



# City of Milwaukee

City Hall  
200 East Wells Street  
Milwaukee, WI 53202

## Meeting Agenda PUBLIC WORKS COMMITTEE

**ALD. ROBERT BAUMAN, CHAIR**  
**Ald. Joseph Dudzik, Vice-Chair**  
**Ald. Willie Wade, Ald. Robert Donovan, and Ald. Robert Puente**  
**Staff Assistant, Tobie Black, 286-2231**  
**Fax: 286-3456, [tblack@milwaukee.gov](mailto:tblack@milwaukee.gov)**  
**Legislative Liaison, Aaron Cadle, 286-8666,**  
**[acadle@milwaukee.gov](mailto:acadle@milwaukee.gov)**

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Wednesday, December 8, 2010

9:00 AM

Room 301-B, City Hall

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**Amended 11/6/10 - Item numbered #15 (File 100956) has been added.**

1. [100959](#) Resolution relative to approving the levying of assessments and construction of assessable public improvement projects at various locations and appropriating funds for these purposes.  
**Sponsors:** THE CHAIR
  
2. [100958](#) Resolution determining it necessary to make various assessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$1,085,000 for a total estimated cost of these projects being \$1,225,000.  
**Sponsors:** THE CHAIR
  
3. [100960](#) Resolution determining it necessary to make various nonassessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$235,000 for a total estimated cost of these projects being \$26,965,000.  
**Sponsors:** THE CHAIR
  
4. [100961](#) Resolution approving construction of nonassessable public improvements at various locations and appropriating funds for these purposes with the City construction cost estimated to be \$6,166,511.83 for a total estimated cost of these projects being \$9,164,000.  
**Sponsors:** THE CHAIR
  
5. [100989](#) Resolution to remove obstructions and to remove or reconstruct encroachments, projections, and special privileges from streets and alleys on the 2011 paving program.  
**Sponsors:** THE CHAIR
  
6. [101027](#) Appointment of the call center director by the Mayor.  
**Sponsors:** THE CHAIR

7. [100994](#) Substitute Resolution authorizing the City of Milwaukee to file applications with the Federal Transit Administration for Federal transportation assistance administered by the Federal Transit Administration  
**Sponsors:** THE CHAIR
8. [100953](#) Substitute resolution approving a license agreement between the City of Milwaukee and Access Fiber Group for occupancy of a portion of the City's communications conduit system.  
**Sponsors:** THE CHAIR
9. [100957](#) An ordinance relating to solid waste and recycling regulations.  
**Sponsors:** THE CHAIR
10. [100952](#) Resolution authorizing the issuance of a street occupancy permit to J.H. Findorff and Son as construction manager for The Moderne new construction project at 1141 North Old World Third Street allowing occupancy for 20 feet of the entire alleyway starting at West Juneau Avenue to a point 120 feet south.  
**Sponsors:** THE CHAIR
11. [100997](#) Resolution authorizing the issuance of a street occupancy permit to Dawes Rigging and Crane for work on the Milwaukee Area Technical College at 700 West State Street allowing for the occupancy of the south bound parking lane and traffic lane on North 6th Street for a total of 26 feet in addition of the 12 foot sidewalk area.  
**Sponsors:** THE CHAIR
12. [100909](#) Resolution authorizing the installation of a new traffic control signal at the intersection of West Bolivar Avenue and South 20th Street in the 13th Aldermanic District.  
**Sponsors:** THE CHAIR
13. [100966](#) Resolution relative to the 2011 Capital Improvements Program to provide funds for traffic signs and signal work at various locations.  
**Sponsors:** THE CHAIR
14. [100968](#) Resolution relative to the 2011 Capital Improvements Program to provide funds for street lighting work at various locations.  
**Sponsors:** THE CHAIR
15. [100956](#) Resolution approving construction and appropriating funds for the rehabilitation of the Wisconsin Ave. Lift Bridge and the replacement of the Juneau Ave. Bascule Bridge, both spanning over the Milwaukee River, with \$21,500,000 in grant funding from the American Recovery and Reinvestment Act supplemental Transportation Investment Generating Economic Recovery program and \$1,320,000 in State/Federal Local Bridge Program funding, with the City construction cost estimated to be \$4,680,000 for a total estimated construction cost of these projects being \$27,500,000.  
**Sponsors:** THE CHAIR  
  
*This item will include discussion of measures that will be taken to ensure transparency and accountability relating to the expenditure of American Recovery and Reinvestment*

*Act funds received as a result of adoption of this file.*

16. [100980](#) Resolution directing the Commissioner of Public Works and Comptroller to execute a Revised Project Agreement titled "State/Municipal Agreement for a Highway Improvement Project" between the City of Milwaukee and Wisconsin Department of Transportation for programming of the project known as Downtown to Bayview Bikeway and to fund the additional preliminary engineering with a total estimated cost of \$161,200 of which the estimated City share is \$32,240 and the estimated grantor share is \$128,960.  
**Sponsors:** THE CHAIR
17. [100981](#) Resolution authorizing the Commissioner of Public Works to execute a Cost Sharing Agreement with Milwaukee County for the planned improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue.  
**Sponsors:** THE CHAIR
18. [100983](#) Resolution authorizing the Commissioner of Public Works to execute a cost sharing agreement with the City of West Allis for the planned improvement of South 76th Street from West Pierce Street to West Greenfield Avenue, with an estimate City cost of \$5,000 for preliminary engineering and plan review.  
**Sponsors:** THE CHAIR
19. [100982](#) Resolution authorizing the City Comptroller to transfer funds to various State and Federal Aid project subaccounts for the estimated remaining Wisconsin Department of Transportation and City of Milwaukee preliminary engineering \$15,000 City share.  
**Sponsors:** THE CHAIR
20. [070481](#) Substitute resolution amending a special privilege for change of ownership to Old World Development, LLC for encroachment into the public right-of-way of a wooden fence dumpster enclosure for the premises at 1103 North Old World 3rd Street, in the 4th Aldermanic District.  
**Sponsors:** THE CHAIR
21. [100391](#) Substitute resolution granting a special privilege to Johnston Center Re-Use LLC to construct and maintain a raised planter in the public right-of-way for the premises at 1220 West Windlake Avenue, also known as 2150 South 13th Street, in the 12th Aldermanic District.  
**Sponsors:** THE CHAIR
22. [091348](#) Resolution to grant a special privilege to Johnston Center Re-Use LLC to construct and maintain five vertical sunshades for the premises at 2150 S. 13th Street, in the 12th Aldermanic District.  
**Sponsors:** THE CHAIR

*--May be placed on file as no longer needed.*

**This meeting will be webcast live at [www.milwaukee.gov/channel25](http://www.milwaukee.gov/channel25).**

Members of the Common Council and its standing committees who are not members of this committee may attend this meeting to participate or to gather information. Notice is given that this meeting may constitute a meeting of the Common Council or any of its standing committees, although they will not take any formal action at this meeting.

Upon reasonable notice, efforts will be made to accommodate the needs of persons with disabilities through sign language interpreters or auxiliary aids. For additional information or to request this service, contact the Council Services Division ADA Coordinator at 286-2998, (FAX)286-3456, (TDD)286-2025 or by writing to the Coordinator at Room 205, City Hall, 200 E. Wells Street, Milwaukee, WI 53202.

Limited parking for persons attending meetings in City Hall is available at reduced rates (5 hour limit) at the Milwaukee Center on the southwest corner of East Kilbourn and North Water Street. Parking tickets must be validated in Room 205, (City Clerk's Office) or the first floor Information Booth in City Hall.

Persons engaged in lobbying as defined in s. 305-43-4 of the Milwaukee Code of Ordinances are required to register with the City Clerk's Office License Division. Registered lobbyists appearing before a Common Council committee are required to identify themselves as such. More information is available at [www.milwaukee.gov/lobby](http://www.milwaukee.gov/lobby).



## Legislation Details (With Text)

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**File #:** 100959      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution relative to approving the levying of assessments and construction of assessable public improvement projects at various locations and appropriating funds for these purposes.

**Sponsors:** THE CHAIR

**Indexes:** PUBLIC IMPROVEMENTS

**Attachments:** Cover Letter, Official Notice Number 40, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100959

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution relative to approving the levying of assessments and construction of assessable public improvement projects at various locations and appropriating funds for these purposes.

**Requestor**

INFRASTRUCTURE SERVICES DEPARTMENT

**Drafter**

MLD:dr

Report 5

11/17/2010

November 17, 2010

File Number

To the Honorable, the Common Council

Dear Council Members:

The Common Council has adopted preliminary resolutions which determined it necessary and in the public interest to make various public improvements and to make special assessments therefore.

The Commissioner of Public Works is filing this report consisting of a list of projects. This report is subject to amendment at the next Public Works Committee Hearing. The plans and specifications of said improvements are on file in the City Engineer's Office.

I am herewith submitting a report regarding the above matter and recommend adoption of the amended resolution approving same.

Very truly yours,

Jeffrey S. Polenske, P.E.  
City Engineer

MLD:dr  
Afr 5  
Report Appended

**OFFICIAL NOTICE NUMBER 40  
PUBLIC HEARING ON PROPOSED IMPROVEMENTS  
AND SPECIAL ASSESSMENTS**

There will be a public hearing held by the Public Works Committee of the Common Council of the City of Milwaukee concerning the following improvements and special assessments. The Commissioner of Public Works has determined these improvements are necessary and in the public interest.

The hearing will be held at the date and time shown below:

<p><b>WEDNESDAY</b></p> <p><b>DECEMBER 8, 2010</b></p> <p><b>ROOM 301-B – CITY HALL</b></p> <p><b>9:00 A.M.</b></p>
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**5th Aldermanic District**

**W. Concordia Ave. – N. 96th St. to N. Argonne Dr. (Portions in the City of Wauwatosa) (ST211050142):**

Asphalt pavement resurfacing, replace curb and gutter, sidewalk and driveway approaches where necessary, sodding (7.0-foot width of tree border area), and grading.

**11th Aldermanic District**

**W. Eden Pl. – S. 77th St. to S. 79th St. (ST211100105):**

Asphalt pavement resurfacing, replace curb and gutter, sidewalk and driveway approaches where necessary, sodding (8.0-foot width of tree border area), and grading.

**S. 77th St. – W. Warnimont Ave. to W. Eden Pl. (ST211100103):**

Asphalt pavement resurfacing, replace curb and gutter, sidewalk and driveway approaches where necessary, sodding (8.0-foot width of tree border area), and grading.

**13th Aldermanic District**

**E. College Ave. – A point west of S. Pennsylvania Ave. to S. Howell Ave. (Portions in the City of Oak Creek) (ST32092401):**

Concrete pavement reconstruction, replace curb and gutter and sidewalk and driveway approaches where necessary, sodding (6.0-foot width of new tree border area), grading, and install new concrete sidewalk as necessary.

You may examine a copy of the report recommending these projects in Room 908, 841 North Broadway, Milwaukee, Wisconsin during the hours of 8:30 A.M. and 4:30 P.M., Monday through Friday, except November 25th and 26th, 2010.

This notice is published by authority of the Common Council of the City of Milwaukee in accordance with Section 66.0703 and any other pertinent sections of the Wisconsin Statutes and in the manner directed by Section 115-42 of the Milwaukee Code of Ordinances.

Office of the City Clerk, Milwaukee

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Ronald D. Leonhardt, City Clerk

November 16, 2010





## Legislation Details (With Text)

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**File #:** 100958      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution determining it necessary to make various assessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$1,085,000 for a total estimated cost of these projects being \$1,225,000.

**Sponsors:** THE CHAIR

**Indexes:** ALLEY IMPROVEMENTS, PUBLIC IMPROVEMENTS, STREET IMPROVEMENTS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100958

**Version**

ORIGINAL

**Sponsor**

THE CHAIR

**Title**

Resolution determining it necessary to make various assessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$1,085,000 for a total estimated cost of these projects being \$1,225,000.

**Analysis**

This resolution authorizes engineering studies and directs the Commissioner of Public Works to determine any benefits or damages which would result if the projects were to be constructed. After the Commissioner files his report, a Public Hearing will be held on those projects determined assessable. A resolution will be submitted after the Public Hearing authorizing construction. The City cost for engineering these projects is estimated to be \$1,085,000 with the total cost estimated to be \$1,225,000.

**Body**

Resolved, By the Common Council of the City of Milwaukee that it is necessary and in the public interest to do the following described work according to City specifications, and that such public improvements and resulting special assessments be made pursuant to Section 66.0703 and any other pertinent sections of the Wisconsin Statutes and in the manner directed by Section 115-42 of the Milwaukee Code of Ordinances:

5th Aldermanic District

W. Keefe Ave. - N. 80th St. to N. 83rd St. (ST211120160): Paving the roadway with asphalt. Laying a concrete curb and gutter. Laying concrete sidewalk. Doing all the necessary grading pertaining to said work. (Nonassessable Reconstruction Paving Fund -- \$10,000). The total estimated cost for this project including the requested amount is \$150,000. This project is anticipated to be completed during the 2012-2013 construction season.

Various Aldermanic Districts

Administration cost for alley paving engineering (ST212110001): (Nonassessable Alley Paving Fund 2011 Budgeted Funds -- \$150,000). The total estimated cost for this project is \$150,000. This project is anticipated to be completed during the 2011 construction season.

Administration cost for sidewalk paving engineering (ST230110001): (Nonassessable 2011 Budgeted Funds -- \$80,000). The total estimated cost for this project is \$80,000. This project is anticipated to be completed during the 2011 construction season.

Administration cost for 2012 sidewalk paving engineering (ST230120139): (Nonassessable 2011 Budgeted Funds -- \$20,000). The total estimated cost for this project is \$20,000. This project is anticipated to be completed during the 2011 construction season.

Administration cost for street paving engineering (ST211110001): (Nonassessable Reconstruction Paving Fund -- \$800,000). The total estimated cost for this project is \$800,000. This project is anticipated to be completed during the 2011 construction season.

Administration cost for new street paving engineering (ST210110001): (Nonassessable New Paving Fund - 2011 Budgeted Funds -- \$25,000). The total estimated cost for this project is \$25,000. This project is anticipated to be completed during the 2011 construction season.

; and, be it

Further Resolved, That the abutting and adjacent properties be assessed a portion of the cost, said assessment to be recommended by the Commissioner of Public Works in his report; and, be it

Further Resolved, That all assessments and payments be made in accordance with Section 115-42 of the Milwaukee Code of Ordinances; and, be it

Further Resolved, That all City departments are authorized to do engineering, surveying, preparing of plans, and estimates of cost thereof, to be utilized in the preparation of said report of the Commissioner of Public Works; and, be it

Further Resolved, That the Department of Public Works is authorized to use the funding as specified in the above description of work; and, be it

Further Resolved, That Projects: W. Keefe Ave. (ST211120160), Alley Paving Engineering (ST212110001), Sidewalk Paving Engineering (ST230110001), 2012 Sidewalk Paving Engineering, (ST230120139), Street Paving Engineering (ST211110001), and New Street Paving Engineering (ST210110001) are to be allocated in the 2011 budget; and, be it

Further Resolved, That if surplus funds become available, some or all of the 2011 budget projects may be funded with 2010 funds; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer such funds which are available for this purpose to the appropriate capital Project/Grant accounts.

**Requestor**

Infrastructure Services Division

**Drafter**

MLD:dr

Apr 5

11/17/2010





## Legislation Details (With Text)

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**File #:** 100960      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution determining it necessary to make various nonassessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$235,000 for a total estimated cost of these projects being \$26,965,000.

