to execute this Agreement and such other documents as are

contemplated or to be delivered by Seller herein, and to bind Seller thereto; and Seller has the full and complete authority to sell the Property;

- d. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interests relating to the Property and there are no persons in possession of any portion of the Property except as may be disclosed by the Title Commitment or Survey. Specifically, there are no leases or other agreements under which any person has a right to occupy the Property at any time subsequent to the Closing Date;
- e. Seller is not in default in the performance of any of Seller's obligations under any easement agreement, covenant, condition, restriction, permit or license or other instrument relating to the Property;
- f. There are no wells on the Property;
- g. There is no individual sewage treatment system on or serving the Property;
- h. There are no underground storage tanks on or serving the Property.
- i. The Property will as of the Closing Date be free and clear of all liens, security interests, leases or other Objections to title except the Permitted Exceptions and except as otherwise permitted by this Agreement;
- j. To Seller's actual knowledge, City water service, sewer lines and electrical lines and related equipment and systems are available to serve the Property;
- k. Seller has received no notice that the Property is not in compliance with current subdivision and platting regulations or not without access to a public right of way;
- l. To Seller's actual knowledge, no methamphetamine production has occurred on the Property;
- m. Seller has received no notice that the Property and its existing use does not comply and has not at all times complied with, and Seller is not in violation of and has not violated, in connection with its ownership, use, maintenance or operation of the Property and the conduct of the business related thereto, any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses and permits of any governmental authorities relating to environmental matters (being hereinafter collectively referred to as the "Environmental Laws"), including by way of illustration and not by way of limitation (A) the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, or the Minnesota Environmental Response and Liability Act, (including any amendments or extensions thereof and any rules, regulations,

standards or guidelines issued pursuant to any of said Environmental Laws), and (B) all other applicable environmental standards or requirements. Without limiting the generality of the foregoing, and except as disclosed in the Environmental Reports and otherwise in accordance with applicable Environmental Laws: (i) neither Seller, its agents, employees and independent contractors nor any tenant or occupant has operated the Property for the purpose of receiving, handling, using, storing, treatment, transporting or disposing of petroleum products or any Hazardous Material as defined in said Environmental Laws, other toxic, dangerous or hazardous chemicals, materials, substances, pollutants and wastes, or any chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority (all the foregoing being hereinafter collectively referred to as "Hazardous Materials"); (ii) there are no existing or pending remedial actions or other work, repairs, construction or capital expenditures with respect to the Property in connection with the Environmental Laws, nor has Seller received any notice of any of the same; (iii) no Hazardous Materials have been released into the environment, or have been deposited, spilled, discharged, placed or disposed of at, on, or adjacent to the Property, nor has the Property been used at any time by any person as a landfill or a disposal site for Hazardous Materials or for garbage, waste or refuse of any kind; and (iv) no notices of any violation of any of the matters referred to in the foregoing sections (i) to (iii) relating to the Property or its use have been received by Seller and there are no writs, injunctions, decrees, orders or judgments outstanding, no lawsuits, claims, proceedings or investigations pending or threatened, relating to the use of Hazardous Materials at the Property.

If at any time prior to Closing, Seller learns of events or circumstances which render any of the representations or warranties set forth in this Section 8 inaccurate in any respect, Seller shall immediately notify Purchaser in writing, and in such event, Purchaser shall have the right to terminate this Agreement upon written notice to Seller. In the event Purchaser elects not to so terminate this Agreement, the parties shall proceed pursuant to the terms of this Agreement, and the applicable representations and warranties shall be deemed modified as disclosed in such notice from Seller. All such representations and warranties, as the same may be modified, shall survive Closing for a period of twelve (12) months. During said six-month period, Seller agrees to indemnify and hold Purchaser harmless from and against and to reimburse Purchaser with respect to any and all claims, demands, causes of action, losses, damages, liabilities, and costs (including reasonable attorneys' fees and court costs) asserted against or incurred by Purchaser by reason of or arising out of the breach of any warranty or representation as set forth in this Section 8, and any suit based on such representations or indemnities shall be commenced within two years of the Closing Date or be forever barred.

