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## SUBRECIPIENT AGREEMENT

Subrecipient: <b>City of Minneapolis</b>	<b>SG-2008-010</b>
Address: <b>350 South Fifth Street Minneapolis, MN 55401</b>	
Workscope: <b>UPA Marquette Ave &amp; 2<sup>nd</sup> Ave Dual Contra Flow Bus Lanes</b>	
Term: <b>November 1, 2007 through December 31, 2009</b>	
Total Award Amount: <b>\$32,166,000.00</b>	Council Action
FTA 5309 Funds: <b>\$25,732,800.00</b>	Item No.: <b>2007-399</b>
Local Match: <b>\$6,433,200.00</b>	Date: <b>January 9, 2008</b>
Federal Grant No.: <b>MN-04-0012</b>	
CFDA No.: <b>20.500</b>	

### AGREEMENT

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

#### WHEREAS:

1. Acting in partnership with the Minnesota Department of Transportation ("MNDOT") the Council and MNDOT jointly applied for and were awarded \$133.3 million dollars in federal funds under the Urban Partnership Agreement ("UPA") by the United States Department of Transportation ("USDOT").
2. The Council, acting in its role as the Twin Cities Metropolitan Planning Organization and Federal Transit Administration ("FTA") designated recipient, submitted an application to the USDOT, FTA for the UPA grant funds pursuant to 49 U.S.C. Section 5309.
3. Provided that the 2008 Minnesota Legislature enacts enabling legislation for the UPA and appropriates state funds to the Council and MNDOT for the local match to the UPA grant ("State Appropriation"), the Council will be awarded \$85.9 million dollars of UPA funding from the USDOT, FTA pursuant to grant number MN-04-0012 for certain transit projects, including the Subrecipient's Workscope.
4. This Agreement is intended to memorialize the terms under which the Subrecipient will receive the FTA grant funds and the State Appropriation.

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

#### **I. SUBRECIPIENT WORKSCOPE; APPROVED BUDGET AND MATERIAL REPRESENTATIONS**

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**1.01 Workscope.** The Subrecipient agrees to perform and complete in a satisfactory and proper manner the Workscope specified on **Exhibit A** ("FTA Grant Application Information") 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 detailed below. Any proposed change in the scope of work must be submitted to the Council's Project Manager for written approval. A change in the scope of work 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 for costs directly incurred for the performance of 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* (<http://www.fta.dot.gov/documents/14-Master.pdf>)
- *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, 49 CFR Part 18 ([http://www.access.gpo.gov/nara/cfr/waisidx\\_06/49cfr18\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr18_06.html))
- *Grant Management Guidelines*, FTA Circular 5010.1C ([http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_4114.html](http://www.fta.dot.gov/laws/circulars/leg_reg_4114.html))
- *Third Party Contracting Requirements*, FTA Circular 4220.1E, ([http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_4063.html](http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html)) (See also paragraph 10.05)

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.

**2.03 Compliance With Bond Proceed Laws.** The Subrecipient agrees to comply with the provisions of all applicable state and federal laws, rules, and regulations pertaining to the use of bond proceeds. This grant is financed with bonds issued in accordance with federal arbitrage restrictions. The Subrecipient will not use the grant funds in any way which would cause the bonds to be classified as "Arbitrage Bonds" under the Internal Revenue Code. The Subrecipient will not take any action that would adversely affect the exemption from federal income taxation of the bonds or omit to take any action necessary to maintain such tax exempt status.

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**2.04 Acknowledgment.** The Subrecipient acknowledges that this grant is financed using state bond funds and is therefore subject to the requirements of Minnesota Statutes section 16A.695 and the Order Amending Order of Commissioner, which are attached hereto and incorporated herein to this grant as **Exhibit B** (“the Additional Provisions”). The requirements in the Additional Provisions are in addition to and do not supplant requirements found elsewhere in this agreement. If any requirement in the Additional Provisions is inconsistent with a provision found elsewhere in this agreement and is irreconcilable with such provision, the requirement in the Additional Provisions shall prevail.

**2.05 Declaration as to Use of State Bond Proceeds.** When state bond proceeds are used to acquire or improve real property in whole or in part, the Subrecipient shall cause to be recorded in the official real estate title records maintained by the county recorder for the county in which the property is located, the following declaration:

The Property is bond financed property within the meaning of Minnesota Laws 1994, Chapter 643, Section 36, and cannot be sold, mortgaged or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Finance, which approval must be evidenced by a written statement signed by the Commissioner of Finance and attached to the deed, mortgage or instrument used to sell, mortgage or otherwise dispose of the property.

Title to the Property shall remain subject to this restriction until (i) restriction has been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Finance, or (ii) a written release, releasing the Property from the restriction, signed by the Commissioner of Finance, is recorded in the real estate records relating to the Property. This declaration shall be made in substantially the form shown in the Order Amending Order of Commissioner on **Exhibit B**.

### **III. GRANT AMOUNT, MATCH AND PAYMENT**

**3.01 Estimated Project Amount.** The total estimated cost of the Workslope is \$32,166,000.00, consisting of the Maximum Federal Grant Amount and the State Appropriation which will be used as the Subrecipient’s required match. **Neither source of funds will be available to the Subrecipient until the 2008 Minnesota State Legislature enacts enabling legislation for the UPA and appropriates state funds to the Council for the local match. Any costs incurred during the pre-award period starting November 1, 2007 until the date of the enabling legislation and approval of the local match are done at the Subrecipient’s own risk. Once the legislative actions are complete, the funding will become available in accordance with the terms of this Agreement.**

**3.02 Maximum Federal Grant Amount.** The Council awards to the Subrecipient a grant of up to \$25,732,800.00 for the Workslope. 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 Workslope expenditures.

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

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**3.03 Subrecipient Match.** The Council will make available twenty percent (20%) of the Estimated Project Amount as the local Subrecipient match against the Maximum Federal Grant Amount, i.e., not less than \$6,433,200.00. 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 based on submission of an invoice from the Subrecipient using the form attached hereto as **Exhibit C**. 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 D**.

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 Article III. 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 Workscope activities taking place during the Project Activity Period shall revert 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 Workscope in this agreement, the Subrecipient agrees to pay those costs and expenses. 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 Workscope 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. Notwithstanding any other provisions 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.

#### **IV. ACCOUNTING AND RECORDKEEPING REQUIREMENTS**

**4.01 Documentation of Workscope Costs.** All costs charged to the Workscope, whether paid with grant funds or charged as the Subrecipient's match, must be supported by proper documentation,

including properly executed payrolls, time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

**4.02 Establishment and Maintenance of Workscope 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 Workscope 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**
- **September 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.

**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

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attached hereto as **Exhibit D** and based on the procurement process established for the Subrecipient in the "Federal Procurement Basics" which is attached hereto as **Exhibit E**.