**Sponsors:** THE CHAIR

**Indexes:** PUBLIC IMPROVEMENTS, SANITARY SEWERS, SEWER IMPROVEMENTS, SEWERS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100960

**Version**

ORIGINAL

**Sponsor**

THE CHAIR

**Title**

Resolution determining it necessary to make various nonassessable public improvements at various locations and appropriating funds for these purposes with the City engineering cost estimated to be \$235,000 for a total estimated cost of these projects being \$26,965,000.

**Analysis**

This resolution authorizes engineering studies on projects which by City Charter are nonassessable. After design plans and estimates of costs have been prepared, a resolution authorizing construction will be submitted to the Common Council. The City cost for engineering these projects is estimated to be \$235,000 with the total cost estimated to be \$26,965,000.

**Body**

Resolved, By the Common Council of the City of Milwaukee, that it is necessary and in the public interest to do the following described improvements according to City specifications:

1st Aldermanic District

Area bounded by W. Hampton Ave., W. Villard Ave., N. Green Bay Ave., and N. 21st St. (#4) (SM494100106): Sanitary sewer lining. (Infiltration/Inflow Reduction Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$2,930,000. This project is anticipated to be completed during the 2011 construction season.

2nd and 5th Aldermanic Districts

Area bounded by W. Capitol Dr., W. Congress St., N. 68th St., and N. 76th St. (#5) (SM494100109): Sanitary sewer lining. (Infiltration/Inflow Reduction Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$3,384,000. This project is anticipated to be completed during the 2011 construction season.

4th Aldermanic District

N. Jefferson St. - E. Buffalo St. to E. St. Paul Ave. (SM495100122): Relaying combined sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$113,000. This project is anticipated to be completed during the 2011 construction season.

5th Aldermanic District

Area bounded by W. Center St., W. Burleigh St., N. 82nd St., and N. 92nd St. (#3) (SM494100107): Sanitary sewer lining. (Infiltration/Inflow Reduction Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$4,300,000. This project is anticipated to be completed during the 2011 construction season.

6th Aldermanic District

W. Keefe Ave. - N. 18th St. to N. 19th St. (SM495100149): Combined sewer lining. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$2,000,000. This project is anticipated to be completed during the 2011 construction season.

N. 6th St. - W. Capitol Dr. to W. Fiebrantz Ave. (SM495100151): Relaying sanitary sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$200,000. This project is anticipated to be completed during the 2011 construction season.

#### 7th Aldermanic District

Area bounded by W. Capitol Dr., W. Concordia Ave., N. 35th St., and W. Fond du Lac Ave. (#6) (SM494100108): Sanitary sewer lining. (Infiltration/Inflow Reduction Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$5,384,000. This project is anticipated to be completed during the 2011 construction season.

N. Sherman Blvd. - W. Fiebrantz Ave. to W. Capitol Dr. (SM495100150): Relaying sanitary sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$300,000. This project is anticipated to be completed during the 2011 construction season.

#### 9th Aldermanic District

(N/S) Sewer Easement between N. Delta Pl., N. Edgeworth Dr., N. Port Ave., and W. Bradley Rd. (SM495100117): New storm sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$1,400,000. This project is anticipated to be completed during the 2011 construction season.

#### 10th Aldermanic District

W. Fairview Ave. - N./S. 63rd St. to N./S. 68th St. (SM495100148): Relaying sanitary sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$600,000. This project is anticipated to be completed during the 2011 construction season.

#### 11th Aldermanic District

Area bounded by Greenfield City Limits and W. Morgan Ave., S. 34th St., and S. 31st St. (SM495100211): Sanitary sewer lining. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$126,000. This project is anticipated to be completed during the 2011 construction season.

#### 12th Aldermanic District

S. 4th St. - W. Orchard St. to W. Lapham Blvd. (SM495100216): Relaying combined sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$115,000. This project is anticipated to be completed during the 2011 construction season.

S. 13th St. - W. Hayes Ave. to W. Harrison Ave. (SM495100089): Separation relay. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$2,000,000. This project is anticipated to be completed during the 2011 construction season.

S. 15th Pl. - W. Lincoln Ave. to W. Windlake Ave. (SM495100102): Relaying combined sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$113,000. This project is anticipated to be completed during the 2011 construction season.

#### 13th Aldermanic District

Area bounded by W. Layton Ave., W. Edgerton Ave., S. 20th St., and S. 27th St. (#18) (SM494100110): Sanitary sewer lining. (Infiltration/Inflow Reduction Fund -- \$15,000). The total estimated cost for this project including the requested amount is \$3,800,000. This project is anticipated to be completed during the 2011 construction season.

#### 15th Aldermanic District

N. 26th St. at W. Lisbon Ave. (SM495100005): Relaying combined sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$10,000). The total estimated cost for this project including the requested amount is \$200,000. This project is anticipated to be completed during the 2011 construction season.

#### Various Aldermanic Districts

Asphalt resurfacing of various streets by contract (ST211110168): This project is anticipated to be completed during the 2011 construction season.

Sealcoating of various streets by contract (ST211110169): This project is anticipated to be completed during the 2011 construction season.

Crackfilling of various streets by contract (ST211110170): This project is anticipated to be completed during the 2011 construction season.

;and, be it

Further Resolved, That all City Departments are authorized to perform engineering, surveys, plan preparation, and determine an estimated cost thereof; and, be it

Further Resolved, That the Department of Public Works is authorized to use the funding as specified in the above description of work; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer such funds which are available for this purpose to the appropriate capital Project/Grant accounts.

#### **Requestor**

Infrastructure Services Division

**Drafter**  
MLD:dr  
Npr 5  
11/17/2010

**PW FILE NUMBER: 100960**

NAME	ADDRESS	DATE SENT		
Mary Dziewiontkoski	Dept. Public Works – Infra.	12/1/10		
Clark Wantoch	DPW-Infra.	x		
Ald. Hamilton	CC	x		
Ald. Davis	CC	x		
Ald. Bohl	CC	x		
Ald. Coggs	CC	x		
Ald. Wade	CC	x		
Ald. Puente	CC	x		
Ald. Murphy	CC	x		
Ald. Witkowiak	CC	x		
Ald. Witkowski	CC	x		
Ald. Hines	CC	x		
Alex Runner	CC-CC	x		
Ald. Bauman	CC	x		



## Legislation Details (With Text)

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**File #:** 100961      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution approving construction of nonassessable public improvements at various locations and appropriating funds for these purposes with the City construction cost estimated to be \$6,166,511.83 for a total estimated cost of these projects being \$9,164,000.

**Sponsors:** THE CHAIR

**Indexes:** PUBLIC IMPROVEMENTS, STREET IMPROVEMENTS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
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12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100961

**Version**

ORIGINAL

**Reference**

090194

**Sponsor**

THE CHAIR

**Title**

Resolution approving construction of nonassessable public improvements at various locations and appropriating funds for these purposes with the City construction cost estimated to be \$6,166,511.83 for a total estimated cost of these projects being \$9,164,000.

**Analysis**

This resolution directs the installation and construction of certain public improvements which have been determined to be nonassessable by the Commissioner of Public Works. The City cost of the projects approved by this resolution is estimated to be \$6,166,511.83. The total estimated cost of these projects is \$9,164,000.

**Body**

Whereas, The Common Council of the City of Milwaukee adopted preliminary resolutions determining it necessary and in the public interest to construct nonassessable improvements; and

Whereas, Plans, specifications and cost estimates have been prepared for the following described improvements:

**1st Aldermanic District**

W. Villard Ave. - N. 32nd St. to a point west of N. 32nd St. (ST211090149) File Number 090194: Paving the roadway with asphalt. Laying a concrete curb and gutter. Laying concrete sidewalk. Doing all the necessary grading pertaining to said work. (Nonassessable Reconstruction Paving Fund -- \$5,000, Additional Funds). The total estimated cost for this project including the requested amount is \$20,000. This project is anticipated to be completed during the 2010 construction season.

**3rd Aldermanic District**

E. North Ave. Sink Hole (SM495100160) File Number 100724: (Nonassessable Sewer Maintenance Relay Fund -- \$500,000, Additional Funds). The total estimated cost for this project including the requested amount is \$2,700,000. This project is anticipated to be completed during the 2010 construction season.

**4th Aldermanic District**

N. Plankinton Ave. - 180 feet m/l south of W. Wells St. to W. Wells St. (SM495090049) File Number 081678: Relaying combined sewer. (Nonassessable Sewer Maintenance Relay Fund -- \$217,000). The total estimated cost for this project including the requested amount is \$237,000. This project is anticipated to be completed during the 2011 construction season.

**5th Aldermanic District**

N. 87th St. - W. Auer Ave. to W. Concordia Ave. (WT410100022) File Number 091344: Relaying

water main. (Nonassessable Water Fund Budget Line 5010 -- \$4,000; Nonassessable Water Fund Budget Line 6410 -- \$151,000). The total estimated cost for this project including the requested amount is \$175,000. This project is anticipated to be completed during the 2011 construction season.

#### 6th Aldermanic District

N. Fratney St. (Elimination of Railroad Crossing) - A point north of E. Nash St. (ST211100159) File Number 100311: Concrete pavement reconstruction, replace curb and gutter and sidewalk and driveway approaches where necessary, sodding (no tree border), and grading. (Nonassessable Reconstruction Paving Fund -- \$35,000). The total estimated cost for this project including the requested amount is \$45,000. This project is anticipated to be completed during the 2011 construction season.

#### 7th and 15th Aldermanic Districts

W. Fond du Lac Ave. (STH 145) Streetscape - N. 19th St. to N. 36th St. (ST32002501) (ST04084701) (1360-02-78) File No.(s) 001171 and 091408. Streetscape enhancements. (Grantor Non-reimbursable Paving Fund -- \$368,356.06; Grantor Reimbursable Paving Fund -- \$55,253.40; Department of City Development Non-assessable Paving Funds -- \$105,902.37).

These funds are to be transferred to the construction account (ST04084702) (1360-02-78)

Previously authorized for streetscape construction - \$470,488.17

Current estimated cost of the total project including this resolution - \$1,000,000

Original estimated cost of the total project (File No. 0011710) - \$1,000,000

This project is anticipated to be completed during the 2011 construction season.

#### 11th Aldermanic District

W. Beloit Rd. - W. Oklahoma Ave. to S. 92nd St. (WT410100007) File Number 081588: Water main extension. (Nonassessable Water Fund Budget Line 5010 -- \$12,000; Nonassessable Water Fund Budget Line 6410 -- \$408,000). The total estimated cost for this project including the requested amount is \$460,000. This project is anticipated to be completed during the 2011 construction season.

Median closing on W. Howard Ave. located west of S. 27th St. (ST211100150) File Number 091547: Median revision. (Nonassessable Reconstruction Paving Fund -- \$17,000). The total estimated cost for this project including the requested amount is \$25,000. This project is anticipated to be completed during the 2011 construction season.

W. Howard Ave. - 460 feet east of S. 50th St. to 20 feet east of S. 51st St. (WT410101052) File Number 100598: Relaying water main. (Nonassessable Water Fund Budget Line 5010 -- \$7,000; Nonassessable Water Fund Budget Line 6410 -- \$148,000). The total estimated cost for this project including the requested amount is \$170,000. This project is anticipated to be completed during the 2011 construction season.

W. Oklahoma Ave. - S. 74th St. to W. Beloit Rd. (WT410100006) File Number 081489: Water main extension. (Nonassessable Water Fund Budget Line 5010 -- \$115,000; Nonassessable Water Fund Budget Line 6410 -- \$1,885,000). The total estimated cost for this project including the requested amount is \$2,050,000. This project is anticipated to be completed during the 2010 construction season.

S. 57th St. - W. Howard Ave. to W. Norwich St. (WT410101053) File Number 100598: Relaying water main. (Nonassessable Water Fund Budget Line 5010 -- \$6,000; Nonassessable Water Fund Budget Line 6410 -- \$134,000). The total estimated cost for this project including the requested amount is \$155,000. This project is anticipated to be completed during the 2011 construction season.

S. 60th St. - W. Howard Ave. to W. Waterford Ave. (WT410101054) File Number 100598: Relaying water main. (Nonassessable Water Fund Budget Line 5010 -- \$15,000; Nonassessable Water Fund Budget Line 6410 -- \$285,000). The total estimated cost for this project including the requested amount is \$320,000. This project is anticipated to be completed during the 2011 construction season.

#### 14th Aldermanic District

E. Potter Ave. - S. Kinnickinnic Ave. to S. Logan Ave. (SM495100077) File Number 100312: Combined sewer lining. (Nonassessable Sewer Maintenance Relay Fund -- \$293,000, Additional Funds). The total estimated cost for this project including the requested amount is \$407,000. This project is anticipated to be completed during the 2011 construction season.

#### Various Aldermanic Districts

Asphalt resurfacing of various streets by contract (ST211110168) File Number : (Nonassessable Reconstruction Paving Fund -- \$800,000). The total estimated cost for this project is \$800,000. This project is anticipated to be completed during the 2011 construction season.

Sealcoating of various streets by contract (ST211110169) File Number : (Nonassessable Reconstruction Paving Fund -- \$300,000). The total estimated cost for this project is \$300,000. This project is anticipated to be completed during the 2011 construction season.

Crackfilling of various streets by contract (ST211110170) File Number : (Nonassessable Reconstruction Paving Fund -- \$300,000). The total estimated cost for this project is \$300,000. This project is anticipated to be completed during the 2011 construction season.

now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the Commissioner of Public Works is authorized and directed to proceed with said work; and, be it

Further Resolved, That the City Engineer and the Commissioner of Public Works are hereby authorized to negotiate and enter into an agreement with the State of Wisconsin, Department of Transportation for the City to undertake construction management duties on the following project: W. Fond du Lac Ave. (ST32002501); and, be it

Further Resolved, That the City Engineer is authorized and directed to approve and make periodic payments to the State of Wisconsin, Department of Transportation after receipt of invoices from said State for the City's share of the costs for said project: W. Fond du Lac Ave. (ST32002501); and, be it

Further Resolved, That upon the completion of project W. Fond du Lac Ave. (ST32002501) and a determination of the actual cost(s), it is understood that if the City of Milwaukee's share is less than the amount previously paid, the difference will be refunded to said City; and be it

Further Resolved, That the Department of Public Works is authorized to use the funding as specified in the above description of work; and, be it

Further Resolved, That Projects: W. Villard Ave. (ST211090149), N. Fratney St. (ST211100159), W. Howard Ave. (ST211100150), Asphalt resurfacing (ST211110168), Sealcoating (ST211110169), and Crackfilling (ST211110170) are to be allocated in the 2011 budget; and, be it

Further Resolved, That if surplus funds become available, some or all of the 2011 budget projects may be funded with 2010 funds; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer such funds which are available for this purpose to the appropriate capital Project/Grant accounts.

**Requestor**

Infrastructure Services Division

**Drafter**

MLD:dr

Nfr 5

11/17/2010





## Legislation Details (With Text)

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**File #:** 100989      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution to remove obstructions and to remove or reconstruct encroachments, projections, and special privileges from streets and alleys on the 2011 paving program.

**Sponsors:** THE CHAIR

**Indexes:** SPECIAL PRIVILEGE PERMITS, STREET IMPROVEMENTS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number  
100989  
Version  
ORIGINAL  
Reference

Sponsor  
THE CHAIR  
Title

Resolution to remove obstructions and to remove or reconstruct encroachments, projections, and special privileges from streets and alleys on the 2011 paving program.