11. Representations and Warranties of Purchaser. In order to induce Seller to enter into this Agreement and to sell the Property, Purchaser hereby represents to Seller, as follows:
 - a. Purchaser is a political subdivision of the State of Minnesota, duly formed and validly existing;

b. Purchaser has the right, legal power and authority to enter into this Agreement and to close the transaction contemplated hereby and has completed any and all proceedings, approvals or hearings necessary to purchase the Property and to authorize its purchase of the Property;

c. The person executing this Agreement on behalf of Purchaser has the right, legal power and actual express authority to bind Purchaser to the terms and conditions of this Agreement and such other documents as are contemplated or to be delivered by Purchaser herein, and to bind Purchaser thereto;

d. No representation or warranty made by Purchaser in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

It shall be a condition of Closing that all representations and warranties of Purchaser shall be true and correct as of the Closing Date.

12. Conditions Precedent to Closing. The closing of the transaction contemplated by this Agreement and all the obligations of Purchaser under this Agreement are subject to fulfillment, on or before January 6, 2012 (the "Condition Date"), of the following "Conditions Precedent":

a. The representations and warranties made by Seller in Section 10 shall be correct as of the Condition Date with the same force and effect as if such representations and warranties were made at such time;

b. The status and marketability of title shall have been established to Purchaser's satisfaction in accordance with Section 4;

c. Purchaser, in its sole and absolute discretion, shall have determined that the Property is acceptable to Purchaser. Purchaser shall determine the same from review of the Property Data and the Inspections performed pursuant to Sections 5 and 6, respectively, and any other inquiries or other examinations, studies or evaluations of the Property, if any, which Purchaser elects to perform or to have performed, and by taking into consideration such facts as Purchaser deems relevant;

Purchaser may acknowledge satisfaction or waiver of any of the foregoing Conditions Precedent only by delivering written notice of satisfaction or waiver to Seller on or before the Condition Date. If Purchaser does not acknowledge in writing the satisfaction of all of the foregoing Conditions Precedent (or otherwise waive the same in writing) on or before the Condition Date, this Agreement shall terminate and the Earnest Money (and all accrued interest) shall be returned to Purchaser, and Purchaser and Seller shall thereafter be released from any liability or obligation hereunder (except for Purchaser's indemnity obligations which shall expressly survive such termination). In the event of such termination, Purchaser shall provide to Seller copies of any reports, studies or assessments conducted by Purchaser as part of the Inspections.

13. Anti-Terrorism. Purchaser hereby represents and warrants that as of the Effective Date and the Closing Date, the following statements are and shall be true, correct and complete without material misrepresentation or omission: (i) Purchaser is not a Prohibited Person (as defined below), (ii) Purchaser is in compliance with the Anti-Terrorism Laws (as defined below), (iii) Purchaser does not conduct any business or engage in any transaction or dealing with any Prohibited Person, or deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order 13224 (as defined below), and (iv) Purchaser has established policies and procedures designed to prevent and detect money laundering, including processes to meet all applicable anti-money laundering requirements of the USA Patriot Act (as defined below). For purposes of the foregoing representations and warranties: (1) "Anti-Terrorism Laws" are any laws related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act, and any regulations promulgated under either of them, (2) "Executive Order 13224" is defined as Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001, (3) "Prohibited Person" is defined as (a) a person or entity subject to the provisions of Executive Order 13224; (b) a person or entity owned or controlled by, or acting for or on behalf of, an entity that is subject to the provisions of Executive Order 13224; (c) a person or entity with whom Purchaser or Seller is prohibited from dealing by any of the Anti-Terrorism Laws; (d) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order 13224; (e) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control; or (f) a person or entity who is affiliated with a person or entity described in clauses (a) through (e) immediately above, and (4) "USA Patriot Act" is defined as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56, as may be amended from time to time.
14. Closing, Possession. The closing of the purchase and sale of the Property (the "Closing") shall take place on or before January 11, 2012 (the "Closing Date"). The Closing shall take place at the offices of the Title Company or such other place as Seller and Purchaser may mutually determine. Possession of the Property shall be delivered to Purchaser on the Closing Date.
15. Seller's Obligations At Closing. At or prior to the Closing Date, Seller shall:
- a. Deliver to Purchaser a duly recordable warranty deed to the Real Property (in a form reasonably satisfactory to Purchaser and the Title Company) conveying to Purchaser marketable fee simple title to the Real Property and all rights appurtenant thereto (the Warranty Deed) subject only to: (i) building and zoning laws, ordinances, state and federal regulations; (ii) reservation of mineral rights in the State of Minnesota; (iii) the lien of real estate taxes for the current and subsequent years; (iv) easements, covenants, and restrictions of record; and (v) such other matters as are waived or deemed waived by Purchaser pursuant to Section 4 of this Agreement (collectively, the Permitted Exceptions);