**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 change in conditions, law, ordinance, or regulation, or any other event that may affect the Subrecipient's ability to perform the Workscope in accordance with the terms of this Agreement.

**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 November 1, 2007 to December 31, 2009 ("Project Activity Period"). Except as provided in paragraph 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 Pre-award Activity.** Pre-award Workscope activities undertaken after November 1, 2007 are eligible for reimbursement under this Agreement. However, if the 2008 Minnesota Legislature fails to enact enabling legislation for the UPA and fails to provide the necessary funds for the local match to the FTA grant, then this Agreement shall terminate and Subrecipient is not entitled to reimbursement for its eligible pre-award activities. During the pre-award activity period, all federal regulations and oversight processes established by the Council must be followed to assure eligibility of expenditures for future funding.

**6.03 Term.** The term of this agreement shall extend from the effective date of this Agreement to the end of the Project Activity Period.

**6.04 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 paragraph 3.02.

**6.05 Termination by Council for Noncompliance.** If the Council finds that there has been a failure to comply with the provisions of this agreement, the Council may terminate the Agreement at any time following seven (7) calendar days written notice to the Subrecipient and upon failure of the Subrecipient to cure the noncompliance within the seven-day period. Noncompliance includes failure to make reasonable progress toward completion of the Workscope. At the Council's option, the Council may cease payment of invoices during any period in which the Subrecipient is not in compliance 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. Nothing herein shall be construed so as to limit the Council's legal remedies to recover grant funds.

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**6.06 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: Craig A. Lamothe, AICP  
Title: UPA Transit Project Manager/Facilities Planning Manager  
Mailing Address: 560 Sixth Avenue North, Minneapolis, MN 55411  
Phone: 612-349-7690  
E-mail: craig.lamothe@metc.state.mn.us

### **The Subrecipient:**

Name: Bill Fellows, P.E.  
Title: Life Cycle Project Manager  
Mailing Address: 309 2<sup>nd</sup> Avenue South, Minneapolis, MN 55401  
Phone: 612-673-5661  
E-mail: bill.fellows@ci.minneapolis.mn.us

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

**7.02 Council Project Manager.** For purposes of administration of this Agreement, the contact person listed in paragraph 7.01, or such other person as may be designated in writing by the Council's Regional Administrator shall be the Project Manager. Nothing, however, in this Agreement will be deemed to authorize the Council's Project Manager to execute amendments to this agreement on behalf of the Council.

**7.03 Subrecipient Project Manager.** For purposes of administration of this Agreement, the contact person listed in paragraph 7.01, or such other person as may be designated in writing by the Subrecipient, shall be the Project Manager. The Subrecipient Project Manager shall: (1) coordinate Workscope activity with the Council Project Manager; (2) attend monthly UPA meetings called by the Council Project Manager for the Transit Urban Partnership Project Staff, and (3) complete the project manager training provided by the Council to ensure compliance with all federal requirements.

## **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 ([www.access.gpo.gov/nara/cfr/waisidx\\_98/49cfr18\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/49cfr18_98.html))
- *FTA Circular 5010.1C* ([http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_4114.html](http://www.fta.dot.gov/laws/circulars/leg_reg_4114.html))

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 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 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.

**9.04 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.

**9.05 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 363.03, subdivision 4, regarding non-discrimination in the provision of public services.

**9.06 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.

**9.07 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.

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

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

**X. GENERAL FEDERAL REQUIREMENTS**

**10.01 Federal Requirements.** 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 F** and agrees to require, unless specifically exempted, sub-recipients (if authorized) and third party contractors at every tier to comply with the same. 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 (C & A); Execution and Incorporation.** The Subrecipient agrees to comply with and to certify compliance with the current Federal *Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements* ("C & A") attached hereto and incorporated herein as **Exhibit G**. The Subrecipient must certify compliance with the applicable provisions by signing the appropriate certification(s) and returning the signed certification(s) as part of the execution of this Agreement. During the term of this Agreement, the Subrecipient shall annually execute the most current C & A document and provide the same to 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 Workslope activities:

- *FTA Master Agreement* ([www.fta.dot.gov/library/legal/agree.htm](http://www.fta.dot.gov/library/legal/agree.htm))
- *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, 49 CFR Part 18 ([www.access.gpo.gov/nara/cfr/waisidx\\_98/49cfr18\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/49cfr18_98.html))
- *Grant Management Guidelines*, FTA Circular 5010.1C ([www.fta.dot.gov/library/policy/5010.1C/cover.htm](http://www.fta.dot.gov/library/policy/5010.1C/cover.htm))

The listed documents are incorporated by reference into this agreement. Copies of these documents are available at the internet websites indicated or, upon request by the 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 4220.1E, which document is incorporated by reference into this agreement. A copy of this document is available at the FTA internet website, [www.fta.gov/](http://www.fta.gov/)indicated or, upon request by the Subrecipient, from the Council. The "Federal Procurement Basics" is attached hereto as **Exhibit E** 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.

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- B. **Council Approval of Contracts.** The Subrecipient shall not execute any third party contract or otherwise enter into a binding agreement until it has first received written approval from the Council's Project Manager.
- C. **Subrecipient Contract Initiation Memo.** Subrecipient shall use the Contract Initiation Memo attached hereto as **Exhibit H** 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 grant 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 I**.

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.

**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.

**SUBRECIPIENT**

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**METROPOLITAN COUNCIL**

Date \_\_\_\_\_

By \_\_\_\_\_

Regional Administrator

Approved as to form:

\_\_\_\_\_  
Metropolitan Council  
Office of General Counsel

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**LIST OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
A	FTA Grant Application Information
B	the Additional Provisions
C	Subrecipient Invoice Form
D	DBE Reporting Form
E	Federal Procurement Basics
F	Specific Federal Requirements
G	Certifications and Assurances
H	Subrecipient Contract Initiation Memo
I	Disadvantaged Business Enterprise (DBE) Program

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# EXHIBIT A

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**FTA GRANT APPLICATION INFORMATION**

**Project Information**

<b>Project Details</b>	
<b>Project Title</b>	Double Bus Lanes – Marquette Avenue and 2 <sup>nd</sup> Avenue
<b>Project Start Date</b>	November 1, 2007
<b>Project End Date</b>	December 31, 2009
<b>Met Council Div/Subrecipient</b>	City of Minneapolis
<b>Project Manager</b>	Bill Fellows, P.E.