Analysis

This resolution authorizes the removal of obstructions and the removal or the reconstruction of encroachments, projections, and special privileges from streets and alleys on the 2011 paving program.

Body

Resolved, By the Common Council of the City of Milwaukee, that under Section 66.0425 of the Wisconsin Statutes, Section 7.05 of the Milwaukee City Charter and Section 245-3 of the Milwaukee Building Code and amendments thereto, all special privileges and permits for projections and encroachments on streets and alleys on which the Common Council approves for improvement during 2011 whether granted as provided by law or otherwise exercised, are hereby cancelled to the extent necessary to accomplish the construction or reconstruction, of said streets and alleys, and the Commissioner of Public Works is hereby authorized and directed to notify the owners of the premises abutting such obstructions, special privileges, encroachments, and projections, to alter, as may be necessary, or to remove the same within thirty (30) days; and, be it

Further Resolved, That upon failure of the owner or owners to alter or remove said obstructions, special privileges, encroachments, and projections on the streets and alleys above-mentioned within said thirty (30) day period, the Commissioner of Public Works is hereby authorized and directed to remove and fill in the same, either by contract or by City forces, and assess the cost thereof against the owner or owners of the abutting property.

Requestor

Department of Public works

Drafter

Infrastructure Services Division

MLD: ns

November 16, 2010





## Legislation Details (With Text)

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**File #:** 101027      **Version:** 0

**Type:** Appointment      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Appointment of the call center director by the Mayor.

**Sponsors:** THE CHAIR

**Indexes:** APPOINTMENTS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

101027

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Appointment of the call center director by the Mayor.

**Requestor**

**Drafter**

CC-CC

jro

11/23/10





## Legislation Details (With Text)

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**File #:** 100994      **Version:** 1

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Substitute Resolution authorizing the City of Milwaukee to file applications with the Federal Transit Administration for Federal transportation assistance administered by the Federal Transit Administration

**Sponsors:** THE CHAIR

**Indexes:** BUS SERVICE, FEDERAL GRANTS

**Attachments:** DOT Federal Transit Administration Master Agreement, Federal Fiscal Year 2010 Certifications and Assurances, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

## Number

100994

## Version

SUBSTITUTE 1

## Reference

## Sponsor

THE CHAIR

## Title

Substitute Resolution authorizing the City of Milwaukee to file applications with the Federal Transit Administration for Federal transportation assistance administered by the Federal Transit Administration

## Analysis

The Federal Transit Administration (FTA) makes financial assistance available for public transit projects and the City of Milwaukee, acting through its Department of Public Works, may make future grant applications for eligible transit projects. As a condition to receiving future federal financial assistance from FTA, the Department of Public Works must achieve certified grantee status by agreeing to comply with various Certifications and Assurances in implementing and managing any project funded by FTA.

This resolution approves the submission of the application for such certified grantee status that the Federal Transit Administration (FTA) requires before awarding a federal assistance grant agreement and approves the form of annual certification and assurances and other documents the FTA requires before awarding a federal assistance grant agreement.

The FTA requires that applicants agree to the Annual Certifications and Assurances to be provided by the applicant's attorney, as well as the terms of a Master Agreement to be entered into between the applicant and the FTA. This resolution approves the terms of those required documents.

Funding applications for any specific projects which may be submitted after obtaining FTA grantee status will be subject to prior approval by the Common Council of the specific project and the project budget.

## Body

Whereas, The City of Milwaukee is a municipal corporation duly existing under the laws of the State of Wisconsin; and

Whereas, the Federal Transportation Administration has been delegated authority to award Federal Financial Assistance for a transportation project; and

Whereas, the City of Milwaukee wishes to apply to the Federal Transit Administration for status as a certified grantee, which status is required in order for the City to be eligible to later apply for financial assistance from the Federal Transit Administration; and

Whereas, the grant or cooperative agreement for Federal Financial Assistance will impose certain obligations upon the City; and

Whereas, upon award of FTA grant funds for the Project, the City will be required to enter into a Master Agreement and provide Annual Certifications and Assurances from its legal counsel, each in the form attached to this file; and

Whereas, the City of Milwaukee has or will provide all annual certifications and assurance to the Federal Transit Administration required with respect to such grant funds; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, That:

1. The City Engineer, or his designee, on behalf of the City of Milwaukee, acting through its Department of Public Works is authorized to execute and file such documents as necessary for the application and award of Federal assistance on behalf of the City of Milwaukee with the Federal Transit Administration.
2. The City Attorney, or his designee, is authorized to execute and file with the application the annual certification and assurances and other documents the Federal Transit Administration requires before awarding a Federal assistance grant agreement.
3. The Commissioner of Public Works, or his designee, on behalf of the City of Milwaukee, acting through its Department of Public Works, is authorized to execute a grant agreement, and other related financial information that may be required for Federal assistance on behalf of the City of Milwaukee with the Federal Transit Administration.
4. Any application for Federal assistance funding for a specific transportation project is subject to prior approval by this Common Council of the project and the project budget

**Drafter**

EHT:et  
12/01/10

1047-2010-2418:163974

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**MASTER AGREEMENT**

**For Federal Transit Administration Agreements authorized by  
49 U.S.C. chapter 53, Title 23, United States Code (Highways),  
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,  
as amended by the SAFETEA-LU Technical Corrections Act, 2008,  
the Transportation Equity Act for the 21<sup>st</sup> Century, as amended,  
the National Capital Transportation Act of 1969, as amended,  
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,  
February 17, 2009, or other Federal laws that FTA administers.**

**FTA MA(16)  
October 1, 2009**

<http://www.fta.dot.gov/documents/16-Master.pdf>

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**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**MASTER AGREEMENT**

This is the official Federal Transit Administration Master Agreement that contains the standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53; Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008; the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended; the National Capital Transportation Act of 1969; the D.C. Official Code, §§ 9-1111.01 *et seq.*; the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”), or other Federal legislation FTA administers to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal assistance through a Grant Agreement or Cooperative Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Recipient as a “State,” “local government,” “private non-profit” entity, or “private for-profit” entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law or regulation, or failure to follow a Federal directive applicable to the Recipient or its Project may result in penalties to the violating party.

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by Federal laws, regulations, or directives effective at a later date, or Grant Agreements, Cooperative Agreements, or Master Agreements issued at a later date.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

**Section 1. Definitions.**

a. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and accepted or approved by FTA.

b. Approval, Authorization, Concurrence, Waiver means a deliberate written statement (transmitted in typewritten hard copy or electronic format or medium) of a Federal Government official authorized to permit the Recipient to take or omit the action required by the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement, which action may not be taken or omitted without that permission. Except to the extent that FTA determines otherwise in writing, that approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force, authority, or effect.

c. Approved Project Budget means the most recent statement of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the "Scope of the Project" when that term is used for legal purposes.

d. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, as provided in 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. The latest applicable Master Agreement is incorporated by reference and made part of the Cooperative Agreement, except to the extent FTA determines otherwise in writing.

e. Federal Directive, for purposes of this Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it is a published policy, administrative practice, circular, guideline, guidance, or letter signed by the head of a Federal agency or his or her designee, that provides instructions or official advice about a Federal program, including application processing procedures, program management, or other similar matters. The term "Federal Directive" encompasses "FTA Directives," "U.S. DOT Directives," and a similar document issued by another Federal department or agency.

f. Federal Government means the United States of America and any executive department or agency thereof.

g. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

- h. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.
- i. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”
- j. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, as provided in 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. The latest applicable Master Agreement is incorporated by reference and made part of the Grant Agreement, except to the extent FTA determines otherwise in writing.
- k. Local Government includes a public transportation authority, as well as a county, municipality, city, town, township, special district, council of governments, public corporation, board, or commission established under the laws of a State (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, Indian tribal government, or any agency or instrumentality thereof.
- l. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement for the Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Project. To the extent that a Recipient is required by any provision of 49 U.S.C. chapter 53 to prepare a “Program of Projects,” for purposes of this Master Agreement, the term “Project” encompasses both “Program” and “each Project within the Program,” as the context may require. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 through 609, “Project” means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data listed in FTA’s electronic management system under “Scopes” and “Scope Level Codes” of the “Approved Project Budget” to determine what constitutes the Scope of the Project or eligible project activities.
- m. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term “public transportation” also includes “mass transportation” and “transit.”
- n. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term “Recipient” includes each “Grant Recipient” or “Grantee” that receives Federal assistance directly from FTA through a Grant and each Recipient that receives Federal

assistance directly from FTA through a Cooperative Agreement. Even if a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except to the extent that FTA has determined otherwise in writing. Thus, unless FTA has determined otherwise in writing, if the Recipient is a consortium, partnership, joint venture, team, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, joint venture, team, or multi-party entity is deemed a “Recipient” for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement for its Project.

o. Subagreement means an agreement through which a Recipient awards Federal assistance derived from FTA to a subrecipient as defined below. The term “subagreement” also includes the term “subgrant,” but does not include the term “third party subcontract.”

p. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term “subrecipient” also includes the term, “subgrantee,” but does not include “third party contractor” or “third party subcontractor.”

q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a contractor or vendor, financed in whole or in part with Federal assistance awarded by FTA.

r. Third Party Subcontract means a subcontract at any tier financed in whole or in part with Federal assistance originally derived from FTA that is entered into by the third party contractor or third party subcontractor.

s. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

## **Section 2. Project Implementation.**

a. General. The Recipient agrees to carry out the Project as follows:

(1) Project Description. Because the “Project Description” in the FTA Award section of the Grant Agreement or Cooperative Agreement provides only a brief description of the Project or Projects to be funded, the Recipient agrees to perform the work as described in the “Project Description” and in its Application that is incorporated by reference in the approved Grant Agreement or Cooperative Agreement for the Project, and justifies the specific Federal assistance awarded for the Project.

(2) Effective Date. The effective date of the Grant Agreement, Cooperative Agreement, or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement, Cooperative Agreement, or Amendment thereto. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Project.

(3) Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project and provide for the use of Project property; (b) carry out the safety and security aspects of the Project and (c) comply with the terms of its Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, the Approved Project Budget, Project schedules, its annual Certifications and Assurances to FTA, and all applicable Federal laws and regulations, and follow Federal directives applicable to the Project and Recipient, except to the extent that FTA determines otherwise in writing.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, FTA and the Recipient agree that milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

b. U.S. DOT Administrative Requirements. The Recipient agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

(1) State, Local Government, or Indian Tribal Government. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Recipient that is a State, local government, or Indian tribal government.

(2) Institution of Higher Education or Nonprofit Organization. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is an institution of higher education or a nonprofit organization.

(3) Private For-Profit Organization. Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is a private for-profit organization.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

(1) Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal

laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement or Cooperative Agreement for the Project, and this Master Agreement, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(1) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(2) Significant Participation by a Lessee of a Recipient. Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the

Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(3) Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(4) Exceptions. The Recipient, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

(a) When the Designated Recipient of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grant Recipient or Grantee covering the Project, the Designated Recipient is not responsible for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

e. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws and regulations, in accordance with applicable Federal directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other participant) will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure that all Project participants comply with all applicable Federal laws and regulations, and follow applicable Federal directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor or other participant) participating in the Project through the Recipient. Thus, the Recipient agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws and regulations, and follows applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(a) Required Clauses. The Recipient agrees to use a written document (such as a subagreement, lease, third party contract, or other similar document) including all appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other participant) responsibilities under applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(b) Flowdown. The Recipient agrees to include in each document (subagreement, lease, third party contract, or other similar document) any necessary provisions requiring the Project participant (subrecipient, lessee, third party contractor, or other participant) to impose applicable Federal requirements and directives on its subrecipients, lessees, third party contractors and other participants in the Project at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

(c) Performance of Recipient's Responsibilities. When the document (subagreement, lease, third party contract, or other similar document) requires the Project participant (subrecipient, lessee, third party contractor, or other participant) to undertake responsibilities for the Project usually performed by the Recipient, the Recipient agrees also to include in that document (subagreement, lease, third party contract or other similar document) appropriate provisions that would be applicable to the Recipient as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement, and extend those provisions to the subrecipients, lessees, third party contractors, and other Project participants to the lowest tier necessary, except to the extent as FTA determines otherwise in writing.

f. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. The Recipient also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Recipient agrees to provide each notice to FTA required by this subsection to the FTA Regional Counsel for the Region in which the Recipient operates its public transportation system or implements the Project.

### **Section 3. Ethics.**

a. Code of Conduct/Standards of Conduct. The Recipient agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, third party contracts, or other arrangements supported with Federal assistance. The Recipient agrees that its code of conduct or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties identified herein has a financial interest in the entity selected for award. The Recipient may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Recipient agrees that its code of conduct or standards of conduct shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Recipient agrees that its code of conduct or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations of its code or standards by its officers, employees, board members, or their agents, or the Recipient's subrecipients, lessees, third party contractors, other participants, or their agents.

(1) Personal Conflicts of Interest. The Recipient agrees that its code of conduct or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any subagreement, lease, third party contract, or other arrangement at any tier, supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the entity selected for award.

(2) Organizational Conflicts of Interest. The Recipient agrees that its code of conduct or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed subagreement, lease, third party contract, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the subrecipient, lessee, third party contractor, or other participant at any tier of the Project or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management

and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will, review the “Excluded Parties Listing System” at <http://epls.gov/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

c. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Recipient agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

e. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to the Recipient’s activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the

right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

g. Trafficking in Persons. To the extent applicable, the Recipient agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of this Master Agreement consistent with U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Recipient agrees that:

(a) Employee means either:

1. An individual who is employed by the Recipient or a subrecipient, and who is participating in the Grant Agreement or Cooperative Agreement for the Project; or

2. Another person who is participating in the Grant Agreement or Cooperative Agreement for the Project and who is not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement or Cooperative Agreement and this Master Agreement.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) Private entity:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

2. Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to Each Recipient. The Recipient agrees:

(a) To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Subsection 3.g(3)(a) of this Master Agreement below.

(b) That FTA may unilaterally terminate its Federal assistance for the Grant Agreement or Cooperative Agreement for the Project as provided in Subsection 3.g(3)(b) or (4) of this Master Agreement. FTA's right to terminate unilaterally:

1. Implements subsection 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and
2. Is in addition to all other remedies for noncompliance that are available to the Federal Government under this Master Agreement.

(c) To include the requirements of Subsection 3.g(3)(a) of this Master Agreement in any subagreement it enters into with a private entity, as defined in Subsection 3.g(1)(c) of this Master Agreement.

(3) Provisions Applicable to a Recipient that is a Private Entity. A Recipient that is a private entity as defined in Subsection 3.g(1)(c) of this Master Agreement agrees that:

(a) It, its employees, its subrecipients and its subrecipients' employees that participate in the Grant Agreement or Cooperative Agreement for the Project, may not--

1. Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect;
2. Procure a commercial sex act during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect; or
3. Use forced labor in the performance of the Grant Agreement or Cooperative Agreement or subagreements for the Project.

(b) FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if the Recipient or a subrecipient that is a private entity--

1. Is determined to have violated a prohibition in Subsection 3.g(3)(a) of this Master Agreement, or

2. Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated a prohibition in Subsection 3.g(3)(a) of this Master Agreement through conduct that is either--

a. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project; or

b. Imputed to the Recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200.