- b. Deliver to Purchaser and the Title Company a standard seller's affidavit sufficient to remove any exception in the Title Policy for mechanics' and materialmen's liens and the rights of parties in possession;
 - c. Deliver to Purchaser an assignment of all service contracts, permits, licenses, warranties and contract rights, to the extent assignable by their terms (if any), in a form reasonably satisfactory to Purchaser, relating to the Property and not covered by other documents of assignment;
 - d. Deliver to Purchaser an assignment of all parking licenses associated with the Union Depot.
 - e. Deliver to Purchaser a completed Minnesota Well Disclosure Certificate or include on the Warranty Deed the statement "The Seller certifies that the Seller does not know of any wells on the described real property";
 - f. Deliver to Purchaser any notices, certificates and/or affidavits relative to private sewage systems, underground storage tanks and pollution as may be required by Minnesota Statutes, if any;
 - g. Deliver to Purchaser a certificate, to Seller's knowledge, reaffirming the truth and accuracy of Seller's representations set forth in this Agreement (or, if such representations are no longer true or accurate, describing the reasons why they are no longer true and accurate);
 - h. Deliver a Warranty Bill of Sale and Assignment Agreement conveying the Personal Property, if any, to Purchaser, free and clear of all encumbrances, and conveying Seller's interest in the Contracts, Permits, Warranties, Plans, and Records to Buyer with warranties, free and clear of all encumbrances, together with the written consent of any parties required to consent to such assignment.
 - i. Deliver to Purchaser such other customary documents as may be reasonably required by the Title Company in connection with the Closing.
16. Delivery of Purchase Price; Purchaser's Obligations At Closing. At Closing, Purchaser shall execute and deliver any documents reasonably required for the performance of its obligations hereunder, the Earnest Money shall be delivered to Seller and Purchaser shall deliver the balance of the Purchase Price to Seller pursuant to Section 2 above.
17. Closing Costs. The following costs and expenses shall be paid as follows in connection with the Closing:
- a. Seller shall pay:

- i. The cost of preparation of the Title Commitment and all related examination charges;
 - ii. The state deed tax or transfer fee imposed on the conveyance; and
 - iii. The recording fees due upon the recording of any documents (other than the Warranty Deed) necessary to place record title in the condition required by this Agreement; and
- b. Purchaser shall pay:
 - i. The cost of the title insurance premium in connection with the issuance of the Title Policy in accordance with the requirements of Section 3;
 - ii. The recording fee necessary to record the Warranty Deed; and
 - iii. All costs and expenses associated with Purchaser's Inspections.

Each party shall pay its own legal fees and other expenses in connection with the Closing.

- c. Real Estate Taxes and Special Assessments. Seller will pay all special assessments that are deferred, levied, pending or constituting a lien against the Property. Seller will pay all taxes that are past due. The installments of real estate taxes due and payable in the year that Closing occurs shall be prorated between Seller and Purchaser as of the Closing Date based upon a calendar year with Seller paying the portion allocable to the period prior to the Closing Date and Purchaser paying the portion allocable to the period from and after, and including, the Closing Date.
18. Brokerage. Seller represents and warrants that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement; except for the limited purpose of marketing the portion of the Property located on the Third Floor. Seller represents that any fee, commission or charge due any broker engaged shall be paid out of the Seller's proceeds at closing, and Seller will cause the broker to provide to the Title Company the amount of such fee, commission or charge by the Condition Date. Purchaser represents and warrants that they have not engaged the services of any broker in connection with the sale and purchase contemplated in this Agreement. Seller and Purchaser hereby agree to indemnify and hold the other harmless for any claim (including reasonable expenses incurred in defending such claim) made by a broker or sales agent or similar party in connection with this transaction.
19. Remedies. If Seller defaults in the performance of this Agreement, Purchaser shall have the right to terminate this Agreement upon five (5) days prior written notice thereof to Seller. Upon terminating the Agreement, the Earnest Money shall be returned to Purchaser. If Seller defaults in the performance of this Agreement and Purchaser does not terminate this Agreement, Seller acknowledges that the Property is unique and that money damages to Purchaser in the event of default by Seller are inadequate. Accordingly, in such event the Earnest Money shall be immediately returned to Purchaser and Purchaser