<b>Fund Details</b>		
<b>Funding sources - FTA awards require match in most cases of 20%, Subrecipients usually provide their own match</b>	\$ 25,732,800	External Award
	\$	Local Match (Council)
	\$ 6,433,200	Local Match (Other)
<b>Total Funding</b>	<b>\$ 32,166,000</b>	

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

The project goal is to achieve a reduction in traffic congestion in the Twin Cities area by expanding single bus lanes on Marquette Avenue and 2<sup>nd</sup> Avenue in downtown Minneapolis to two bus lanes. The project will incorporate green spaces, public gathering areas, and public art where possible. A separate but related UPA project will install bus passenger waiting shelters with better lighting and real-time bus arrival information. This project will be administered by the Metropolitan Council.

Construction of the dual bus lanes will require renovation and removal of selected sidewalk, curb & gutter, and pavement, traffic control, utility work, hazardous material abatement, reconstruction, and re-landscaping.

## Budget Page

Budget Item: <i>All budget items with an asterisk requires milestone information</i>	Item Description or Purpose	FTA or Federal Funding with Match	Other Funding	Total Project Funding
<b>Personnel (Salary):</b>				
Project Admin				
Force Account				
Fringe Benefit				
<b>*Consultant:</b>				
Planning				
Engineer & Design				
Construction Mgmt				
<b>*Contractor:</b>				
Construction—NEW				
Construction—Rehab / Renovation				
<b>*Lease/Rental Costs</b>				
<b>*Bus Purchase</b>	(specify type)			
<b>*Spare Parts</b>				
<b>*3<sup>rd</sup> Party Bus Inspection</b>				
<b>*Staff Travel:</b>				
Local				
Non-local				
<b>*Staff Training: Tuition</b>				
<b>*Insurance</b>				
<b>*Real Estate:</b>				
Acquisition				
Appraisal				
ROW				
<b>*Equipment</b> (list items w/useful life of more than 1 year & cost greater than \$5000)				
<b>*Project Supplies &amp; Material</b> (list items consumable and/or unit cost under \$5000)				
<b>*Computer Hardware</b>				
<b>*Computer Software</b>				
<b>Other Costs</b>				
<b>GRAND TOTAL PROJECT COST</b>				

## Milestone Information

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

Budget Item—Bus Only	Item Description or Purpose	Total Budget Amount
	Bus Purchase	\$
	<i>Milestone Description</i>	<i>Milestone Dates</i>
1	RFP/IFB Issued	
2	Contract Award Date	
3	First Bus Delivery	
4	All Bus Delivered	
5	Contract Complete Date	

Budget Item #1	Item Description or Purpose	Total Budget Amount
		\$
	<i>Milestone Description</i>	<i>Milestone Dates</i>
1	RFP/IFB Issued	
2	Contract Award Date	
3	Contract Complete Date	

Budget Item #2	Item Description or Purpose	Total Budget Amount
		\$
	<i>Milestone Description</i>	<i>Milestone Dates</i>
1	RFP/IFB Issued	
2	Contract Award Date	
3	Contract Complete Date	

Budget Item #3	Item Description or Purpose	Total Budget Amount
		\$
	<i>Milestone Description</i>	<i>Milestone Dates</i>
1	RFP/IFB Issued	
2	Contract Award Date	
3	Contract Complete Date	

DEPARTMENTAL APPROVAL

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# EXHIBIT B

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## 2007 Minnesota Statutes

### 16A.695 PROPERTY PURCHASED WITH STATE BOND PROCEEDS.

- Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.
- (b) "State bond financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds authorized to be issued under article XI, section 5, clause (a), of the Minnesota Constitution.
- (c) "Public officer or agency" means a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or other public entity, or any officer or employee thereof.
- (d) "Fair market value" means, with respect to the sale of state bond financed property, the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property, or the price bid by a purchaser under a public bid procedure after reasonable public notice.
- (e) "Outstanding state bonds" means the dollar amount certified by the commissioner, upon the request of a public officer or agency, to be the principal amount of state bonds, including any refunding bonds, issued with respect to the state bond financed property, less the principal amount of state bonds paid or defeased before the date of the request.

Subd. 2. **Leases and management contracts.** (a) A public officer or agency that is authorized by law to lease or enter into a management contract with respect to state bond financed property shall comply with this subdivision. A reference to a lease or management contract in this subdivision includes any amendments, modifications, or alterations to the referenced lease or management contract and refers to the lease wherein the public officer or agency is the lessor of the state bond financed property and the other contracting party is the lessee.

(b) The lease or management contract may be entered into for the express purpose of carrying out a governmental program established or authorized by law and established by official action of the contracting public officer or agency, in accordance with orders of the commissioner intended to ensure the legality and tax-exempt status of bonds issued to finance the property, and with the approval of the commissioner. A lease or management contract must be for a term substantially less than the useful life of the property, but may allow renewal beyond that term upon a determination by the lessor that the lessee has demonstrated that the use continues to carry out the governmental program. If the lessor and lessee do not renew the lease or management contract and if the lessee has contributed to the land and the capital improvements on the state bond financed property, the lessor may agree to reimburse the lessee for its investment in the land and capital improvements. The reimbursement may be paid, at the option of the lessor and lessee, at the time of nonrenewal without a requirement for a prior escrow of funds or at a later date and on additional terms agreed to by the lessor and the lessee. A lease or management contract must be terminable by the contracting public officer or agency if the other contracting party defaults under the contract or if the governmental program is terminated or changed, and must provide for program oversight by the contracting public officer or agency. The expiration or termination of a lease or management agreement does not require that the state bond proceeds be repaid or that the

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property be sold, so long as the property continues to be operated by, or on behalf of, the public officer or agency for the intended governmental program. Money received by the public officer or agency under the lease or management contract that is not needed to pay and not authorized to be used to pay operating costs of the property, or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to the property other than state bonds, must be:

(1) paid to the commissioner in the same proportion as the state bond financing is to the total public debt financing for the property, excluding debt issued by a unit of government for which it has no financial liability;

(2) deposited in the state bond fund; and

(3) used to pay or redeem or defease bonds issued to finance the property in accordance with the commissioner's order authorizing their issuance.

The money paid to the commissioner is appropriated for this purpose.

(c) With the approval of the commissioner, a lease or management contract between a city and a nonprofit corporation under section 471.191, subdivision 1, need not require the lessee to pay rentals sufficient to pay the principal, interest, redemption premiums, and other expenses when due with respect to state bonds issued to acquire and better the facilities.