(4) Provision Applicable to a Recipient Other Than a Private Entity. FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if a subrecipient that is a private entity--

(a) Is determined to have violated an applicable prohibition in Subsection 3.g(3)(a) of this Master Agreement; or

(b) Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated an applicable prohibition in Subsection 3.g(3)(a) of this Master Agreement through conduct that is either--

1. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project, or

2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200.

#### **Section 4. Federal Assistance.**

The Recipient agrees that FTA will provide Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the “Maximum FTA Amount Awarded,” as stated on the Grant Agreement or Cooperative Agreement for the Project, or (c) the amount calculated on the basis of the “Maximum Percentage(s) of FTA Participation,” as may be modified by the Conditions of Award, Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement or Cooperative Agreement for the Project. FTA’s responsibility to make Federal assistance payments under the Grant Agreement or Cooperative Agreement for the Project is limited to the amounts listed in the Approved Project Budget for the Project. The “Estimated Total Eligible

Cost” in the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA determines the “Maximum FTA Amount Awarded” for the Project.

a. “Net Project Cost.” For any Project required by Federal law or by FTA to be financed on the basis of its “Net Project Cost” as defined at 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project cost that cannot reasonably be financed from the Recipient’s revenues, *i.e.*, “Net Project Cost” of the Project. Therefore, the amount stated as the “Estimated Total Eligible Cost” on the Grant Agreement or Cooperative Agreement for the Project is the “Estimated Net Project Cost” and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance awarded for the Project.

b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its “Net Project Cost” as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the “Estimated Total Eligible Cost” on the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance awarded for the Project.

## **Section 5. Local Share.**

A Recipient that is required to provide a local share for the Project agrees as follows:

a. Restrictions on the Source of the Local Share. The Recipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation, or if FTA determines otherwise in writing.

b. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that FTA determines otherwise in writing. The Recipient agrees to notify the Government of any change in circumstances or commitments that adversely affect its commitment to finance the project costs necessary to complete the Project. In its notification, the Recipient agrees to advise the Government of what actions it has taken or plans to take to ensure adequate local share resources and shall reaffirm its commitment to the Government as set forth in Subsection 5.a of this Master Agreement.

c. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as it incurs Project costs or Project costs become due, except to the extent that the FTA determines otherwise in writing.

d. Reduction of the Local Share. The Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government, except to the extent that FTA determines otherwise in writing.

## **Section 6. Approved Project Budget.**

Except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows: The Recipient will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part of the underlying Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that an amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws and regulations, in accordance with the most recent applicable Federal directives and FTA guidance. The Recipient agrees to obtain prior FTA approval before making transfers of funds not expressly authorized in FTA circulars or other directives. The Recipient also agrees to obtain prior written approval for any budget revision that would result in the need for additional Federal assistance. An award of additional Federal assistance will require a new Approved Project Budget. If the Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Recipient agrees to report this to FTA at the earliest possible time and ask for disposition instructions.

## **Section 7. Accounting Records.**

In compliance with applicable Federal laws and regulations, in accordance with applicable Federal directives, and except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows:

a. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project

(Project funds) in compliance with Federal laws and regulations in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing. FTA encourages the use of financial institutions owned at least fifty (50) percent by minority group members.

c. Documentation of Project Costs and Program Income. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, vouchers, or other appropriate records describing in detail the nature and propriety of the charges, including adequate records to support the costs the Recipient has incurred underlying any payment FTA has agreed to participate in based on a “payable” milestone. The Recipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

d. Checks, Orders, and Vouchers. The Recipient agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Project Account until it has received and filed a properly signed voucher or other appropriate record describing in proper detail the purpose for the expenditure.

## **Section 8. Reporting, Record Retention, and Access.**

a. Types of Reports. The Recipient agrees to submit to FTA all reports required by Federal laws and regulations, in accordance with Federal directives, the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

b. Report Formats. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic or typewritten hard copy formats, or both, as FTA may specify. Electronic submissions must comply with the Federal electronic accessibility provisions of Subsection 12.g(9) and Subsection 15.u of this Master Agreement. FTA also reserves the right to specify that records be submitted in other formats.

c. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Project as the Federal Government may require.

d. Access to Records of Recipients and Subrecipients. The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

e. Project Closeout. The Recipient agrees that Project closeout does not alter the reporting and record retention requirements of this Section 8 of the Master Agreement.

## **Section 9. Payments.**

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

a. Recipient's Request for Payment. In obtaining a payment from FTA for Project expenses, except to the extent that FTA determines otherwise in writing, the Recipient agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Recipient may defer its local share for the Project, a Recipient required under the terms of Federal law, regulation, the Grant Agreement or Cooperative Agreement to provide a local share for the Project agrees that it will not:

(a) Request or obtain Federal funds exceeding the amount justified by the local share it has provided, or

(b) Take any action that would cause the proportion of Federal assistance made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project,

(2) Submit to FTA all financial and progress reports required to date by the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, and

(3) Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA will make all payments of Federal assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Recipient has executed the Grant Agreement or Cooperative Agreement for the Project, in accordance with the following provisions:

(1) Electronic Clearing House Operation Payments. If payment is made for Project costs through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs," Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; with the ECHO System Operations Manual, "Guidelines for Disbursements;" and with the provisions of this Subsection 9.b(1) of this Master Agreement.

The Recipient also agrees that if it fails to comply with the following provisions of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

(a) The Recipient agrees to withdraw cash only when it is actually needed for immediate disbursement required for Project purposes. Except to the extent permitted otherwise or otherwise required by Federal law, regulation, or agreement with the Federal Government, the Recipient agrees to expend all Federal assistance obtained through the Grant Agreement or Cooperative Agreement for Project purposes no later than three (3) days after receiving that Federal assistance. If the Recipient fails to expend that Federal assistance within three (3) days of receipt, fails to return withdrawn but unexpended Federal assistance to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, the Recipient agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws and regulations, and follow applicable Federal directives, unless FTA determines otherwise in writing.

(c) The Recipient agrees to provide for control and accountability for all Federal assistance for the Project consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Recipient agrees that it will not withdraw Federal assistance for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient agrees to withdraw Federal assistance only for payment of eligible Project costs.

(f) The Recipient agrees that it will not withdraw Federal assistance until it is needed for disbursement for Project expenses.

(g) The Recipient agrees to notify the appropriate Regional or Program Office when a single withdrawal will exceed \$50,000,000 at least three days before the withdrawal is anticipated.

(h) The Recipient agrees to remit interest to the Federal Government on any Federal assistance it has withdrawn prematurely, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that the amount of interest due the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees to remit to the Federal Government interest as calculated in accordance with U.S. Treasury regulations, "Rules and

Procedures for Efficient Federal-State Funds Transfers,” 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees to remit to the Federal Government prejudgment common law interest, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” at 31 C.F.R. § 901.9(i). The amount of interest due may be determined by the Federal Government, and in its discretion may be in an amount equal to the amount of interest the Recipient can document that it has earned on its premature drawdowns of Federal assistance funds, or in an amount as calculated in accordance with the “Treasury tax and loan account” rate prescribed by 31 U.S.C. § 3717 for debts owed to the United States, or in an amount as otherwise determined by FTA.

(2) Requisition. If the requisition method of payment is used, the Recipient agrees as follows:

(a) Recipient Responsibilities. The Recipient agrees to complete and submit:

1. “Payment Information Form – Echo-ACH Payment System, Revised 10/92,” to FTA’s Accounting Division.

2. Standard Form 270, “Request for Advance or Reimbursement,” to the designated FTA office.

(b) FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, has satisfied FTA that the Federal assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Recipient’s apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that the Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, to be eligible for reimbursement by FTA, the Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement for the Project, except to the extent that the Federal Government determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its subrecipients, lessees, third party contractors, and other participants in the Project,

(8) Eligible for Federal participation under Federal law and regulations in accordance with applicable Federal directives, and

(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. OMB circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225, applies to Project costs incurred by a Recipient that is a State, local government, or Indian tribal government.

(b) U.S. OMB Guidance for Grants and Agreements, “Cost Principles for Educational Institutions (OMB Circular A-21),” 2 C.F.R. Part 220, applies to Project costs incurred by a Recipient that is an institution of higher education.

(c) U.S. OMB Guidance for Grants and Agreements “Cost Principles for Non-profit Organizations (OMB Circular A-122),” 2 C.F.R. Part 230, applies to Project costs incurred by a Recipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter 1, Subpart 31.2, “Contracts with Commercial Organizations” applies to Project costs incurred by a Recipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal laws or regulations, in accordance with applicable Federal directives, bond interest and other financing costs are allowable. The Recipient agrees that FTA’s participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except to the extent FTA determines otherwise in writing.

e. Excluded Costs. The Recipient understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs attributed to the Project will be treated as follows:

(1) In determining the amount of Federal assistance FTA will provide for the Project, FTA will exclude:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement, Cooperative Agreement or any Amendment thereto, unless otherwise permitted by Federal law, regulation, or directive, accompanied by FTA's approval in writing.;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and

(e) Any profit or fee sought by the Recipient for its services under the Grant Agreement or Cooperative Agreement, except to the extent the FTA determines otherwise in writing.

(f) Any cost ineligible for FTA participation as provided by applicable Federal laws or regulations, in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Recipient understands and agrees that payment made to the Recipient for any Project cost it has submitted does not constitute the Federal Government's final decision about whether that cost is eligible for payment under the Project, and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal assistance requested or paid, the Federal Government will notify the Recipient in writing, stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's responsibility to return any amounts due the Federal Government as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover Federal assistance provided for the Project based on a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal assistance as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient.

f. Program Income

(1) State, Local, or Indian Tribal Governments. In addition to uses of program income authorized under 49 C.F.R. § 18.25, FTA reserves the right, after having entered into the Grant Agreement or Cooperative Agreement for the Project, to permit a Recipient that must comply with 49 C.F.R. Part 18 to add program income to the funds FTA and the Recipient have committed to that Grant Agreement or Cooperative Agreement, and use that program income for the purposes of and under the conditions of that Grant Agreement or Cooperative Agreement.

(2) Institutions of Higher Education, Private Non-Profit Organizations, and Private For-Profit Organizations. In addition to uses of program income permitted under 49 C.F.R. § 19.24, FTA reserves the right, after having entered into the Grant Agreement or Cooperative Agreement for the Project, to permit a Recipient that must comply with 49 C.F.R. Part 19 to add the program income to the funds FTA and the Recipient have committed to that Grant Agreement or Cooperative Agreement, and use that program income to further eligible project or program objectives.

(3) Costs Associated With Program Income. Except to the extent FTA determines otherwise in writing, the costs incident to the earning program income may be deducted from the Recipient's gross income to determine program income, provided these costs have not been charged to the Grant Agreement or Cooperative Agreement.

g. Federal Claims, Excess Payments, Disallowed Costs, Including Interest.

(1) Recipient's Responsibility to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Recipient agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims or Debts Within the Purview of the Debt Collection Act. For Federal claims against the Recipient for debts of the Recipient to the Federal Government (including excess payments or disallowed costs) within the purview of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments or Disallowed Costs. For excess payments or disallowed cost payments made by the Federal Government to the Recipient for which claims procedures have

not been initiated under the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that common law interest owed the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” at 31 C.F.R. § 901.9(i), or otherwise as FTA may determine.

h. De-obligation of Federal Assistance. The Recipient agrees that the Federal Government may de-obligate unexpended Federal assistance before Project closeout.

## **Section 10. Project Completion, Audit, Settlement, and Closeout.**

a. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit of Recipients. Except to the extent the Federal Government determines otherwise in writing, the Recipient acknowledges and agrees as follows:

(1) Audit Requirements. The Recipient agrees to have financial and compliance audits performed as required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, “Audits of States, Local Governments, and Non-Profit Organizations,” the latest OMB A-133 Compliance Supplement for U.S. DOT, and any revision or supplement thereto, except to the extent FTA determines otherwise in writing. The Recipient also agrees to obtain other audits the Federal Government may require. The Recipient agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) “Government Auditing Standards.” The Recipient agrees that Project closeout will not alter the Recipient’s audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by U.S. OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” 2 C.F.R. Part 225, U.S. OMB Guidance for Grants and Agreements, “Cost Principles for Educational Institutions (OMB Circular A-21),” 2 C.F.R. Part 220, U.S. OMB Guidance for Grants and Agreements “Cost Principles for Non-profit Organizations (OMB Circular A-122), or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Owed to the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments the Federal Government made to the Recipient, any costs the Federal Government disallowed, and any amounts the Recipient recovers from third parties or other sources, as well as any penalties and any interest required by Subsection 9.f(2) of this Master Agreement.

d. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed the Project, and either forwards the final Federal assistance payment, or acknowledges

that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing requirements imposed by the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

### **Section 11. Right of the Federal Government to Terminate.**

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

### **Section 12. Civil Rights.**

The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d

*et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving

Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;
- (10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

### **Section 13. Planning and Private Enterprise.**

a. General. The Recipient agrees to implement the Project consistent with the plans developed in accordance with the following Federal planning and private enterprise provisions:

(1) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

(2) Joint FHWA/FTA regulations, “Statewide Transportation Planning; Metropolitan Transportation Planning,” 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments thereto, and

(3) FTA regulations, “Major Capital Investment Projects,” 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any amendments thereto, and the latest FTA “Guidance on New Starts/Small Starts Policies and Procedures.”

b. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning described in Subsection 13.a of this Master Agreement, to the extent feasible, the Recipient agrees to comply with 49 U.S.C. § 5323(k), which affords governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

c. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

#### **Section 14. Preference for United States Products and Services.**

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

a. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.

b. Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

c. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

#### **Section 15. Procurement.**

To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

a. Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

- b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Recipient agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.
- c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not expending or otherwise using any Federal assistance FTA has made available for the Project to support a procurement using exclusionary or discriminatory specifications.
- d. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural engineering, or related services, the contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.
- e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.
- f. Neutrality in Labor Relations. Executive Order No. 13502, "Use of Project Labor Agreements [PLA] for Federal Construction Projects," February 6, 2009, 74 Fed. Reg. 6985 *et seq.*, has rescinded Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note. As a result, the Recipient is no longer prohibited from requiring an affiliation with a labor organization, such as a project labor agreement, as a condition for award of any third party contract or subcontract at any tier for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.
- g. Federal Supply Schedules. A Recipient that is a State, local government, or nonprofit entity may not use Federal Supply Schedules to acquire federally assisted property or services, except to the extent permitted by U.S. GSA, U.S. DOT, or FTA, or otherwise permitted by other Federal laws or regulations in accordance with applicable Federal directives or determinations.
- h. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.
- i. FTA Technical Review. The Recipient agrees that FTA may review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.
- j. Project Approval/Third Party Contract Approval. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA's award of Federal assistance for the Project

does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

k. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

l. Clean Air and Clean Water. The Recipient agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Project participant will agree to:

(1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"

(2) Refrain from using any violating facilities,

(3) Report violations to FTA and the Regional U.S. EPA Office, and

(4) Comply with the inspection and other applicable requirements of:

(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

(b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

m. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

n. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a

multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.

(3) Preaward and Post Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 C.F.R. Part 663 and any amendments thereto.

(4) Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, “Bus Testing,” 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

o. Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

(2) Activities Not Involving Construction. The Recipient agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.

p. Architectural Engineering or Related Services. In accordance with 49 U.S.C. § 5325(b), the Recipient agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

(1) When procuring architectural engineering, or related services, the Recipient agrees that it and its subcontractors at any tier will:

(a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering or related services is negotiated under chapter 11 of Title 40, United States Code, or

(b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering or related services, provided the State has adopted by law such requirement before August 10, 2005.