shall have the right to seek specific performance to enforce performance of the terms of this Agreement, provided that such action is brought within twelve (12) months of the date of Seller's default, and Purchaser waives all other remedies at law or in equity. If Purchaser defaults in the performance of this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement by written notice to Purchaser, in which event the Title Company shall immediately deliver the Earnest Money to Seller as liquidated damages.

20. Special Provisions Relating to Eminent Domain and Relocation.

- a. Purchaser is a government agency with the general power of eminent domain.
- b. Property was made available for sale to the general public, and Purchaser was approached by Seller offering to sell the Property to Purchaser. While Purchaser is an [acquiring authority] within the meaning of Minn. Stat. § 117.50-117.56, it is not acquiring the Property in lieu of eminent domain and has never threatened the use of eminent domain to acquire the Property.
- c. Seller is aware of the types and amounts of relocation assistance, services, payments and benefits for which an owner or displaced person may be eligible under state and federal law and based on such knowledge, Seller agrees that Seller is not eligible for and has no right to any relocation benefits in connection with this transaction.
- d. In the alternative, to the extent that Seller, or any tenant, may be eligible for any such benefits, Seller agrees that it has been compensated for any such relocation payments or benefits by receiving the purchase price.
- e. Notwithstanding the foregoing, in the event that Buyer at any time pursues its rights to acquire the Property or any portion thereof under its powers of eminent domain, Seller shall be entitled to such relocation assistance, services, payments and benefits for which an owner may be eligible under state and federal law.

21. Miscellaneous. The following general provisions govern this Agreement.

- a. No Waivers. The waiver by either party hereto of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. Purchaser, in its sole discretion may waive any right conferred upon Purchaser by this Agreement; provided that such waiver shall only be made by Purchaser giving Seller written notice specifically describing the right waived.
- b. Time of Essence. Time is of the essence of this Agreement.
- c. Survival. Except as otherwise expressly set forth in this Agreement, the representations, warranties and agreements of the parties set forth herein shall not survive the Closing.
- d. Governing Law. This Agreement is made and executed under and in all respects to be governed and construed by the laws of the State of Minnesota and the parties hereto hereby agree and consent and submit themselves to any court of competent jurisdiction situated in Minnesota.

- e. Notices. All notices and demands given or required to be given by any party hereto to any other party shall be deemed to have been properly given if and when delivered in person, sent by facsimile (with verification of receipt), one (1) business day after having deposited with a reputable overnight courier, or three (3) business days after having been deposited with the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows (or sent to such other address as any party shall specify to the other party pursuant to the provisions of this Section):

If to Seller: Leone Real Estate Holdings
Attn: Rich Leone
12810 Fifth Street North
Lake Elmo, MN 55042

Copy to: Blaney & Ledin, Ltd.
Attn: Steve Ledin, Esq.
8971 Highway 5
Lake Elmo MN 55042

If to Purchaser: County of Ramsey, Minnesota
Attn: Director of Property Management
50 West Kellogg Boulevard
Suite 660
St. Paul, MN 55102
Fax: (651) 266-2264

Copy to: County of Ramsey, Minnesota
Attn: James A Mogen, Assistant County Attorney
121 Seventh Place E, Suite 4500
St. Paul, MN 55101
Fax: (651) 266-3032

In the event either party delivers a notice by facsimile, as set forth above, such party agrees to deposit the original of the notice in a post office, branch post office, or mail depository maintained by the U.S. Postal Service, postage prepaid and addressed as set forth above. Such deposit in the U.S. Mail shall not affect the deemed delivery of the notice by facsimile, provided that the procedures set forth above are fully complied with. Any party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such party.