Subd. 3. **Sale of property.** A public officer or agency shall not sell any state bond financed property unless the public officer or agency determines by official action that the property is no longer usable or needed by the public officer or agency to carry out the governmental program for which it was acquired or constructed, the sale is made as authorized by law, the sale is made for fair market value, and the sale is approved by the commissioner. If any state bonds issued to purchase or better the state bond financed property that is sold remain outstanding on the date of sale, the net proceeds of sale must be applied as follows:

(1) if the state bond financed property was acquired and bettered solely with state bond proceeds, the net proceeds of sale must be paid to the commissioner and deposited in the state treasury; or

(2) if the state bond financed property was acquired or bettered partly with state bond proceeds and partly with other money, the net proceeds of sale must be used: first, to pay to the state the amount of state bond proceeds used to acquire or better the property; second, to pay in full any outstanding public or private debt incurred to acquire or better the property; third, to pay interested public and private entities, other than any public officer or agency or any private lender

already paid in full, the amount of money contributed to the acquisition or betterment of the property; and fourth, any excess over the amount needed for those purposes must be divided in proportion to the shares contributed to the acquisition or betterment of the property and paid to the interested public and private entities, other than any private lender already paid in full, and the

proceeds are appropriated for this purpose. In calculating the share contributed by each entity, the

amount to be attributed to the owner of the property shall be the fair market value of the property that was bettered by state bond proceeds at the time the betterment began.

When all of the net proceeds of sale have been applied as provided in this subdivision, this section no longer applies to the property.

Subd. 3a. **Involuntary sale of property.** Notwithstanding subdivision 3, this subdivision

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applies to the sale of state bond financed property by a lender that has provided money to acquire or better the property. Purchase by the lender in a foreclosure sale, acceptance of a deed in lieu of foreclosure, or enforcement of a security interest in personal property, by the lender, is not a sale. Following purchase by the lender, the lender shall not operate the property in a manner inconsistent with the governmental program established as provided in subdivision 2, paragraph (b). The lender shall exercise its best efforts to sell the property to a third party as soon as feasible

following acquisition of marketable title to the property by the lender. A sale by the lender must be made as authorized by law and must be made for fair market value.

Subd. 4. **Relation to other laws.** This section applies to all state bond financed property unless otherwise provided by law.

Subd. 5. **Program funding.** Recipients of grants from money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the recipient has the ability and a plan to fund the program intended for the facility. A private nonprofit organization that leases or manages a facility acquired or bettered with grant money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the organization has the ability and a plan to fund the program intended for the facility.

Subd. 6. **Match requirements.** Recipients of grants from money appropriated from the bond proceeds fund may be required to demonstrate a commitment of money from nonstate sources. This matching money may be pledged payments that have been deposited into a segregated account or multiyear pledges that are converted into cash or cash equivalent through a loan or irrevocable letter of credit from a financial institution. The loan or irrevocable letter of credit may be secured by a lien on the state bond financed property.

Subd. 7. **Ground lease for state bond financed property.** A public officer or agency, as lessee, may lease real property and improvements that are to be acquired or improved with state bond proceeds. The lease must be for a term equal to or longer than 125 percent of the useful life of the property. The expiration of the lease upon the end of its term does not require that the state be repaid or that the property be sold and upon the expiration the real property and improvements are no longer state bond financed property.

Subd. 8. **General applicability.** (a) This section establishes requirements for the receipt and use of general obligation grants and the ownership and operation of state bond-financed property. General obligation grants may only be issued and used to finance the acquisition and betterment of public lands and buildings and other public improvements of a capital nature that are used to operate a governmental program, and for predesign and design activities for specifically identified

projects that involve the operation of a governmental program or activity. A general obligation grant may not be used for general operating expenses, staffing, or general master planning. A public officer or agency that is the recipient of a general obligation grant must comply with this section in its use of the general obligation grant and operation, management, lease, and sale of state bond-financed property. A public officer or agency that uses the proceeds of a general obligation grant for any unauthorized purpose or in violation of this section must immediately repay the outstanding balance of the grant to the commissioner, and a failure to comply authorizes

the commissioner to recover the outstanding balance as a setoff against any state aid provided to

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the public officer or agency.

(b) This section does not create any new authority regarding the ownership, construction, rehabilitation, use, operation, lease management, or sale of state bond-financed property, or the operation of the governmental program that will be operated on the property. Any authority that is needed to enter into a management contract or lease of property, to sell property, or to operate a governmental program or carry out any activity contained in the law that appropriates money for a general obligation grant must be provided by as contained in some other law.

Subd. 9. **Grant agreement.** All general obligation grants must be evidenced by a grant agreement that specifies:

- (1) how the general obligation grant will be used;
- (2) the governmental program that will be operated on the state bond-financed property; and
- (3) that the state bond-financed property must be operated in compliance with this section, all state and federal laws, and in a manner that will not cause the interest on the state general obligation bonds to be or become subject to federal income taxation for any reason. A grant agreement must comply with this section, the Minnesota Constitution, and all commissioner's orders, and also contain other provisions the commissioner of the agency making the grant deems

appropriate. The commissioner shall draft and make available forms for grant agreements that satisfy the requirements of this subdivision.

**History:** 1994 c 643 s 36; 1Sp1995 c 2 art 1 s 19-22; 1996 c 463 s 32; 2004 c 278 s 1; 2007 c 148 art 2 s 14-19

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## Order Amending Order of Commissioner of Finance

Relating to Use and Sale of State Bond Financed Property

IT IS HEREBY ORDERED by the Commissioner of Finance of the State of Minnesota that the Commissioner's Order entitled "Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 14, 1994, be amended to read as follows:

### Section 1. **Authorization; Purpose; Necessity.**

1.01. **Authorization.** This Order is adopted pursuant to Minnesota Statutes, Section 16A.95, as amended, for the purpose of establishing requirements to be complied with by public officers and agencies in entering into contracts relating to the use or sale of state bond financed property.

1.02. **Purpose.** The purpose of the requirements is to ensure that the proceeds of state general obligation bonds authorized by the legislature to be issued to finance the acquisition or betterment of public land and buildings and other improvements of a capital nature by the state and its political subdivisions are used for such purposes, and that the interest to be paid thereon is and will continue to be (whenever possible) exempt from federal income taxation. Essentially, state general obligation bonds can be issued only to finance publicly owned land, buildings or improvements to be used to conduct governmental programs of the state and its instrumentalities and political subdivisions. Where state bonds are to be issued to finance property which is to be leased, managed, operated or otherwise used by a non-public party, or where state bond financed property is to be sold to a non-public party, questions may arise as to the legality and tax-exempt status of the bonds. Accordingly, the requirements set forth herein are to be compiled with by a public officer or agency in entering into lease, management or other similar contracts relating to the use of state bond financed property pursuant to state law, and in selling state bond financed property, to ensure the legality and tax-exempt status of the bonds.

1.03. **Necessity.** The provisions of this Order are determined to be necessary to ensure the legality and tax-exempt status of state general obligation bonds and compliance with the act.

Section 2. **Definitions.** For purposes of this Order the terms defined in this Section shall have the meanings given to them in this Section.

2.01. **Act.** "Act" means Minnesota Statutes, Section 16A.95, as amended.

2.02. **Code.** "Code" means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

2.03. **Commissioner.** "Commissioner" means the Commissioner of Finance or his or her designated representative.