(2) Upon awarding a contract for architectural engineering or related services, the Recipient agrees that it and its subcontractors at any tier will:

(a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

(b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

(c) Apply the firm's indirect cost rates for purposes of contract estimation, negotiation, administration, reporting, and payment, without limitation by administrative or de facto ceilings, after the firm's indirect cost rates are accepted as provided above.

(d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the Recipient agrees and assures that it and the members of any group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Master Agreement shall:

1. Notify any affected firm before requesting or using that data,
2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Recipient may use design-build procurements to implement its Projects after it has complied with all applicable requirements established by the Federal Government, whether through Federal laws or regulations in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

r. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

s. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Recipient agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement. Before awarding a third party contract, the Recipient agrees to consider:

- (1) The third party contractor's integrity,
- (2) The third party contractor's compliance with public policy,
- (3) The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
- (4) The third party contractor's financial and technical resources.

t. Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

u. Electronic and Information Technology. When using Federal assistance to procure reports or information for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to FTA, the reports or information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

## **Section 16. Leases.**

a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

## **Section 17. Patent Rights.**

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

Contracts and Cooperative Agreements,” 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

## **Section 18. Rights in Data and Copyrights.**

a. Definition. The term “subject data,” as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data,” as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government’s license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier

of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any

patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential.”

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

## **Section 19. Use of Real Property, Equipment, and Supplies.**

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the Project’s award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local government, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and follow applicable

Federal directives, except to the extent that FTA determines otherwise in writing. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and follow applicable Federal directives, except to the extent that FTA determines otherwise in writing. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in this Section 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain its Project property in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of the Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives.

(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(a) The incidental use does not interfere with the Recipient's Project or public transportation operations;

(b) The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(c) The Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(d) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of its Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other

obligation pertaining to Project property, that in any way would affect the continuing Federal interest in its Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government in writing, the Recipient agrees that it will not obligate itself to any third party with respect to its Project property in any manner that would adversely affect the continuing Federal interest in that Project property.

(3) Other Actions. The Recipient agrees that it will not take any action that would either adversely affect the Federal interest or impair its continuing control of use of its Project property.

g. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to, transfer title to any Project property financed with Federal assistance for the underlying Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and the lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property.

The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own property disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by FTA on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, or by straight line depreciation of improvements to the real property coupled with the value of the land as determined by FTA on the basis of appraisal, or by other applicable Federal law or regulations.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property withdrawn from service. In unusual circumstances, the Recipient may request that another reasonable method be used, including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient concerning Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

j. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, “Shippers - General Requirements for Shipments and Packagings,” 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient’s knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient’s Project property management responsibilities stated in Section 19 of this Master Agreement, and as may be set forth in Federal laws, regulations, and directives effective at a later date, except to the extent the Federal Government determines otherwise in writing.

## **Section 20. Insurance.**

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed on the Recipient by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

b. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

## **Section 21. Relocation.**

When relocation of individuals or businesses is required, the Recipient agrees as follows:

a. Relocation Protections. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*, and implementing U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced as a result of a Federal or federally assisted program. These requirements apply to relocation in connection with all interests in real property acquired for Project purposes irrespective of Federal participation in the costs of that real property.

b. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required to comply with Federal relocation requirements for individuals, the Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.*, and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” 42 U.S.C. § 3608 note, except to the extent the Federal Government determines otherwise in writing.

c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Recipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and implementing U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 C.F.R. Part 35.

## **Section 22. Real Property.**

For real property acquired with Federal assistance, the Recipient agrees as follows:

a. Land Acquisition. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*, and implementing U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons whose property is acquired as a result of a Federal or federally assisted program. These requirements apply to all interests in real property acquired for Project purposes irrespective of Federal participation in the cost of that real property.

b. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in title to real property used in connection with the Project.

d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

### **Section 23. Construction.**

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees as follows:

- a. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.
- b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.
- c. Construction Reports. The Recipient agrees to provide progress reports and other data and information that may be required by FTA or the State in which the construction takes place.
- d. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any amendments thereto, and follow the most recent edition of FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects," and any later revisions thereto.
- e. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

### **Section 24. Employee Protections.**

a. Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions

Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926; and

(3) Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, to the extent that it applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL’s certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; or Projects for the over-the-road bus accessibility program authorized by section 3038 of

TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are set forth in Subsections 24.d(2), (3), and (4), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for the Elderly Individuals and Individuals with Disabilities Formula Program and for the Elderly Individuals and Individuals with Disabilities Formula Program Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating in a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions, if any, are identified in the U.S. DOL’s certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification, to the extent that certification is required. Any U.S. DOL certification that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient’s project, in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(4) Employee Protective Arrangements for Projects Financed by the Over-the-Road Bus Accessibility Program. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Over-the-Road Bus Accessibility Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient’s project, in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

## **Section 25. Environmental Protections.**

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws

that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with any applicable Federal laws and regulations and follow applicable Federal directives in effect now or that become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Recipient. The Recipient understands and agrees that those laws and regulations, and associated Federal directives, might not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Recipient's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Recipient agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.*, November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); to comply with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Recipient

further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Recipient agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

(3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Recipient agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The Recipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The Recipient also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The Recipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

- f. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.
- g. Wetlands. The Recipient agrees to facilitate compliance with the protections for wetlands addressed in Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.
- h. Floodplains. The Recipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.
- i. Endangered Species and Fisheries Conservation. The Recipient agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*
- j. Historic Preservation. The Recipient agrees as follows:
- (1) The Recipient agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.
  - (2) The Recipient agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:
    - (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.
    - (b) The Recipient agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.
- k. Indian Sacred Sites. The Recipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

1. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622, among others. The Recipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303). The Recipient also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Recipient agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The Recipient agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

#### **Section 26. Energy Conservation.**

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

#### **Section 27. State Management and Monitoring Systems.**

The Recipient agrees to comply with joint FHWA/FTA regulations, “Management and Monitoring Systems,” 23 C.F.R. Part 500, and FTA regulations, “Transportation Infrastructure Management,” 49 C.F.R. Part 614, to the extent applicable.

#### **Section 28. Charter Service Operations.**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in

its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, subrecipient, lessee, third party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

### **Section 29. School Transportation Operations.**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, subrecipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

### **Section 30. Metric System.**

To the extent U.S. DOT or FTA directs, the Recipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended

by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and applicable U.S. DOT or FTA regulations, and agrees to follow applicable Federal directives. As practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

### **Section 31. Geographic Information and Related Spatial Data.**

The Recipient agrees to implement the Project in accordance with the provisions applicable to FTA of U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, so that any Project activities involving spatial data or geographic information systems activities financed directly or indirectly, in whole or in part, with Federal assistance, are or will be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Section 32. Substance Abuse.**

To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance:

- a. Drug-Free Workplace. U.S. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated. *[U.S. OMB published final Drug-Free Workplace guidance in 74 Fed. Reg. 28149 et seq. on June 15, 2009.]*
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

### **Section 33. Motor Carrier Safety**

To the extent applicable, the Recipient agrees to comply with, and assures the compliance of its subrecipients, lessees, third party contractors, and other Project participants with the following U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations:

- a. Financial Responsibility. The Recipient agrees as follows:

- (1) To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone, the Recipient agrees to comply with U.S. FMCSA regulations,

“Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. Part 387, setting forth requirements for economic registration and insurance requirements. For a Recipient of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311 with interstate transit operations, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4), which reduces the amount of insurance required of the Recipient to the highest amount required by any State in which the transit provider operates.

(2) To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone and the Recipient is not a unit of government (defined as the Federal Government, a State, any political subdivision of a State or any agency established under a compact between States), the Recipient agrees to comply with U.S. FMCSA regulations, Part 387, Subpart B, “Federal Motor Carrier Safety Regulations,” and also with 49 C.F.R. Parts 390 through 396.

b. Driver Qualifications. The Recipient agrees to comply with U.S. FMCSA’s regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. Part 383.

c. Substance Abuse Rules for Motor Carriers. To the extent applicable, the Recipient agrees to comply with U.S. FMCSA’s regulations, “Drug and Alcohol Use and Testing Requirements,” 49 C.F.R. Part 382, and implementing Federal guidance that applies to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating more than 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

#### **Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, with FTA regulations, “Rail Fixed Guideway Systems; State Safety Oversight,” 49 C.F.R. Part 659, and follow any applicable Federal directives that may be issued to implement 49 U.S.C. § 5330, and any amendment or revision thereto.

#### **Section 35. Federal “\$1 Coin” Requirements.**

To the extent required by the Federal Government, the Recipient agrees to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the Recipient’s equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with that use. The Recipient also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

#### **Section 36. Seat Belt Use.**

In accordance with the provisions of Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt

and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Project.

### **Section 37. Protection of Sensitive Security Information.**

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15; and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 1520.

### **Section 38. Special Notification Requirements for States.**

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided.

### **Section 39. Special Provisions for the Urbanized Area Formula Program.**

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the Federal laws and regulations applicable to that program in accordance with applicable FTA directives, except to the extent that FTA determines otherwise in writing:

- a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.
- b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and other applicable Federal laws and regulations in accordance with applicable Federal directives. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO “Government Auditing Standards.”
- c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or

involving Project property will not exceed one-half the rates that generally apply to other individuals at peak hours, irrespective of whether the Project property is operated by the Recipient or another entity connected with the Project, either through subagreement, lease, third party contract, or otherwise. The Recipient also agrees to give the rate required to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or Title XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et seq.*, respectively.

d. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:

(1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by Federal law, regulation, or directive issued at a later date.

(2) Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

e. Public Transportation Security. For each fiscal year, the Recipient agrees to spend at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for public transportation -security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

f. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

g. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform, to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database, and comply with implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any other reporting regulations in accordance with FTA directives.

h. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

#### **Section 40. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.**

The Recipient agrees that the following provisions apply to the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310, as amended by SAFETEA-LU, and under subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to follow applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing:

- a. Eligible Subrecipients. The Recipient agrees to provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or inappropriate; (2) a governmental authority approved by the State to coordinate services for elderly individuals and individuals with disabilities; or (3) a governmental authority that certifies to the Governor of its State that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of elderly individuals and individuals with disabilities.
- b. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Recipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer each Project in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, and applicable provisions of 49 U.S.C. § 5310. The Recipient agrees to comply with applicable Federal laws and regulations, and to follow the most recent edition of FTA Circular 9070.1, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions,” including any revisions thereto, except to the extent FTA determines otherwise in writing.
- c. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, that sets forth the subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient’s compliance with Federal requirements applicable to the Project and the Recipient’s obligations under its Grant Agreement for the Project and this Master Agreement.
- d. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:
  - (1) Capital Projects. Except as provided in Subsection 40.d(2) of this Master Agreement below, only capital projects are eligible for support with Federal assistance authorized under 49 U.S.C. § 5310. Projects may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

(2) Operating Assistance Limitation. Only if the Recipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the Federal assistance under 49 U.S.C. § 5310 apportioned to the Recipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

e. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

f. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property financed with FTA assistance, 49 U.S.C. § 5310(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

#### **Section 41. Special Provisions for the New Freedom Program.**

The Recipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with the requirements of other Federal laws and regulations that may apply to the Project. The Recipient agrees to follow the most recent edition of FTA Circular, 9045.1, “New Freedom Program Guidance and Application Instructions,” including any revisions thereto, except to the extent FTA determines otherwise in writing.

b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a New Freedom Project, that sets forth the subrecipient’s responsibilities, and include appropriate clauses imposing requirements as necessary to assure that the subrecipient will not compromise the Recipient’s compliance with the Federal requirements applicable to the Project and the Recipient’s obligations under the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement.

#### **Section 42. Special Provisions for the Nonurbanized Area Formula Program.**

The Recipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with those requirements, except to the extent FTA determines otherwise in writing:

a. Provisions Applicable to States.

(1) State Procedures. The Recipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to follow the provisions of the most recent edition of FTA Circular 9040.1, “Nonurbanized Area Formula Program Guidance and Grant Application Instructions,” including any revisions thereto, and comply with Federal laws and regulations that apply to the Projects.

(2) Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Nonurbanized Area Formula Project, that sets forth the subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient’s compliance with Federal requirements applicable to the Project and the Recipient’s obligations under its Grant Agreement for the Project and this Master Agreement.

(3) Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b). Those Projects may include purchase of service agreements with private providers of public transportation service, capital assistance, operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

(4) Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the transfer of Project property acquired with Federal assistance under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the subrecipient currently possessing the Project property consents to that transfer, and the transferred Project property will continue to be used for purposes in accordance with 49 U.S.C. § 5311.

(5) Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or his or her duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

(6) Reporting Requirements. As required by 49 U.S.C. § 5311(b)(4) and 49 U.S.C. § 5335(a), the Recipient agrees to conform to, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform to, the reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA’s national transit database, and will comply with the implementing FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 C.F.R. Part 630, and any additional regulations and directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

b. Provisions Applicable to Indian Tribes. The Recipient agrees as follows:

(1) An Indian tribe that is a subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), agrees to comply with the requirements of Subsection 42.a of this Master Agreement that are applicable to other subrecipients of the State receiving FTA assistance under 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

(2) The provisions of subsections 42(a) and 42(b)(1) of this Master Agreement do not apply to a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1).

### **Section 43. Special Provisions for the Clean Fuels Grant Program.**

The Recipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

a. General. The Recipient agrees to comply with 49 U.S.C. § 5308, and with the provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable. The Recipient also agrees to comply with FTA regulations, “Clean Fuels Grant Program,” 49 C.F.R. Part 624, and other applicable Federal regulations, and follow applicable FTA directives, except to the extent FTA determines otherwise in writing.

b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient of Clean Fuels Grant financial assistance, which agreement sets forth the subrecipient’s responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient’s compliance with Federal requirements applicable to the Project, the Recipient’s obligations under the Grant Agreement for the Project, and this Master Agreement.

### **Section 44. Special Provisions for Research, Development, Demonstration, and Special Studies Projects.**

The Recipient agrees to comply with the following provisions pertaining to Projects financed with Federal assistance authorized for research, development, demonstration, or special studies projects, except to the extent that FTA determines otherwise in writing:

a. Project Report. The Recipient agrees to:

(1) Prepare and make available a comprehensive report of the results of the Project, the conclusions reached, and the methods used that FTA may publish or make available for publication on the Internet, in addition to other reports the FTA may request the Recipient to provide.

(2) The Recipient agrees to identify clearly any specific confidential, privileged, or proprietary information or data contained within any report it submits to FTA.

(3) Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S. Department of Transportation, Federal Transit Administration, in order to foster information exchange, (b) the U.S. Government assumes no responsibility or liability for the contents or use of that report, (c) the U.S. Government is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

b. Project Identification. The Recipient understands and agrees that each tangible product resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless determined otherwise in writing by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the Project.

c. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, as amended, 42 U.S.C. §§ 289 *et seq.*, and U.S. DOT regulations, “Protection of Human Subjects,” 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and activities related to the Project.

d. Protection of Animals. The Recipient agrees to comply with the requirements of the Animal Welfare Act, as amended, 7 U.S.C. §§ 2131 *et seq.*, and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 C.F.R. Chapter I, Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

e. Export Control. The Recipient understands and agrees that any technical information developed in the course of implementing the Grant Agreement or Cooperative Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, or other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Recipient agrees that it will not export to any countries or foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Department of Commerce, “Export Administration Regulations,” 15 C.F.R. Parts 730 *et seq.*, or other applicable Federal regulations without first obtaining the necessary Federal license or licenses and complying with those Federal regulations.