- f. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.
- g. Invalidity. If for any reason any term or provision of this Agreement shall be declared void and unenforceable by any court of law or equity it shall only affect

such particular term or provision of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

- h. Complete Agreement. All understandings and agreements heretofore had between the parties are merged into this Agreement which alone fully and completely expresses their agreement. This Agreement may be changed only in writing signed by both of the parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein contained, and all prior negotiations, discussions, writings and agreements between the parties with respect to the subject matter herein contained are superseded and of no further force and effect.
- i. Attorneys' Fees and Costs. In the event of any litigation arising out of the breach or claimed breach of this Agreement, the prevailing party shall be entitled to recover from the other all costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs.
- j. Representation by Counsel. The parties acknowledge that each party to this Agreement has been represented by counsel and such counsel has participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed or constructed against the party who has drafted or caused this Agreement to be drafted. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- k. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

[Signature page to follow]

SIGNATURE PAGE
TO
PURCHASE AGREEMENT
2nd Floor Office Space, Union Depot Headhouse

(Seller Execution)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SELLER:

Leone Real Estate Holdings, LLC

By: _____

Richard Leone
Chief Manager/President

SIGNATURE PAGE
TO
PURCHASE AGREEMENT
Suites 200 and 300, Union Depot Head House
(Purchaser Execution)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

PURCHASER:

Ramsey County Regional Railroad Authority

By: _____

James McDonough
Chair, RCRRA

By: _____

Timothy Mayasich
Director, RCRRA

Approved as to form:

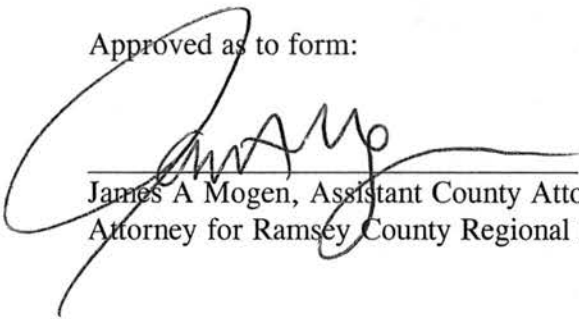

James A Mogen, Assistant County Attorney
Attorney for Ramsey County Regional Railroad Authority

EXHIBIT A

Legal Description of the Property

Second Floor

PIN# 06.28.22.11.0065

Lot 16 Block 1 - St Paul Union Depot, Ramsey County, Minnesota

Third Floor

PIN# 06.28.22.11.0068

Lot 21 Block 1 - St Paul Union Depot, Ramsey County, Minnesota

EXHIBIT B

Personal Property Inventory

EXHIBIT C

Lease for 90 days Possession of Suite 300

ATTACHED

LEASE AGREEMENT
RCRRA UNION DEPOT SUITE 300
Leone Real Estate Holdings, LLC

This lease is between Ramsey County Regional Railroad Authority, a political subdivision of the State of Minnesota (hereinafter "LESSOR") and Leone Real Estate Holdings, LLC, Attn: Rich Leone, 12810 Fifth Street North, Lake Elmo, MN 55042, a Minnesota limited liability company (hereinafter "LESSEE").

1. GRANT OF LEASE/DESCRIPTION OF PREMISES

LESSOR hereby leases to LESSEE, and LESSEE hereby rents from LESSOR, the premises at 214 Fourth St E, Suite 300, Saint Paul, MN 55101, Ramsey County, State of Minnesota.

2. TERM

The term of this lease is 90 days, commencing on _____, 2012.

3. RENTAL

No rent shall be charged for the term of the lease. Any holdover period shall be charged at a rate of \$5.00 per square foot. Any rent shall be net of taxes, operations and utilities.

4. DEPOSIT

LESSEE shall deposit with LESSOR a Security Deposit in the amount of One Thousand dollars (\$1,000). The Security Deposit shall be held by the LESSOR, will not earn interest and may be commingled with other funds. Security Deposits will be refunded upon termination of this lease, less any outstanding costs and charges payable due to, or arising under this lease, or for damage to the PREMISES. Security Deposit will not be refunded until LESSOR receives confirmation that all utility charges have been paid.