2.04. **Fair Market Value.** "Fair market value" means, with respect to the sale of state bond financed property, the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property, or the bid price by a purchaser under a public bid procedure after reasonable public notice.

2.05. **Non-Public Party.** "Non-public party" means a person or entity other than a public officer or agency.

2.06. **Outstanding State General Obligation Bonds.** "Outstanding state general obligation bonds" and "outstanding state bonds" means the dollar amount certified by the commissioner, upon the request of a public officer or agency, to be the principal amount of state bonds, including any refunding bonds, issued with respect to the state bond financed property, less the principal amount of state bonds paid or defeased as of the date of certification.

2.07. **Public Officer or Agency.** "Public officer or agency" means a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or any other public entity, or any officer or employee thereof. It does not include the United States or any agency or instrumentality of the United States.

2.08. **State Bond Financed Property.** "State bond financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds. "Acquired" and "bettered" shall have the meanings given the terms "acquisition" and "betterment", respectively, in Minnesota Statutes, Section 475.51, and shall include planning and design activities related to a specific project.

2.09. **State General Obligation Bonds.** "State general obligation bonds" and "state bonds" mean state general obligation bonds authorized to be issued under Article XI, Section 5, clause (a) of the Minnesota Constitution, or any bonds issued to refund those bonds.

2.10. **Use Contract.** "Use contract" means a lease, management contract or other similar contract relating to state bond financed property, between a public officer or agency which owns or has jurisdiction over the property and another public officer or agency or a non-public party.

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Section 3. **Application.** This Order shall apply only as provided in this Section, and the provisions of Sections 4 through 6 are subject to the provisions of this Section.

3.01. **In General.** This Order applies to transactions involving state bond financed property, regardless of when acquired or improved, unless otherwise provided by law, or unless such application would impair the obligations of a public officer or agency to a non-public party under a contract entered into pursuant to law, which contract was in effect on May 17, 1994. The commissioner will, from time to time, issue, revise and publish a list of transactions exempted from the provisions of the act and this Order pursuant to law.

3.02. **Certain Use Contracts.** If the public officer or agency having jurisdiction over or which owns state bond financed property determines that it is permanently or currently not needed for governmental purposes, and the determination is approved by the commissioner, the requirements set forth herein relating to governmental programs shall not be applicable to use contracts relating thereto.

3.03. **Transactions Between Public Officers and Agencies.** This Order applies to transactions between and involving only public officers or agencies which are entered into pursuant to state law, except as specifically provided in Sections 4 and 5.

Section 4. **Requirements for Use Contracts.**

4.01. **Statutory Authorization.** (a) Use contracts relating to state bond financed property can be entered into only where authorized by state law other than the act; the act itself does not authorize, but only regulates, such contracts.

(b) A use contract must comply with the substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

4.02. **Requirements for Non-Public Party Use Contracts.** Use contracts between a public officer or agency and a non-public party are governed by the provisions of Section 4.01 and this Section.

(a) The use contract must be entered into for the express purpose of carrying out a governmental program established by law or authorized by law and established by official action of the contracting public officer or agency. The governmental program and its purpose must be set forth in the use contract.

(b) The term of a use contract relating solely to land shall be governed by the state law authorizing it. The term of a use contract relating to the buildings and improvements, including all renewal terms that are solely at the option of the non-public party, shall be substantially less than the useful life of the buildings or improvements. Ordinarily a use contract term not exceeding 50% of the useful life of the property to which it relates will be considered to be for a period substantially less than the useful life of such property. A use contract may allow renewal beyond the end of the original (or any previous renewal) term, upon determination by the public officer or agency by official action that such renewal is necessary or desirable to continue to carry out a governmental program.

(c) The use contract must provide for program oversight by a public officer or agency. A use contract which requires the non-public party to provide to the contracting public officer or agency an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenues and expenses, will be considered to provide for program oversight by a public officer or agency.

(d) The use contract must allow for termination by a public officer or agency in the event of default by the non-public party, or in the event the governmental program is terminated or changed, and may provide for notice of default for a specified period which is reasonable under the circumstances prior to termination.

(e) The use contract must require the non-public party to pay all costs of operation and maintenance of the state bond financed property allocable to it, unless the public officer or agency is authorized and agrees to pay such costs pursuant to state law. A use contract need not require the non-public party to pay to the public officer or agency any compensation for use of the state bond financed property unless required by a state law other than the act or required by the commissioner.

(f) If during any year of the term of a use contract relating to state bond financed property, state general obligation bonds issued to acquire or better such property are outstanding, a percentage of all moneys received by a public officer or agency pursuant to the use contract in excess of the amount needed and authorized to be used to pay operating costs of the state bond financed property, or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to the property other than state bonds, must be paid to the commissioner by the public officer or agency and used by the commissioner to pay and redeem or defease state bonds issued to finance the property. Such percentage shall be determined by the commissioner and, absent circumstances which would indicate a different method, will be determined by dividing the total principal amount of all state bonds issued with respect to the state bond financed property by the total principal amount of all public debt financing incurred with respect to such property by any public officer or agency (other than debt issued by a public officer or agency for which it has no financial liability), without regard to the amount of bonds outstanding at any time.

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**4.03. Requirements for Public Officer or Agency Use Contracts.** Use contracts between two public officers or agencies are governed by the provisions of Section 4.01 and this Section. The provisions of Section 4.02, paragraphs (a), (c), (d) and (f) shall apply to such use contracts.

**4.04. Approval by Commissioner.** (a) No public officer or agency shall enter into a use contract with respect to state bond financed property, or the renewal or amendment of an existing use contract, without the prior written approval of the commissioner.

(b) Proposed use contracts, renewals and amendments and, with respect to use contracts involving a non-public party the related information described below, should be submitted to the commissioner not less than 60 days before their proposed date of execution, except that in the case of a use contract described in Section 4.05, paragraph (a), the use contract should be submitted not less than 90 days before such date, and the submission should indicate that Section 4.05 is applicable. Such related information should include, if not evident from the use contract, state law authorization; the name, address, nature, financial condition, and reason for selection of the non-public party; the initial or current program implementation plan and budget (except in cases of leases of excess property); and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change in use contract terms within a reasonable period after receipt of the proposed use contract and the related information, but failure to approve or provide comments on a proposed use contract shall not constitute approval.