#### **Section 45. Special Provisions for the Medical Transportation Demonstration Projects.**

The Recipient of Federal assistance authorized under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and comply with other applicable Federal

laws or regulations. The Recipient also agrees to follow any applicable Federal directives, except to the extent FTA determines otherwise in writing.

#### **Section 46. Special Provisions for the National Technical Assistance Center for Senior Transportation.**

The Recipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws and regulations. The Recipient also agrees to follow any applicable Federal directives, except to the extent that FTA determines otherwise in writing.

#### **Section 47. Special Provisions for Human Resources Fellowships.**

The Recipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

- a. General. In addition to 49 U.S.C. § 5322(b), the Recipient agrees to comply with other applicable Federal laws and regulations, and follow applicable Federal directives, except to the extent FTA determines otherwise in writing.
- b. Fellowship Awards. The Recipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program authorized under 49 U.S.C. § 5322(b) will be selected on the basis of that individual's demonstrated ability and the contribution that individual reasonably can be expected to make to an efficient public transportation operation.

#### **Section 48. Special Provisions for Job Access and Reverse Commute Formula Grant Program.**

The Recipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5316, and applicable provisions of 49 U.S.C. § 5307. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to follow the most recent edition of FTA Circular, 9050.1, "The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," including any revisions thereto, and comply with Federal laws and regulations that apply to the Project.
- b. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a JARC Project, which agreement sets forth the subrecipient's

responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with any Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement and this Master Agreement.

#### **Section 49. Special Provisions for the Paul S. Sarbanes Transit in Parks Program.**

The Recipient agrees that the following provisions apply to the Paul S. Sarbanes Transit in Parks Program authorized under 49 U.S.C. § 5320, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5320, applicable requirements of 49 U.S.C. § 5307, and other applicable Federal laws and regulations.
- b. FTA Notice. The Recipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to the Paul S. Sarbanes Transit in Parks Program and other applicable FTA directives, including any amendment or revision thereto, except to the extent FTA determines otherwise in writing. FTA and the Recipient agree that the provisions of the latest FTA Notice and revisions thereto will supersede conflicting provisions of this Master Agreement.

#### **Section 50. Special Provisions for Over-the-Road Bus Accessibility Projects.**

The Recipient agrees that the following provisions apply to Federal assistance under the Over-the-Road Bus Accessibility Program, except to the extent that FTA determines otherwise in writing:

- a. General. The Recipient agrees to comply with section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note, and other Federal laws and regulations that may be applicable to the Over-the-Road Bus Accessibility Program, in accordance with applicable Federal directives, when issued.
- b. Accessibility. The Recipient agrees to comply with the "Over-the-Road Buses," regulations within U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.
- c. Employee Protective Arrangements. Subsection 24.d(4) of this Master Agreement describes employee protection requirements for the Over-the-Road Bus Accessibility Program.
- d. FTA Notice. The Recipient agrees to follow the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any revision thereto, except to the extent FTA determines otherwise in writing. FTA and the Recipient agree

that the provisions of the most recent FTA Notice pertaining to the Over-the-Road Bus Accessibility Program supersede conflicting provisions of this Master Agreement.

### **Section 51. Special Provisions for State Infrastructure Bank Projects.**

The Recipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank (SIB), and agrees to comply with the requirements thereof:

a. General. The Recipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements and directives for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it has not been superseded by 23 U.S.C. § 610, (3) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent it has not been superseded by 23 U.S.C. § 610, (4) any law amending any of the foregoing, and any law applicable to the Project enacted at a later date, (5) any other applicable Federal directives that may be issued, except to the extent FTA determines otherwise in writing, (6) the terms and conditions of any U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the SIB program in the State, entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official(s), and (8) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent FTA determines otherwise in writing.

b. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limitations specified in its Grant Agreement for the SIB Project or the Approved Project Budget for that Grant Agreement.

### **Section 52. Special Provisions for TIFIA Projects.**

To the extent applicable, the Recipient agrees to administer each Project financed with Federal credit assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended (TIFIA), in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609,

49 U.S.C. §§ 5307, 5309, or 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto, will not apply to the TIFIA Loan, Loan Guarantee, or Line of Credit made available for the Project. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan, a Loan Guarantee under TIFIA, or a Line of Credit made available under TIFIA, and such default has not been cured within 90 days.

### **Section 53. Special Provisions for Recovery Act Projects**

The Recipient agrees that the following provisions apply to funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009 (“Recovery Act”), and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

a. Identification of Recovery Act Funding. A Grant Agreement or Cooperative Agreement financed with Recovery Act funds will indicate that the Recovery Act is the source of funding as follows:

(1) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5307 – Urbanized Area - Economic Recovery,” the Project or Projects are financed with Recovery Act funds appropriated for the Transit Capital Assistance for the Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(2) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5307 – Urbanized Area - Economic Recovery Flex,” the Project or Projects are financed with Recovery Act appropriations for highways transferred to support the FTA Urbanized Area Formula Grant Program authorized by 49 U.S.C. § 5307.

(3) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5309 – New Starts - Economic Recovery,” the Project is financed with Recovery Act appropriations for Capital Investment Grants authorized for Small Starts or New Starts by 49 U.S.C. §§ 5309(d) or (e), respectively.

(4) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5309 – Fixed Guideway - Economic Recovery,” the Project is financed with Recovery Act appropriations for Fixed Guideway Infrastructure Investment for Modernization, authorized by 49 U.S.C. § 5309(b)(2).

(5) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery,” the Project is financed with Recovery Act appropriations for Transit Capital Assistance for the Nonurbanized Area Formula Program authorized by 49 U.S.C. § 5311.

(6) If the “Citation of Statute(s) Authoring Project” of the underlying Grant Agreement displays “49 USC 5311 – Nonurbanized Area - Economic Recovery Flex,” the Project or

Projects are financed with Recovery Act appropriations for highways transferred to support the Nonurbanized Area Formula Grant Program authorized by 49 U.S.C. § 5311.

(7) If the “Citation of Statute(s) Authorizing Project” of the underlying Grant Agreement or Cooperative Agreement displays “PL 111-5 – Transp. Invest/Greenhouse Gas & Energy Red. – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for Federal Transit Administration capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems.

(8) If the “Citation of Statute(s) Authorizing Project” of the underlying Grant Agreement displays “PL 111-5 – OST Surface Transportation – Economic Recovery,” the Project is financed with Recovery Act funds specified in Title XII for the U.S. DOT Office of the Secretary Supplemental Discretionary Grants for a National Surface Transportation System, also referred to as the “TIGER Discretionary Grant Program.”

b. Identification of Project(s). The Project or Projects financed with Recovery Act funds are set forth in the Recipient’s Project application and reflected in the Approved Project Budget.

c. Prompt Implementation. The Recipient agrees to begin work on its Recovery Act Project promptly after FTA has awarded Recovery Act funds for that Project, and agrees to continue to expend those Recovery Act funds expeditiously for Project purposes.

d. Federal Requirements. In addition to applicable Recovery Act statutory and regulatory requirements, the Recipient agrees that applicable requirements of 49 U.S.C. chapter 53 apply to each federally assisted public transportation Project financed with Recovery Act funds, except that the Federal share of the costs for which any Recovery Act award is made under this heading shall be, at the option of the Recipient, up to 100 percent of the cost of the Project.

e. U.S. OMB Provisions. The Recipient agrees to comply with applicable provisions of U.S. Office of Management and Budget, “Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards,” 2 C.F.R. Part 176, 74 *Fed. Reg.* 18449 *et seq.*, April 23, 2009. Specifically the Recipient acknowledges and agrees to comply with the following provisions

(1) Reporting and Registration Requirements under Section 1512 of the Recovery Act.

(a) This award requires the Recipient to complete projects or activities that are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The Recipient agrees to submit the requisite reports no later than ten calendar days after each calendar quarter in which it receives the Federal assistance award funded in whole or in part by the Recovery Act.

(c) The Recipient agrees to have, and require its subrecipients to have, a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>).

(d) The Recipient agrees to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active Federal award funded with Recovery Act funds. If the Recipient has delegated any of its reporting requirements under Section 1512 of the Recovery Act to any subrecipient, the Recipient agrees to require that subrecipient to maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it is participating in a Project financed through an active Federal award funded with Recovery Act funds.

(e) The Recipient agrees to report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(2) Buy America Requirements under Section 1605 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Buy America requirements sufficient for compliance with Section 1605 of the Recovery Act.

(3) Wage Rate Requirements under Section 1606 of the Recovery Act. Statutory provisions of 49 U.S.C. chapter 53 impose Wage Rate requirements involving construction, alteration, maintenance, or repair sufficient for compliance with Section 1606 of the Recovery Act.

(4) Recovery Act Transactions Listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 49 C.F.R. § 18.20 or 49 C.F.R. § 19.21, as applicable, the Recipient agrees to maintain records that identify adequately the source and application of Recovery Act funds.

(b) A Recipient covered by the Single Audit Act Amendments of 1996, and U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by U.S. OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) The Recipient agrees to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When the Recipient awards Recovery Act funds for an existing program, the Recipient agrees to furnish sufficient information to each subrecipient that distinguishes the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) The Recipient agrees to require each subrecipient to include on its SEFA information to specifically identify Recovery Act funding similar to the requirements for the Recipient's SEFA described above. This information is needed to allow the Recipient to properly monitor subrecipient expenditures of Recovery Act funds as well as oversight by FTA, DOT, Offices of Inspector General and the Government Accountability Office.

f. One-Time Funding. The Recipient acknowledges that receipt of Recovery Act funds is a "one-time" disbursement that does not create any future obligation by the FTA to advance similar funding amounts. The Recipient agrees that the total amount of Recovery Act funds for the entire period of Project performance is the amount displayed on the underlying Grant Agreement for the Project, as may be later amended. The Government's liability to make payments to the Recipient is limited to eligible Project costs that can be financed with those Recovery Act funds as displayed on the underlying Grant Agreement or Cooperative Agreement for the Project and any later amendment thereto.

g. Integrity. The Recipient agrees that all data it submits to FTA in compliance with Recovery Act requirements will be accurate, objective, and of the highest integrity.

h. Violations of Law. The Recipient agrees that it and each of its subrecipients shall report to the U.S. DOT Inspector General or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

i. Maintenance of Effort. A Recipient that is a State agrees to comply with the maintenance of effort certification it has made in compliance with Section 1201 of Recovery Act.

j. Emblems. The Recipient is encouraged to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds that are provided by U.S. DOT in a manner consistent with Federal guidance, and to include this provision in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project(s).

k. Further Requirements. The Recipient agrees to comply with applicable future Federal requirements that may be imposed on the use of Recovery Act funds, and to follow applicable Federal directives that may be issued, except to the extent the Federal Government determines otherwise in writing.

#### **Section 54. Disputes, Breaches, Defaults, or Other Litigation.**

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 54 of this Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Recipient may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

## **Section 55. Amendments to the Project.**

The Recipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to that Grant Agreement or Cooperative Agreement and signed by the original signatories or their authorized designees or successors. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an amendment to its Application or the underlying Grant Agreement or Cooperative Agreement for the Project.

## **Section 56. FTA's Electronic Management System.**

- a. Recipient Use. Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.
- b. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Award and Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of such matters as Project, its scope, activities, and so forth include, except to the extent FTA so states in writing. FTA

reserves the right to treat information other than that reflected in its current TEAM system as determinative of what constitutes the “Project,” “Scope of the Project,” and “Project Activities.”

**Section 57. Information Obtained Through Internet Links.**

Although this Master Agreement may include electronic links to Federal laws, regulations, and directives, FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient understands and agrees that any information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

**Section 58. Severability.**

The Recipient agrees that if any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.

## FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

### PREFACE

*In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2010. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of \$100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests each Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.*

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

*The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(16) for Federal Fiscal Year 2010 at the FTA Web site <http://www.fta.dot.gov/documents/16-Master.pdf>. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.*

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

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

## **01. ASSURANCES REQUIRED FOR EACH APPLICANT**

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

### **A. Assurance of Authority of the Applicant and Its Representative**

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

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

### **B. Standard Assurances**

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

### **C. Intergovernmental Review Assurance**

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to

Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

**D. Nondiscrimination Assurance**

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

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

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

request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

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

F. U.S. Office of Management and Budget (OMB) Assurances

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

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

- (c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
  - (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
  - (e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;
  - (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - (g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;
  - (h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and
  - (i) Any other nondiscrimination statute(s) that may apply to the project;
- (6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
- (a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
  - (b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
  - (c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
  - (d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
  - (e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

- (f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
  - (g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;
  - (h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and
  - (i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;
- (7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted projects;
  - (8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
  - (9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;
  - (10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;
  - (11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;
  - (12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;
  - (13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;
  - (14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

- (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;
  - (b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;
  - (c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;
  - (d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;
  - (e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;
  - (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;
  - (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;
  - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and
  - (i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);
  - (j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and
  - (k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;
- (15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;
- (16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;
- (17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR

subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

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

## 02. LOBBYING CERTIFICATION

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

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding \$100,000:
  - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
  - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," Rev. 7-97; and
  - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification

is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **03. PROCUREMENT COMPLIANCE**

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

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

### **04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS**

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

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

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

### **05. PUBLIC HEARING**

*An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital*

*project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."*

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

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

#### **06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE**

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

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

#### **07. ACQUISITION OF CAPITAL ASSETS BY LEASE**

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

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

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

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

#### **08. BUS TESTING**

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

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

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

#### **09. CHARTER SERVICE AGREEMENT**

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

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

pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

## 10. SCHOOL TRANSPORTATION AGREEMENT

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

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

## 11. DEMAND RESPONSIVE SERVICE

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

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the

level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

## **12. ALCOHOL MISUSE AND PROHIBITED DRUG USE**

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

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

## **13. INTEREST AND OTHER FINANCING COSTS**

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

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

## **14. INTELLIGENT TRANSPORTATION SYSTEMS**

*An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other*

*documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.*

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

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

## **15. URBANIZED AREA FORMULA PROGRAM**

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

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

*Information” window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.*

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

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

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

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

the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

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

Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

## 16. CLEAN FUELS GRANT PROGRAM

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

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

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

- made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
- G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;
- H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);
- I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- J. The Applicant certifies it will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

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

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

*documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and section 3012 of SAFETEA-LU, respectively. The State is thus requested to select Category "17."*

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

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

## **18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES**

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

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

*by 49 U.S.C. 5311. The State is thus requested to select Category "18."*

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

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

#### **19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM**

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

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

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

## **21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM**

*Each State, tribal area, or local government authority that is an Applicant for Paul S. Sarbanes*

*Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications by selecting Category "21."*

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

- 5306 (planning and private enterprise requirements); and
- (7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and
- B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:
- (1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;
  - (2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and
  - (3) Consult with the appropriate Federal land management agency during the planning process.

## **22. TRIBAL TRANSIT PROGRAM**

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

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

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

## **23. TIFIA PROJECTS**

*Each Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit*

*assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award TIFIA credit assistance to the Applicant until the Applicant provides these certifications by selecting Category "23."*

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

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

#### **24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS**

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

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

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

##

*Selection and Signature Page(s) follow.*

**FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR  
FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**  
*(Signature page alternative to providing Certifications and Assurances in TEAM-Web)*

**Name of Applicant:** \_\_\_\_\_

**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.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Protections for Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock for Use in Revenue Service.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels 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.	Paul S. Sarbanes Transit in Parks Program.	_____
22.	Tribal Transit Program.	_____
23.	TIFIA Projects	_____
24.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

**FEDERAL FISCAL YEAR 2010 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: \_\_\_\_\_

Name and Relationship of Authorized Representative: \_\_\_\_\_

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 and regulations, and follow applicable Federal directives, and comply 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 2010.