Nothing herein limits the LESSEE's liability for outstanding costs or charges, or for damages to the PREMISES by the amount of the Deposits. LESSEE remains primarily responsible for these costs, charges and damages.

5. UTILITIES AND OPERATION COSTS

LESSEE will assume responsibility for payment of all utility bills.

LESSEE will assume responsibility for payment of its pro-rata share of all common area maintenance costs.

LESSOR will invoice the LESSEE at the end of the 90 day term for all costs or charges due under this lease. If utilities are contracted through LESSOR, LESSOR may, at its option,

invoice all costs monthly. LESSEE shall be responsible for payment within 15 days of invoice.

6. ALTERATIONS: TRADE FIXTURES

During the term hereof or any renewal term, LESSEE shall not make any alterations without LESSOR's written consent.

7. USE

The PREMISES shall be used and occupied for as a recording studio doing business as Fuzzy Slippers Studio. LESSEE shall hold LESSOR harmless from penalties and fines imposed due to the conduct by LESSEE of its business in the PREMISES in a manner different from its ordinary and usual manner of conducting such business. LESSEE shall not permit any action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger LESSOR or any other LESSEES or LESSEES of the project.

8. RESPONSIBILITIES AND DUTIES

LESSEE shall keep the PREMISES clean and free from dirt and other refuse. LESSEE shall make all repairs to the PREMISES that are required. LESSOR is not responsible for repairing, replacing or maintaining any part of the PREMISES. LESSEE shall, at its sole cost and expense, promptly make all repairs as and when required in and about the PREMISES.

9. INSURANCE

LESSEE shall purchase and maintain such insurance as will protect the LESSEE from claims which may arise out of, or result from, the LESSEE's operation, whether such operations are by the LESSEE or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

The LESSEE shall secure the following coverages and comply with all provisions noted.

A. Fire and All-Risk Property Insurance

- a. Coverage shall be written on a replacement cost basis for any personal property and/or improvements or betterments of the LESSEE at the PREMISES.

B. Commercial General Liability Insurance

Applicable to the PREMISES and the LESSEE's use of the public and common areas both inside and outside of PREMISES.

- a. \$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products/completed operations total limit
\$1,000,000 personal injury and advertising liability
\$50,000 damage to rented premises
\$5,000 per person medical payment

\$50,000 fire legal

\$1,000,000 participant legal liability

b. This policy is to be written as acceptable to the LESSOR.

C. All Certificates of Insurance shall:

a. Be issued evidencing such coverage to the LESSOR throughout the term of this lease:

b. Provide that the insurance company gives the LESSOR thirty (30) days' prior written notice of cancellation, non-renewal or any material changes in the policy.

c. Add LESSOR, its officials, employees and agents as additional insureds, using ISO form CG 20 11 01 96, or its equivalent.

d. Indicate if policy is written with an admitted or non-admitted carrier. Bests' Rating for the insurer shall be noted on the Certificate, and shall not be less than an A.

e. Indicate if the policies are issued pursuant to these requirements

D. The above subparagraphs establish minimum insurance requirements, and it is the sole responsibility of the LESSEE to purchase and maintain additional insurance that may be necessary in connection with this lease.

E. The LESSEE shall not occupy the PREMISES or use the PREMISES until the LESSEE has obtained the required insurance and filed an acceptable Certificate of Insurance with the LESSOR. Copies of insurance policies shall be submitted to the LESSOR upon request.

F. Nothing in this lease shall constitute a waiver by the LESSOR of any statutory or common law immunities, limits, or exceptions on liability.

10. INDEMNITY

LESSEE agrees to defend, to hold harmless and indemnify LESSOR, its officials, officers, employees, agents, representatives, clients, customers or invitees against any and all liability, costs, claims, lawsuits, damages for lawsuits, all expenses, including attorney's fees, and all damages (including but not limited to bodily injury, personal injury, property damage and attorney's fees) arising from or allegedly arising from the use or operation of the PREMISES, or the business or activities of the LESSEE. For other claims arising out of or related to this agreement, each party agrees to be responsible for its own acts and omissions while carrying out the terms of this agreement.