**4.05. Tax Considerations.** (a) Except as provided in paragraph (b), if under the terms of a proposed use contract the commissioner reasonably expects to receive money pursuant to Section 4.02, paragraph (f), the public officer or agency shall, upon direction by the commissioner, take, and/or require the contracting non-public party to take, such actions and furnish such documents to the commissioner as the commissioner determines to be necessary to ensure that the interest to be paid on the state bonds issued to finance the property to which the use contract relates is on the state bonds issued to finance the property to which the use contract relates is exempt from federal income taxation. Such actions may include either (i) compliance with procedures intended to classify the state bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, or (ii) changing the nature and/or terms of the use contract so that it complies with Revenue Procedure 93-19; or (iii) compliance with Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

(b) The commissioner may determine that under the Code the state bonds will not be subject to federal income taxation without regard to compliance with paragraph (a), or that compliance with the requirements of paragraph (a) is not practical or economically feasible, in which event compliance with paragraph (a) may not be required. In most cases, and barring special circumstances, compliance will not be required where the total amount of state bonds authorized by law to be issued with respect to a governmental project or program is less than \$1,000,000.

#### **Section 5. Guidelines and Procedures for Sale of Bond Financed Property.**

**5.01. Authorization of Sales.** (a) State bond financed property can be sold or transferred to a non-public party or a public officer or agency only where authorized by state law; the act itself does not authorize, but only regulates, such transactions.

(b) A sale or transfer must comply with substantive and procedural provisions of the state law authorizing it, the act, and the requirements of this Order.

**5.02. Requirements for Sales.** (a) Except as provided in paragraph (c), no public officer or agency shall sell state bond financed property unless the public officer or agency determines by official action that the property is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, the sale is made for fair market value, and the sale is approved by the commissioner.

(b)(i) If any state bond financed property which is sold was acquired or improved solely with state bond proceeds, all of the net proceeds of such sale shall be paid to the commissioner, and so much of the net proceeds of sale as is necessary to pay and redeem or defease the outstanding State bonds deposited in the state bond fund, and used for this purpose, and any balance of the net proceeds deposited in the general fund or other state fund designated by law; and (ii) if the state bond financed property which is sold was acquired or improved partly with state bond proceeds and partly with other money, the net proceeds of sale shall be used: (x) first, to pay to the commissioner an amount equal to the state bond proceeds used to acquire or better the property; (y) second, to pay in full any outstanding public or private debt incurred to acquire or better the property; and (z) third, any net sale proceeds not needed for these purposes shall be divided between or among and paid to the interested public and private parties which provided money for such acquisition or betterment (other than any private lender already paid in full), in proportion to the amounts of money provided by them for such purpose, which division shall be agreed to in writing between or among all of them. Amounts received by the commissioner shall be used in the same manner as provided in clause (i) of this paragraph.

For purposes of this paragraph (b), the acquisition of state bond financed property by a lender in satisfaction of a debt, either by foreclosure sale or acceptance of a deed in lieu of foreclosure or by enforcement of a security

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interest, is not a sale; but a subsequent sale by the lender is subject to the act and this section and must be made as authorized by law and for fair market value. While held by the lender the state bond financed property shall not operate the property in a manner inconsistent with the governmental program established with respect to the property. The lender shall exercise its best efforts to sell the state bond financed property to a third party as soon as feasible following acquisition of marketable title to the property.

When all of the net proceeds of sale of any state bond financed property have been applied as provided in this paragraph, the act and this Order no longer apply to the property.

(c) State bond financed property may be transferred between public officers or agencies for a nominal consideration where authorized by state law, if the transferor public officer or agency determines by official action that the state bond financed property to be transferred is no longer useable or needed to carry out the governmental program for which it was acquired or constructed, and the transferee public officer or agency determines by official action that the property is needed or useful for a governmental program of the transferee, the official action is filed with the commissioner, and the transferee public officer or agency acknowledges that any sale of the property by the transferee is subject to the provisions of this Order.

(d) Paragraphs (a) through (c) do not apply to transfers of control of state-owned property between state departments or agencies which are regulated by Minnesota Statutes, Section 15.16. So much of the moneys transferred to a state department or agency as a result of the transfer of control of state bond financed property as is necessary to pay and redeem or defease outstanding state bonds issued to finance the acquisition or improvement of the property, shall be transferred to the state bond fund and used for this purpose.

**5.03. Approval by Commissioner.** (a) No public officer or agency shall enter into a contract for the sale of state bond financed property or any amendment thereto affecting the sale price without the approval of the commissioner.

(b) Proposed sale contracts and amendments, and the related information described below, should be submitted to the commissioner not less than 60 days before their planned date of execution. Such related information should include, if not evident from the sale contract, state law authorization; the name, address and nature of the purchaser, if known; the proposed method of sale; the sale price and how it was determined; any appraisal upon which the sale price is based; and other information deemed relevant by the public officer or agency. The department of finance will endeavor to provide approvals or comments requiring change within a reasonable period after receipt of the proposed sale contract and the related information, but failure to approve or provide comments on a proposed sale contract shall not constitute approval.

#### Section 6. **Grant and Loan Agreements; Title Records.**

**6.01. Grant and Loan Agreements.** Every state officer or agency to which proceeds of state general obligation bonds are appropriated to fund a grant or loan to another public officer or agency shall enter into a grant or loan agreement with respect to such proceeds whereby the public officer or agency receiving the grant or loan acknowledges that use agreements relating to and sales of property acquired in whole or in part with the state bond proceeds: (a) are subject to the provisions of the act and this Order, and (b) will be used in a manner which will not cause the interest on the state bonds to be or become subject to federal income taxation, due to their classification as "private activity bonds" within the meaning of Section 141 of the Code, or as "arbitrage bonds" within the meaning of Section 148 of the Code, or for any other reason.

**6.02. Title Records.** Every public officer or agency which expends state general obligation bond proceeds to acquire or improve real property shall, not later than thirty (30) days after the first such expenditure or as soon thereafter as practical, cause to be recorded in the official real estate title records maintained by the county recorder for the county or counties in which the property is located, a declaration or other appropriate instrument in the form or substantially the same form attached hereto as Exhibit 1. Upon full compliance with the provisions of this order and when appropriate, upon request, the Commissioner of Finance shall execute and deliver to the party requesting it, a written release evidencing the release of the subject property from the provisions of the act and this Order.

#### Section 7. **Amendments; Publication; Effective Date.**

**7.01. Amendments.** The Commissioner retains the right to amend this Order at any time as necessary to accomplish the purposes of the act.

**7.02. Publication.** The Commissioner intends to publish this Order and any amendments thereto in such manner and at such times as are likely to provide access to its contents by all affected persons, but the Order or any amendment shall be effective upon its issuance without regard to its publication.

**7.03. Effective Date.** This Order is effective as of its date of execution set forth below.

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Laura M. King  
Commissioner of Finance

**EXHIBIT 1**

**DECLARATION**

The undersigned, as owner of fee title to the real property legally described on Exhibit A, which is attached hereto and made a part hereof ("Property"), hereby declares that title to the Property is hereby subject to the following restriction:

The Property is bond financed property within the meaning of Minnesota Laws 1994, Chapter 643, Section 36, and cannot be sold, mortgaged or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Finance, which approval must be evidenced by a written statement signed by the Commissioner of Finance and attached to the deed, mortgage or instrument used to sell, mortgage or otherwise dispose of the property.