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 2010.

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 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: \_\_\_\_\_

Name \_\_\_\_\_  
Authorized Representative of Applicant

**AFFIRMATION OF APPLICANT'S ATTORNEY**

For (Name of Applicant): \_\_\_\_\_

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: \_\_\_\_\_

Name \_\_\_\_\_  
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.





## Legislation Details (With Text)

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**File #:** 100953      **Version:** 1

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Substitute resolution approving a license agreement between the City of Milwaukee and Access Fiber Group for occupancy of a portion of the City's communications conduit system.

**Sponsors:** THE CHAIR

**Indexes:** AGREEMENTS, COMMUNICATIONS SYSTEMS

**Attachments:** Exhibit A, Exhibit B, Occupancy License Agreement - Access Fiber Group, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
11/29/2010	1	CITY CLERK	DRAFT SUBMITTED		
12/1/2010	1	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number  
100953  
Version  
SUBSTITUTE 1  
Reference

Sponsor  
THE CHAIR  
Title

Substitute resolution approving a license agreement between the City of Milwaukee and Access Fiber Group for occupancy of a portion of the City's communications conduit system.

Analysis

This resolution approves a conduit occupancy license agreement between the City of Milwaukee and Access Fiber Group for occupancy of a portion of the City's communications conduit system.

Body

Whereas, The City of Milwaukee owns and operates a conduit system located in the public right-of-way; and

Whereas, Access Fiber Group has registered with the Department of Public Works in accordance with the provisions and criteria specified in s. 98-7, Milwaukee Code of Ordinances, for permission to place and maintain telecommunications facilities in a portion of the City's conduit system; and

Whereas, Section 98-7 of the Code of Ordinances provides for negotiation of a conduit occupancy license agreement specifying the terms and extent of Access Fiber Group's use of the City's conduit system; and

Whereas, A conduit occupancy license agreement is attached to this file as Exhibit A and describes the extent of Access Fiber Group's use of the City's conduit system; and

Whereas, Access Fiber Group has agreed, pursuant to s. 98-5 of the Code of Ordinances, to permit, under certain conditions and for a 4-year renewable term at the City's option, on a license basis, the placement of Access Fiber Group's facilities within a portion of the City of Milwaukee's conduit system designated in Access Fiber Group's conduit maps on file in the Department of Public Works and summarized in Exhibit A of the conduit occupancy license agreement; now, therefore, be it

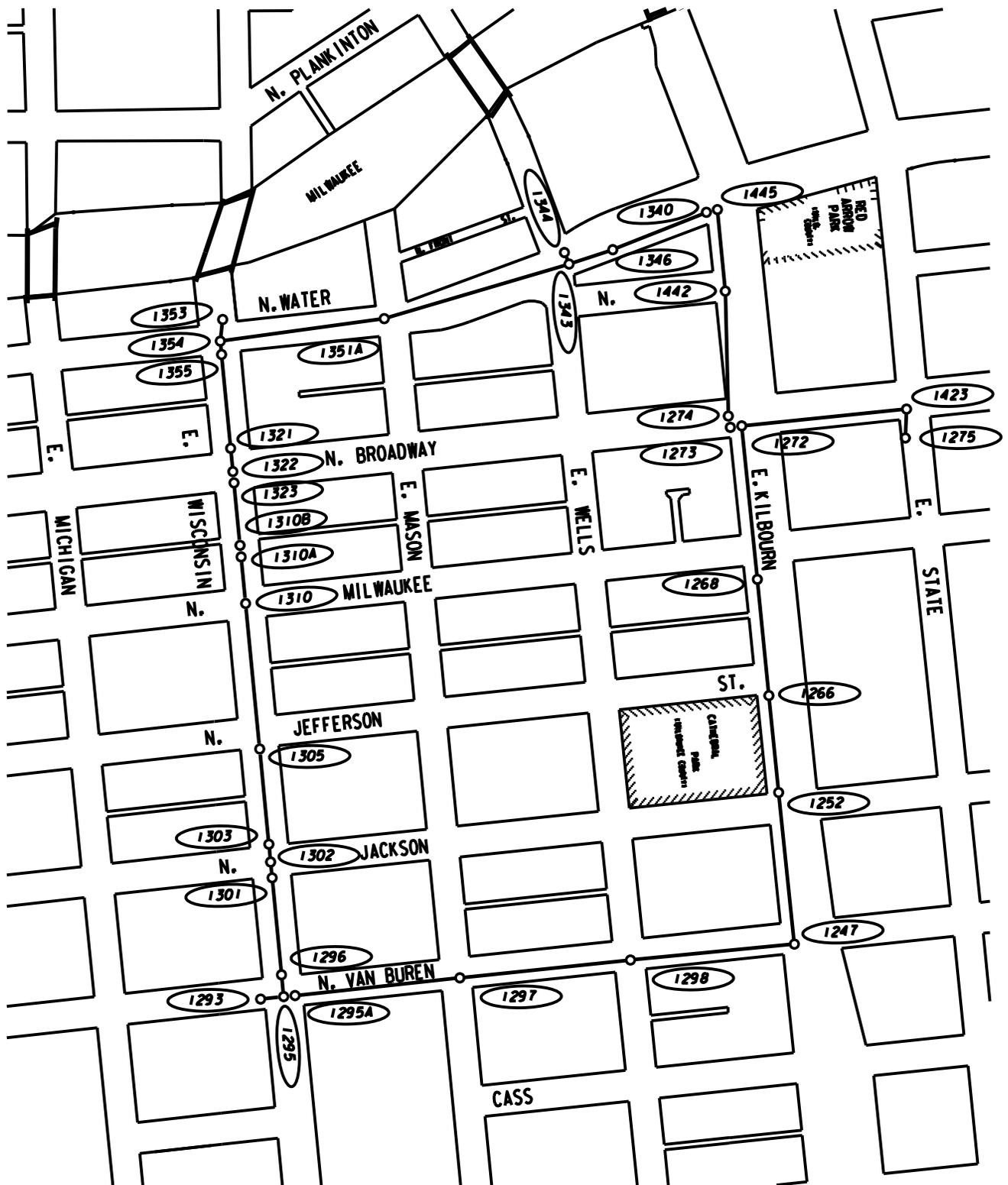
Resolved, By the Common Council of the City of Milwaukee, that the conduit occupancy license agreement with Access Fiber Group, a copy of which is attached to the file, is approved; and, be it

Further Resolved, That the Commissioner of Public Works is authorized to make minor revisions to the license agreement that do not change the intent of the license agreement; and, be it

Further Resolved, That the Commissioner of Public Works is authorized and directed to execute the license agreement on behalf of the City of Milwaukee.

Requestor  
DPW - Administration Division  
Drafter  
LRB123556-2  
MET  
11/23/10

dh



TECHNOLOGY SUPPORT SECTION  
 ADMINISTRATIVE SERVICES DIVISION  
 DEPARTMENT OF PUBLIC WORKS  
 MILWAUKEE, WISCONSIN

DUCT OCCUPANCY FOR

ACCESS FIBER

SCALE NONE

DRAWN BY SALAPAT

PLAN DATE 12-2-10

CHECKED BY KLR

SHEET NO. 1 OF 1

PLAN FILE NO. EXHIBIT A

**EXHIBIT "B"**

**Conduit Rental Fee Worksheet**

Access Fiber Group

<b>LOCATION</b>	<b>MANHOLE FROM</b>	<b>MANHOLE TO</b>	<b>CONDUIT CLASS</b>	<b>LENGTH IN FEET</b>	<b>RATE PER FOOT</b>	<b>ANNUAL FEE</b>	
<b><u>E. Kilbourn Ave from N. Water St. proceeding East to N. Van Buren St.</u></b>							
	1340	1445	2a	12	\$ 1.95	\$ 23.40	
	1445	1442	2a	212	\$ 1.95	\$ 413.40	
	1442	1274	2a	336	\$ 1.95	\$ 655.20	
	1274	1273	2a	16	\$ 1.95	\$ 31.20	
	1273	1272	2a	15	\$ 1.95	\$ 29.25	
	1272	1268	2a	395	\$ 1.95	\$ 770.25	
	1268	1266	2a	301	\$ 1.95	\$ 586.95	
	1266	1252	2a	252	\$ 1.95	\$ 491.40	
	1252	1247	2a	388	\$ 1.95	\$ 756.60	
<b><u>N. Van Buren St from E. Kilbourn Ave proceeding South to E. Wisconsin Ave</u></b>							
	1247	1298	2a	427	\$ 1.95	\$ 832.65	
	1298	1297	2a	445	\$ 1.95	\$ 867.75	
	1297	1295A	2a	433	\$ 1.95	\$ 844.35	
	1295A	1295	2a	26	\$ 1.95	\$ 50.70	
<b><u>E. Wisconsin Ave from N. Van Buren St. proceeding West to N. Water St.</u></b>							
	1295	1296	2a	59	\$ 1.95	\$ 115.05	
	1296	1301	2a	251	\$ 1.95	\$ 489.45	
	1301	1302	2a	41	\$ 1.95	\$ 79.95	
	1302	1303	2a	46	\$ 1.95	\$ 89.70	
	1303	1305	2a	248	\$ 1.95	\$ 483.60	
	1305	1310	2a	377	\$ 1.95	\$ 735.15	
	1310	1310A	2a	121	\$ 1.95	\$ 235.95	
	1310A	1310B	2a	30	\$ 1.95	\$ 58.50	
	1310B	1323	2a	171	\$ 1.95	\$ 333.45	
	1323	1322	2a	12	\$ 1.95	\$ 23.40	
	1322	1321	2a	70	\$ 1.95	\$ 136.50	
	1321	1355	2a	243	\$ 1.95	\$ 473.85	
	1355	1354	2a	37	\$ 1.95	\$ 72.15	
<b><u>N. Water St from E. Wisconsin Ave proceeding North to E. Kilbourn Ave</u></b>							
	1354	1351A	2a	430	\$ 1.95	\$ 838.50	
	1351A	1343	2a	521	\$ 1.95	\$ 1,015.95	
	1343	1346	2a	119	\$ 1.95	\$ 232.05	
	1346	1340	2a	273	\$ 1.95	\$ 532.35	
<b><u>E. Kilbourn Ave from N. Broadway proceeding North</u></b>							
	1272	1423	2a	430	\$ 1.95	\$ 838.50	
	1423	1275	2a	76	\$ 1.95	\$ 148.20	
<b><u>E. Wisconsin Ave from N. Van Buren St proceeding South</u></b>							
	1295	1293	2a	60	\$ 1.95	\$ 117.00	
<b><u>E. Wisconsin Ave from N. Water St proceeding West</u></b>							
	1354	1353	2a	59	\$ 1.95	\$ 115.05	
<b><u>N. Water St from E. Wells St proceeding West</u></b>							
	1343	1344	2a	24	\$ 1.95	\$ 46.80	
All Classes	Total Charges					\$	<b>13,564.20</b>

CONDUIT OCCUPANCY  
LICENSE AGREEMENT

This License is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011, (the "Effective Date"), by and between the City of Milwaukee, a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 (herein called "Licensor") and Access Fiber Group, Inc., having its principal place of business at 201 Summit Parkway, Birmingham, AL 35209, (herein called "Licensee").

Whereas, Licensor owns and operates a conduit system located in the City of Milwaukee, County of Milwaukee, State of Wisconsin (herein called the "Conduit System"); and

Whereas, Licensee has registered in accordance with sec. 98-7, Milwaukee Code of Ordinances, for permission to place and maintain telecommunications facilities (herein "Licensee's Facilities") in the portions of the Licensor's Conduit System described on Exhibit A attached hereto; and

Whereas, Licensor has agreed pursuant to sec. 98-5, Milwaukee Code of Ordinances, to permit, under certain conditions and for a 4 year renewable term at the parties' option, on a license basis, the placement of Licensee's Facilities within the portions of the Licensor's Conduit System designated in Licensee's Facilities conduit maps on file in the office of the City Engineer and the Department of Public Works and summarized herein as Exhibit A; and

Whereas, Licensor's Common Council has approved this Conduit Occupancy License Agreement via Common Council Resolution File No. 100953 adopted on December 21st, 2010; and

Now, Therefore, In consideration of the foregoing and of the mutual covenants provided herein, the parties agree as follows:

A. SCOPE OF AGREEMENT

1. Grant of License. Subject to the provisions of this License, Licensor hereby grants to Licensee the right to use the portion of its Conduit System outlined on Exhibit A attached hereto and made a part hereof for the placement of Licensee's Facilities. Upon mutual agreement of the City Engineer on behalf of the Licensor and agreement of the Licensee, Exhibits A & B may be amended from time to time to reflect changes in the use of the Conduit System by Licensee.

2. Non-Vesting Provision. No use of Licensor's Conduit System by Licensee or payment of any charges required under this License shall create or vest in Licensee any easements or other ownership or property rights of any nature in the Conduit System. Furthermore, this License shall not constitute an assignment of any of Licensor's rights to use public or private property in which the Conduit System is located. In the event any property owner or municipal or other public authority terminates any permit or franchise or other right of Licensee to occupy the Conduit System, Licensee shall have the right to protest by appropriate proceedings, or renegotiate the termination of such permit or franchise. In such event, Licensee shall indemnify and hold Licensor harmless from any expense, legal action or cost, including reasonable attorney's fees, resulting from the exercise of its rights under this paragraph. In the event that Licensee has exhausted all its rights of appeal in protesting the above and has failed to obtain the relief sought in such proceedings or appeal or if any renegotiations have failed, Licensor shall have the right to terminate this License by giving at least one hundred twenty (120) days written notice to Licensee. Upon the effective date of termination undertaken in accordance with the provisions of the preceding sentence, this License

shall become null and void and neither party hereto shall have any further obligation to the other with respect thereto.

3. Permits and Approvals Required. Prior to the installation of its Facilities within the Conduit System located upon public/private property, Licensee shall obtain from the appropriate public and/or private authority any required authorization(s), permits or easements to install its Facilities within any portion of the Conduit System.

4. City's Maintenance Right. Licensor's right to maintain its Conduit System and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements is in no manner limited by this License.

5. No Restriction on Licensor. Nothing contained in this License shall be construed to compel Licensor to construct, reconstruct, retain, extend, or place its Conduit System for use by Licensee unless needed for Licensor's own service requirements. Notwithstanding the foregoing, Licensee shall have the right to terminate this License Agreement upon ninety (90) days' prior written notice to Licensor in the event Licensee is unable, because of the condition of the Conduit System, to use the Conduit System in the manner originally contemplated herein.

6. Compliance with Law. Nothing contained in this License shall be construed as a limitation, restriction or prohibition against Licensor with respect to any agreement or arrangement which Licensor has heretofore entered into with others not parties to this License regarding the Conduit System covered by this License.

The parties hereto shall at all times observe and comply with, and the provisions of this License are subject to, all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties hereto under this License, so long as such laws, ordinances or

regulations remain in effect. Licensee specifically agrees to comply with all the provisions of Chapter 98, Milwaukee Code of Ordinances, which provisions are specifically incorporated herein and made a part hereof.