11. DAMAGES TO PREMISES

In the event of damages to the PREMISES by fire, the elements or other casualty, LESSOR shall not have any responsibility to repair the damage or to restore the PREMISES. Upon such casualty, LESSEE shall have the option to continue to occupy the PREMISES as provided herein, or to terminate the lease. Until this lease is terminated, all responsibility to pay rent and other costs under this agreement shall continue.

12. CONDEMNATION

In the event that the PREMISES, or any part thereof, shall be condemned for public use, then, and in that event, upon the vesting of title to the same for such public use, this lease shall terminate, anything herein contained to the contrary notwithstanding, except that LESSEE shall have the right to prove and collect the value of the trade fixtures installed by it, for moving expenses and for other special damages. In the event of such termination of this lease, all rent paid in advance shall be apportioned as of the date of such termination. Notwithstanding the foregoing provisions of this paragraph, in the event that only a part not so taken shall be sufficient for the operation of LESSEE's business, LESSEE may elect to continue this agreement without any adjustment to the rent or other requirements.

13. DEFAULT BY LESSEE

The occurrence of any of the following shall constitute a material default and breach of this lease by LESSEE:

- A. Any failure by LESSEE to pay rent or any other monetary sums required to be paid hereunder where such failure continues for fifteen (15) days after written notice thereof from LESSOR to LESSEE.
- B. The abandonment or vacation of the PREMISES by LESSEE.
- C. The attachment, execution or other judicial seizure of substantially all of LESSEE's assets located at the PREMISES or of LESSEE's interest in this lease, where such seizure is not discharged within forty-five (45) days.
- D. A failure of LESSEE to observe and perform any other material provision of this lease to be observed or performed by LESSEE, where such failure continues for fifteen (15) days after written notice thereof by LESSOR to LESSEE, provided, however, that if the nature of such default is such that it cannot reasonably be cured within such fifteen (15) day period, LESSEE shall not be deemed to be in default if LESSEE shall within such period commence such cure and, thereafter, diligently prosecute the same to completion. Notice by LESSOR shall state with specificity the provision of this lease alleged to be breached and the act or acts of LESSEE acceptable to LESSOR as a cure thereof.

In the event of any breach or default by LESSEE of a material term or condition of this Agreement, LESSOR may, at any time thereafter without limiting LESSOR in the exercise of any right or remedy at law or in equity which LESSOR may have by reason of such default or breach, serve a written notice on LESSEE that LESSOR elects to terminate this lease upon a specified date not less than fifteen (15) days after the date of the serving of such notice, and this lease shall then expire on the date so specified as if that date had been originally fixed as the expiration date of the term herein granted and without any right of renewal thereafter. No default shall be deemed waived unless in writing and signed by LESSOR except that a default in the payment of rent or additional rent shall be deemed waived if such default is made good before the notice of termination of this lease shall have been served on LESSEE.

14. DEFAULT BY LESSOR

If default is made by LESSOR in the performance of the conditions or covenants of this lease, LESSEE, in addition to all other remedies now or hereafter afforded or provided by law, may at its election, perform such covenant or agreement for or on behalf of LESSOR or make good any such default and any amount or amounts which LESSEE shall advance pursuant thereto shall be repaid by LESSOR to LESSEE on demand, and if LESSOR shall not repay any such amount or amounts upon demand, LESSEE shall have the privilege of deducting same from the next installment or installments of rent to accrue under this lease.

15. NON-WAIVER OF DEFAULTS

Any failure or neglect by either party to assert or enforce any rights or remedies because of any breach or default by the other hereunder shall not (except as to those specified instances herein when express time limits are provided for the taking of action) prejudice or affect their respective rights or remedies with respect to any subsequent breaches or defaults, and shall not be construed as a waiver of their respective rights to assert and enforce any rights or remedies for subsequent breaches or defaults.

16. NOTICES

All notices or demands given or required to be given hereunder shall be in writing and shall be sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the intended recipient's address or addresses below set forth or at such other address or addresses as the intended recipient may have theretofore specified in a written notice to sender given in accordance with the requirements of this paragraph. Any such notice so given shall be deemed given on the day of deposit in the United States mail, and if sent as aforesaid shall be effective whether or not received by the addressee.