Title to the Property shall remain subject to this restriction until (i) restriction has been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Finance, or (ii) a written release, releasing the Property from the restriction, signed by the Commissioner of Finance, is recorded in the real estate records relating to the Property.

Dated:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ under the laws of \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Instrument Was Drafted By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[an error occurred while processing this directive]

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# EXHIBIT C



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# EXHIBIT D

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## DBE Progress/Project Report

Project #:	DBE Progress Report #:
Project Title:	
Prime Contractor:	Type of Services:
Contract #	Contract Award Date:
Original Contract Amount: \$	Amount Billed to Date:
Contract Change Orders: \$	Percent Billed to Date:
Contract Dollars Expended: \$	Payment Claim #:
Contract Dollars Remaining: \$	

**Utilization Goal: \_\_\_\_\_ %**  
**Reporting Period: From \_\_\_\_\_ to \_\_\_\_\_**

DBE Subcontractor	Original Contract Amount	Current Contract Amount	Amount Billed This Claim	Amount Billed To Date	
DBE Totals:					
Contract DBE % of Total Current Contracted Amount:					
Billed DBE % of Total Contract Amount Billed:					

### Affirmative Action Status/Labor Force Breakdown by Hours

**SKILLED:**

Male	Female	Blk Male	Blk Female	Hispanic Male	Hispanic Female	Asian Male	Asian Female	A/I Male	A/I Female

**UNSKILLED:**

Male	Female	Blk Male	Blk Female	Hispanic Male	Hispanic Female	Asian Male	Asian Female	A/I Male	A/I Female

**Explanation if DBE Goal Not Being Met or Other Comments:**


Signature:	Date:
Title:	

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# EXHIBIT E

## Federal Procurement Basics

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

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

1. Micro-purchases may be made without obtaining competitive quotations if the recipient or subrecipient determines that the price to be paid is fair and reasonable.
2. Micro purchases of construction services valued at greater than \$2,000 require the application of Davis-Bacon Act federal prevailing wage rates.
3. All micro purchases for architectural and engineering services require compliance with the Brooks Act.
4. Minimal documentation is required: (a) a determination that the price is fair and reasonable and (b) how this determination was derived.

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

1. An Independent Cost Estimate (ICE): a documented analysis of the estimated cost of the item or services, based on historic costs, vendor information, or other reasonable methods.
2. Use of the Disadvantaged Business Enterprise (DBE) directory to obtain at least one quote from a DBE firm, if one is available for the required good or service.
3. At least three written or verbal quotes.
4. A documented price analysis, using the ICE as a basis of comparison.
5. The FTA clauses must be attached to the purchase order. Subrecipients can direct questions to the Council 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.

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5. The solicitation is issued.
6. Solicitation responses are forwarded by Council's Project Manager to Council's Purchasing and ODEO for approval and DBE compliance check before the award of a contract.
7. Copies of executed Metropolitan Council and Subrecipient contracts are kept by Council's Project Manager and Council Purchasing.
8. Metropolitan Council and Subrecipient contract changes require prior review and approval by the Council's Project Manager, Council Purchasing and ODEO.

#### **Contract Changes**

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

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# EXHIBIT F

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## SPECIFIC FEDERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

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

**1. Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

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Employment Opportunity, Department of Labor," 42 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Contract. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

2. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 532, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
3. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

## 9. Disadvantaged Business Enterprise ("DBE").

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

- B. **Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR's receipt of payment of retainage from the COUNCIL. The

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

**10. Incorporation of FTA Terms.** Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 CFR section 18.36 and FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

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

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

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

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

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

The CONTRACTOR further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member

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of Congress in connection with the projects funded by the funds allocated to the CONTRACTOR in this agreement, the CONTRACTOR shall complete and submit to the COUNCIL, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

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

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# EXHIBIT G

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APPENDIX A

FEDERAL FISCAL YEAR 2008 CERTIFICATIONS AND ASSURANCES FOR  
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

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

Name of Applicant: City of Minneapolis

The Applicant agrees to comply with applicable provisions of Categories 01 – 24. \_\_\_\_\_  
OR

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

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

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APPENDIX A

**FEDERAL FISCAL YEAR 2008 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**  
*(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)*

AFFIRMATION OF APPLICANT

Name of Applicant: City of Minneapolis

Name and Relationship of Authorized Representative: Steven A. Kotke, P.E., City Engineer,  
Director of Public Works

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and directives, and with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2008.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2008.

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

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

Signature  Date: 3/15/2008

Name Steven A. Kotke, P.E., City Engineer, Director of Public Works  
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): City of Minneapolis

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

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

Signature  Date: 3/10/08

Name Corey Conover, Assistant City Attorney  
Attorney for Applicant

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

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# EXHIBIT H

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<b>Section 1 – Project Information – to be completed by the Subrecipient Project Manager</b>						
Subrecipient Project Manager: Phone:					Date:	
Project Title:					MC Project #:	
Proposed Services:					Estimated Cost:	
Period of Performance:	From		To:			
Subcontracting:	Indicate whether or not there as a reasonable opportunity for subcontracting of this procurement				Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Subrecipient Project Manager</b> – I have accurately completed the information in Sections 1, 2, and 3 of this SCIM. If this will be a federally funded purchase, I have completed and filed an Independent Cost Estimate.						
_____				Date: _____		
Signature						
<b>Council Project Manager Approval</b>						
I have reviewed the information in Sections 1, 2, and 3 and approve the initiation of this contract.						
_____				Date: _____		
Signature						
Title						
<b>Section 2 – Funding – to be completed by the Council Project Manager <i>Check one box only:</i></b>						
<input type="checkbox"/> This contract will be FTA-assisted (complete the <i>Grant Approval</i> section, below)						
<input type="checkbox"/> This contract will be USDOT-assisted by an agency other than FTA (i.e. FAA or FHWA)						
<input type="checkbox"/> This contract will be Minnesota PFA-eligible						
<input type="checkbox"/> This contract will NOT be assisted with grant funds from any source						
<input type="checkbox"/> 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:						
<b>Grant Approval –</b> to be completed for all FTA-assisted contracts						
Federal Grant Number: _____						
_____				_____		
Grants Manager Signature				Date		
<b>Funding Approval</b> – I have reviewed the information in Section 2 and certify that it is accurate.						
Signature _____				Date _____		
Title _____				(To be signed by the CFO, Controller, MCES Finance Director, or Director of Finance, Metro Transit)		

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

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

2. Proposed means of publicizing the availability of the contract

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

3. Proposed process to select contractor

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

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

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

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

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

**Reviewed by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Section 5 – Authorization**

By Subrecipient in accordance with its organizational structure.

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

\_\_\_\_\_  
Signature of Authorized Signer

Date: \_\_\_\_\_

\_\_\_\_\_  
Title of Authorized Signer

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

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

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# EXHIBIT I

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

**1.0 POLICY STATEMENT**

**2.0 OBJECTIVES**

**3.0 DBE PROGRAM DEFINITIONS**

**4.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

- 4.1 Duties of The Metropolitan Council DBE Liaison Officer
- 4.2 Duties of the Subrecipient

**5.0 DBE DIRECTORY**

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

**7.0 RECORD KEEPING, MONITORING AND ENFORCEMENT**

- 7.1 Bidders List
- 7.2 Monitoring Payments to DBEs
- 7.3 Reporting to the Metropolitan Council

**METROPOLITAN COUNCIL AND SUBRECIPIENT  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PROGRAM PROCESS**

**1.0 POLICY STATEMENT**

In accordance with 49 CFR sections 26.3, 26.7, 26.21, and 26.23, Subrecipient hereby affirms the Metropolitan Council's policy to utilize businesses owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts. Subrecipient 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.

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

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

In addition, Subrecipient will not:

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

**2.0 OBJECTIVES**

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

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

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

These objectives are passed on to Subrecipient. Subrecipient accepts these objectives as their own.

### 3.0 PROGRAM DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**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.

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**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.

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

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

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

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

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

**SUBRECIPIENT** The entity, public or private, to which DOT financial assistance is awarded via a Recipient for the programs of the FAA, FHWA, or FTA.,

**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.

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#### **4.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

1. The Chair of the Metropolitan Council has overall responsibility for the Council's DBE program, and performs the role of providing policy leadership regarding the involvement of DBEs in the activities of the Metropolitan Council.
2. The Regional Administrator has responsibility for establishing and maintaining a program to promote the Metropolitan Council's DBE program. This responsibility will be carried out in conjunction with the Metropolitan Council DBE Liaison Officer.
3. In accordance with 49 CFR section 26.25, the Metropolitan Council has designated its Director, Office of Diversity and Equal Opportunity as its DBE Liaison Officer, responsible for implementing all aspects of the DBE program. The Council DBE Liaison Officer shall have direct and independent access to, and direct communication with, the Regional Administrator concerning DBE program matters.
4. Subrecipient shall designate an employee who has responsibility for establishing and maintaining the Metropolitan Council's DBE pass through agreement and program. This person is referred to as the "Subrecipient DBE Liaison Officer." The Subrecipient DBE Liaison Officer's responsibilities will be carried out in conjunction with the Council DBE Liaison Officer.
5. Subrecipient shall notify the Council DBE Liaison Officer of the person designated as the Subrecipient DBE Liaison Officer.
6. The Subrecipient DBE Liaison Officer shall work directly with the Metropolitan Council DBE Liaison Officer to ensure the program's success.

#### **4.1 Duties of Metropolitan Council DBE Liaison Officer**

The responsibilities of the Council DBE Liaison Officer include:

1. Providing compliance and goal achievement information. This includes:
  - a. Surveying the DBE community and conducting outreach in order to increase business opportunities to DBEs.
  - b. Analyzing Subrecipient's contract opportunities available for DBEs. Utilizing the DBE directory to search for potential DBE vendors.
  - c. 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.
  - d. For contracts with DBE goals:
    1. Ensuring that DBEs maintain current DBE certification by verifying their status with the DBE Directory.

2. Ensuring that DBEs are utilized in accordance with the terms of the contract.
  3. Ensuring that potential DBE utilization problems are immediately resolved.
  4. If applicable, ensuring that the prime contractor/proposer continues to outreach to DBEs for additional business opportunities that result during the performance of the contract.
  5. Granting or denying all requests for DBE substitution.
  6. Subrecipient will package individual contracts in a manner to maximize the ability of DBEs to compete favorably and ensuring that RFPs, RFIQs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing. The Council will monitor all contracts for compliance.
2. Monitoring contractor/Subrecipient compliance with DBE commitments, maintaining accurate records, demonstrating DBE efforts and accomplishments, and determining compliance. This includes:
- a. The Subrecipient will provide periodic reports to the Metropolitan Council DBE Liaison Officer concerning DBE compliance or non-compliance of contractors and staff with the requirements of this program. The Council DBE Liaison Officer will assist in preparing those reports.
  - b. Attending meetings of the Subrecipient's board or council at which time these matters are considered; and responding to queries from the board or council members.
  - c. Compiling DBE statistical and narrative reports.
- 
3. Participating in prebid and preproposal meetings with potential prime and DBE contractors/proposers.
  4. Evaluating bids and proposals for compliance with DBE requirements, including bidder's good faith efforts.
  5. Monitoring contractor's compliance with DBE utilization goals.
  6. Coordinating dispute resolution through process established in partnering workshops with contract representatives, vendors and others regarding DBE program.
  7. Conducting compliance reviews.
  8. Conducting on-site verification and interviews.

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9. Consulting with the Metropolitan Council DBE Liaison Officer.

#### **4.2 Duties of Subrecipient DBE Liaison Officer**

1. Assist the Metropolitan Council DBE Liaison Officer in any and all efforts to ensure compliance with the USDOT rules and regulations.

#### **5.0 DBE Directory**

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

#### **6.0 DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS**

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

1. The contractor will submit monthly progress reports to the Subrecipient DBE Liaison Officer, in conformance with the currently approved schedule, reflecting its DBE participation. A DBE Progress Project 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.

2. The Subrecipient DBE Liaison Officer will review the contractor's monthly progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the contractor as stated in its bid or proposal. The reports are forwarded to the Metropolitan Council DBE Liaison Officer.
3. 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.

## **7.0 RECORD KEEPING, MONITORING AND ENFORCEMENT**

### **7.1 Bidders List**

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

### **7.2 Monitoring Payments to DBEs**

1. In accordance with the requirements of Section 7.3 of this program, Subrecipient will require all prime contractors to submit on a monthly basis, evidence of actual payments to each DBE listed on the contract.
2. This evidence shall take the form of the DBE Progress/Project Report.
3. Both the Council and Subrecipient will review and monitor the amount actually paid to each DBE and non-DBE in accordance with the requirements of Section 7.3 of this program.

### **7.3 Reporting**

1. Together the Council and Subrecipient shall submit a monthly report describing the activities undertaken toward progress achieved in meeting the goal of greater DBE participation in its procurement and financial assistance programs during the preceding federal quarter. These reports shall discuss at least the following:

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- a. A brief description of any problems encountered in the general area of DBEs, or specific contracts or projects.
- b. Specific efforts to identify and award contracts to DBEs.
- c. A summary of the extent to which percentages have been met.