For LESSOR:

Tim Mayasich
Director, Ramsey County Regional Railroad Authority
50 West Kellogg Blvd., Suite 6560
Saint Paul, MN 55102

With Copy to:

Director, Department of Property Management
50 W. Kellogg Boulevard, Suite 660
Saint Paul, MN 55102

For LESSEE:

Leone Real Estate Holdings, LLC
Attn: Rich Leone
12810 Fifth Street North
Lake Elmo, MN 55042

17. QUIET ENJOYMENT

LESSOR agrees that upon compliance with the terms and conditions of this lease, LESSEE shall and may peaceably and quietly have, hold and enjoy the leased premises for the term of this lease and any renewal of said term.

18. ENTRY BY LESSOR

LESSOR, its employees, agents and contractors shall have the right to enter the PREMISES upon the following terms: at reasonable hours for the purpose of performing the work and services required of LESSOR under this lease or due to repairs, maintenance or improvements to the PREMISES undertaken independent of this lease, at reasonable hours and upon reasonable notice to make inspections of the PREMISES, at reasonable hours and upon reasonable notice for the purpose of work or services related to the LESSOR's remodeling, repair or maintenance of the Union Depot Headhouse, or at any time in the event of an emergency.

19. SURRENDER

At the expiration of said term or any renewal thereof, LESSEE will quit and surrender the PREMISES hereby leased in as good state and condition as when possession was delivered.

20. SEVERABILITY

If any term or provision of this lease shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this lease shall not be affected thereby but each term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law

21. SUBLET and ASSIGN

Notwithstanding any other terms of conditions to the contrary in this lease, it is understood and agreed that LESSEE shall not sublet or assign the lease without the written consent first of LESSOR.

22. HEADINGS

Headings in this lease are for convenience only and are not to be construed as a part of this lease nor to define or limit in any way the scope or intent of the provisions hereof.

23. APPLICABLE LAW

This agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the State of Minnesota, District Court, Second Judicial District. EACH OF LESSOR AND LESSEE

HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATING TO THIS LEASE.

24. NON-VIOLENCE

The LESSEE shall make all reasonable efforts to ensure that Contractor's employees, officials and subcontractors do not engage in violence while performing under this contract. Violence, as defined by the Ramsey County Workplace Violence Policy, is any action that is the use of physical force, harassment, or intimidation or abuse of power or authority where the impact is to control by causing pain, fear or hurt. The LESSEE shall be considered in compliance with the requirements of this provision if it complies with the provisions of its own Policy on Employee Conduct, which is in substantial conformance with the Ramsey County Workplace Violence Policy.

25. HAZARDOUS MATERIALS

Except for Hazardous Material contained in products used by LESSEE in de minimis quantities for ordinary cleaning and office purposes, LESSEE shall not permit or cause any party to bring any Hazardous Material upon the PREMISES or transport, store, use, generate, manufacture, dispose, or release any Hazardous Material on or from the PREMISES without LESSOR'S prior written consent. LESSEE, at its sole cost and expense, shall operate its business in the PREMISES in strict compliance with all environmental requirements and all requirements of this Lease.

26. ENTIRE AGREEMENT

This instrument, with any exhibits and riders attached hereto, contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This lease and the exhibits and riders may be altered, amended, or revoked only by a subsequent instrument in writing signed by duly authorized representatives of LESSOR and LESSEE.

27. CONSTRUCTION

The parties agree that counsel for both parties have reviewed this Agreement. Accordingly, neither party shall be deemed to have drafted this Agreement nor shall it be construed against either party by virtue of the drafting thereof in the event of a dispute.

(Signature Page to Follow)

IN WITNESS THEREOF, the parties have caused this lease to be executed as of the day and year first above written.

LESSOR
RAMSEY COUNTY REGIONAL
RAILROAD AUTHORITY

LESSEE
LEONE REAL ESTATE HOLDINGS, LLC

By: _____
James McDonough
Chair, RCRRA

By: _____
Richard Leone
Chief Manager/President

By: _____
Timothy Mayasich
Director, RCRRA

DEPARTMENTAL RECOMMENDATION

_____, Director
Property Management

Budgeting and Accounting

APPROVED AS TO FORM
AND INSURANCE:

Assistant Ramsey County Attorney