**B. TERM OF LICENSE**

This License shall become effective on the Effective Date and shall continue in effect for 4 years unless terminated as provided herein or by operation of law. This License's term may be extended for additional four year periods, upon the terms and conditions (except for the License Fee which shall be reasonably recomputed by Licensor for each successive four year term) herein provided, if a written extension agreement is executed by Licensor's Commissioner of Public Works and Licensee.

**C. LICENSEE OPTION ON RELOCATION**

1. In the event Licensor is required for any reason to relocate its Conduit System, or any portion thereof, by any governmental authority and Licensor elects to relocate its Conduit System, or any portion thereof, Licensee shall have the option to:

(a) request the relocation of Licensee's Facilities along with Licensor's Conduit System and Licensee shall bear its pro rata share of any and all reasonable costs attributable to such relocation, or

(b) terminate this Conduit Occupancy License Agreement, without any further obligation to Licensor.

2. Cost Sharing Formula. In the event Licensee requests the relocation of Licensee's facilities as provided in Section C.1(a) above, Licensee's pro-rata share of any and all costs attributable to such relocation shall be calculated by multiplying Licensor's total cost of relocating

the Conduit System by a fraction, the numerator of which shall be the number of innerducts Licensee is occupying within the Conduit System, and the denominator of which shall be the total possible number of innerducts located within the Conduit System.

D. CONSTRUCTION AND MAINTENANCE

1. Conditions for Make-ready. Licensee shall provide to Licensor a copy of its construction design drawings (including any excess cable storage requirements) and installation schedule for Licensor's approval not less than 3 weeks prior to Licensee's requirement for Facilities installation within the Conduit System. Upon Licensor's receipt of a request submitted by Licensee to place its Facilities in Licensor's Conduit System, Licensor shall perform the necessary make-ready work for Licensee's use of the Conduit System. As used herein, the term "make-ready" work shall be limited to the act of rearranging existing cable or conduit material and shall not include repairs of current conduit or the construction of new conduit. Licensor shall conduct a survey to determine the charges for necessary make-ready work and for placement of Licensee's Facilities in the Conduit System, shall inform Licensee in writing of the good-faith estimate of charges for such work and commence the make-ready work only after receiving the written approval from Licensee. Licensee shall pay all direct and documented costs reasonably incurred by Licensor in performing such make-ready work. Licensee shall make payment to Licensor within thirty (30) days from Licensee's receipt of Licensor's itemized invoice and supporting documentation therefor.

2. Notice to Proceed. After the completion of the make-ready work, Licensee shall request in writing that Licensor place Licensee's Facilities in Licensor's Conduit System. Licensor shall commence the placement of Licensee's Facilities in an expeditious manner after notification from Licensee to proceed with the placement of its Facilities. Licensee shall pay Licensor for all direct

and documented costs reasonably incurred by Licensor in placing Licensee's cable in Licensor's Conduit System. Licensee shall make payment to Licensor within thirty (30) days from Licensee's receipt of Licensor's itemized invoice and supporting documentation therefor.

3. Construction Practices. Licensee shall, at its own expense, during the term of this License, maintain its Facilities covered by this License in a safe condition, properly identified and tagged, in accordance with regulations established by Licensor, so as not to physically conflict or electrically interfere with the Facilities placed in the Conduit System by Licensor or others.

4. Construction Management. Licensee shall notify Licensor ten (10) days in advance by written notice as provided in paragraph L., infra, or by telephone notice to Licensor's City Engineer at (414)286-2400 before any routine repair or maintenance of its Facilities. Except in the event of a Licensee emergency, as described in Section E.2 below, Licensee's employes, agents or contractors will be permitted to enter or work in Licensor's manholes/handholes only when an authorized employe or agent of Licensor is present. Licensor's agents shall have the authority, without subjecting Licensor to any liability therefor, to suspend Licensee's work or operations in and around Licensor's manholes/handholes if, in the sole discretion of said employe or agent, any hazardous conditions arise or any unsafe practices, including unsafe practices which may threaten the integrity of Licensor's facilities, are being followed by Licensee's employes, agents or contractors. In the event of a Licensor imposed suspension of Licensee's work, authorized representatives of Licensor and Licensee shall promptly meet at the earliest mutually possible time but no more than twelve (12) hours after the imposition of the suspension, to take all steps necessary to continue. Within that time, Licensor shall provide to Licensee written notice of steps to be taken by Licensee to eliminate any hazardous conditions or to revise any practices deemed to be unsafe. The presence of

Licensor's authorized agent shall not relieve Licensee of its responsibility to conduct all of its work in and around Licensor's manholes/handholes in a safe and workmanlike manner.

5. Each year, after the first year, of the term of this Agreement and any extensions thereof, Licensee shall provide the Licensor with an updated map indicating all City conduit occupied by the Licensee along with the payment of the Licensee Fee.

E. EMERGENCY PROCEDURES

1. Licensor Emergency. In the event of a Licensor emergency:

(a) Licensor's work shall take precedence over any and all operations of Licensee in Licensor's Conduit System;

(b) Licensor may rearrange Licensee's Facilities in a reasonable manner. Licensee shall reimburse Licensor for all reasonable and direct costs associated with such rearrangement of Licensee's Facilities.

2. Licensee Emergency. In the event of a Licensee emergency, Licensee shall promptly notify Licensor at its Department of Public Works City Engineer at (414)286-2400 during normal business hours or (414)286-3481 after 5:00 p.m. and before 8:00 a.m., prior to performing any maintenance or repair necessary to correct the emergency situation. After such notice is given, Licensee may enter the manholes, handholes and conduits of Licensor to perform any emergency repair or maintenance.

F. MAINTENANCE AND INSPECTION RIGHTS

1. Maintenance upon Licensee Default. If any part of Licensee's Facilities is not placed and maintained in accordance with the terms and conditions set forth in this License and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from

Licensor, then, in such event, Licensor may, at its option, correct said condition and notify Licensee in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of Licensor's employes or the public, interfere with the performance of Licensor's service obligations, or pose an immediate threat to the physical integrity of Licensor's Facilities, and prior notice to Licensee before Licensor performs such work is not possible or reasonable under the circumstances, Licensor may perform such work and/or take such action that it deems necessary without first giving written notice to Licensee and without subjecting itself to any liability for damage to Licensee's Facilities or for any interruption of Licensee's services. As soon as practicable thereafter, Licensor will advise Licensee in writing of the work performed or the action taken. Licensee shall be responsible for all direct expenses reasonably incurred by Licensor associated with any work or action performed by Licensor pursuant hereto and shall reimburse Licensor within thirty (30) days from its receipt of Licensor's itemized invoice and supporting documentation therefor.

2. Inspection Rights. Licensor reserves the right to make periodic inspections of any part of Licensee's Facilities in the Conduit System. Licensee shall have the right to have its employes or representatives present during the time of any such inspection. Licensor shall give Licensee at least five (5) business days' advance written notice of such inspections, except in those instances where, in the sole judgment of Licensor, safety considerations justify the need for such an inspection without the delay of providing five (5) business days' advance written notice. In that event, Licensor shall provide telephone notice to Licensee by calling 1-800-497-5578. The making of periodic inspections or the failure to do so shall not operate to impose upon Licensor any liability of

any kind whatsoever nor relieve Licensee of any responsibility, obligations or liability assumed under this License.

3. Occupancy Audit. At Licensee's written request to Licensor and deposit with Licensor of sufficient funds to cover the cost thereof (as determined by Licensor), Licensor shall provide within a reasonable time, a detailed audit of the actual Conduit System usage by Licensee including the percentage portion of use of each conduit by all parties occupying the relevant segment of conduit. Any funds deposited but not used in the preparation of such audit shall be promptly returned to Licensee.

#### G. FEES AND CHARGES

1. License Fee. The License fee due for Conduit Occupancy shall be \$10,539.04/year ("License Fee") established in accordance with sec. 98-13, Milwaukee Code of Ordinances. The License Fee has been calculated in accordance with the worksheet attached as Exhibit B.

2. Other Fees. Fees will be charged for all work pre-approved in writing by Licensee and performed by Licensor or its authorized representative in connection with furnishing the Conduit System accommodations as covered by this License and shall be based upon the Licensor's reasonable and direct cost, plus fifteen percent (15%) of such amount. Such charges will include, but not be limited to, prelicense survey, design, engineering, make-ready work, installation of Licensee telecommunications cable and inspection and, if required, removal of Licensee's Facilities. Licensee shall make payment to Licensor within thirty (30) days from its receipt of Licensor's itemized invoice and supporting documentation therefor.

3. Invoices. Licensor shall promptly invoice Licensee for all work performed hereunder by Licensor on behalf of or for the benefit of Licensee with respect to the Conduit System, but in no event later than ninety (90) days after the completion of such work.

#### H. LIABILITY AND INDEMNIFICATION

1. Licensor Liability. Licensor shall exercise caution to avoid damaging Licensee's Facilities and shall make an immediate report to Licensee of any and all damage caused by its employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable, actual and direct costs incurred by Licensee for the physical repair of its Facilities damaged by the negligence of Licensor, its employees or agents. However, Licensor shall not be responsible or liable for damages to Licensee's Facilities caused by the negligence of other licensees whom Licensor has given permission to occupy its Conduit System. Licensor shall establish construction standards and practices for all licensees so as to avoid damage to Licensee's Facilities in the Conduit System.

2. Licensee Liability. Licensee shall exercise caution to avoid damaging Licensor's or other licensees' facilities and shall make a prompt report to Licensor of any and all damage caused by its employees, agents or contractors. Licensee agrees to reimburse Licensor or other licensees for all reasonable, actual and direct costs incurred by Licensor or other licensees for the physical repair of its Facilities damaged by the negligence of Licensee, its employees or agents.

3. Licensee Indemnification Obligation. Licensee assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of an injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of Licensor or others sustained or alleged to have been sustained in connection with or to have arisen

out of, or resulting from the exercise by Licensee of its rights granted herein, including losses, expenses and damages sustained by Licensor, provided that Licensor shall have given prompt written notice to Licensee of the facts giving rise to such losses, expenses, damages or claims. Licensee hereby agrees to indemnify and hold harmless Licensor, its agents and employees from any and all suits or actions brought against them, or any of them, based on any such alleged injury or damage, except for loss caused by direct or negligent action or omission of Licensor, its agents or employees or other licensees, including any failure to comply with Paragraph A3 of this License, and pay all damages, costs, and expenses (including reasonable attorney's fees) in connection therewith.

4. No Liability for Consequential Damages. Notwithstanding the above, neither party shall be liable to the other for indirect or consequential damages of the other party or of third parties, including, but not limited to, any interruption of service or for any loss of revenues resulting therefrom, whether caused by the negligence of either party or not.

## I. TERMINATION

1. Mutual Termination. This License may terminate at any time upon written mutual agreement of the parties hereto.

2. Termination by Default. If at any time either party fails or refuses to perform any of the covenants or conditions contained in this License, and such failure or refusal shall continue for thirty (30) days after receipt of written notice by such party from the other party (or, in the event of Licensee's default from Licensor's Commissioner of Public Works), the non-defaulting party, at its election and upon ten (10) days' advance written notice to the other party, may terminate this License. Notwithstanding the above, where a default cannot reasonably be cured within thirty (30)

days, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with all due diligence, the time for curing such defaults shall be extended for such a period of time as may be reasonably necessary to complete such cure. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

3. Removal upon Termination. Upon termination of this License for any reason, Licensee shall remove its Facilities within ninety (90) days following such termination. In the event Licensee fails to remove its Facilities within such ninety (90) day period, said Facilities shall be deemed abandoned and Licensor, at its sole discretion and without liability, shall remove the Facilities and Licensee shall reimburse Licensor for all actual and direct costs reasonably associated with such removal.

4. Liability Not Extinguished. Termination of this License shall not affect either party's liabilities and obligations incurred hereunder prior to the effective date of such termination.

#### J. INSURANCE

1. Insurer Qualification. Licensee shall carry comprehensive or commercial general liability insurance together with coverage for contractual liability, issued by insurance carriers licensed to do business in the State of Wisconsin and maintaining an A- or better rating as established by A.M. Best & Company. The amounts of such insurance shall be in the amount of not less than \$1,000,000 as to any one occurrence and \$2,000,000 general aggregate. Licensee shall also carry such insurance as will protect it from all claims under any Worker's Compensation Law in effect that may be applicable to it. Licensee shall submit to Licensor certificates by each

company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this License Agreement.

2. Liability Not Reduced. The required minimum limits of coverage shown above do not limit or diminish Licensee's liability under this License.

3. Form of Certification. Licensee shall submit to Licensor a standard "Accord" insurance certificate (or comparable form reasonably acceptable to Licensor) signed by an authorized representative of its insurance company, certifying that the insurance coverage required hereunder is in effect for the purposes of this License. Said insurance certificate shall certify that no material alteration, modification or termination of such coverage shall be effective without at least thirty (30) days' advance written notice of Licensor.

4. City as Additional Named Insured. All policies (excluding worker's compensation) shall include Licensor, as an additional insured.

5. Insurance Document Review. At Licensor's sole cost, Licensee shall permit any authorized representative of Licensor to examine Licensee's original insurance policies should Licensor so reasonably request. In the event Licensor reviews Licensee's insurance policies, Licensor shall keep all information concerning Licensee's insurance policies confidential to the extent permissible under law.

6. Failure to Provide Insurance. Should Licensee at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled or non-renewed, Licensor shall have the right to terminate this License or secure substitute coverages and Licensee shall reimburse Licensor for all actual and direct expenses and premiums reasonably paid in connection with such substitute coverage.

7. Effective Period. All insurance required in accordance with this License must be effective before Licensor will authorize installation of Licensee's Facilities within the Conduit System and shall remain in force until such time as this License has terminated and such Facilities have either been removed from the Conduit System or abandoned by Licensee.

8. Alternate Coverage. A combination of primary and excess/umbrella liability policies will be acceptable as a means to meet the limits required under this License.

#### K. ASSIGNMENT

1. Assignment Requires Consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or permitted assigns; provided, however, that no assignment hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each party hereto, which consent shall not be unreasonably withheld or unduly delayed; provided, further, however, that without such consent, Licensee shall have the right upon written notice to Licensor, to (a) assign or transfer this Agreement, in whole or in part, to any entity controlling, controlled by, or under common control with Licensee, or to any entity acquiring all or substantially all of Licensee's stock or assets, and/or (b) collaterally assign, mortgage, hypothecate, pledge or otherwise grant a security interest in this Agreement, in whole or in part, to secure a debt. In the event of any assignment or transfer by Licensee described in subsections (a) or (b) above, the assignee or transferee shall assume in full the obligations of Licensee under this Agreement, and Licensee shall be released from its obligations hereunder.

2. Obligations After Assignment. In the event of any assignment by either party undertaken pursuant to subparagraph (1) above, except as expressly set forth therein, the assigning

or transferring party shall remain liable for all its obligations under this Agreement, unless: (a)(i) the other party consents to release, by written instrument, the assigning or transferring party from such obligations, and (ii) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the assigning or transferring party under this Agreement.

L. NOTICES. Except as expressly indicated in this Agreement, all notices and other communications to be given pursuant to this License shall be in writing and shall be deemed to have been duly given (i) if personally delivered to the person being served or to an officer of the corporate party being served; (ii) if mailed by United States certified mail, return receipt requested, postage prepaid; or (iii) if delivered by overnight carrier, delivery receipt requested, to the parties at the following addresses:

Licensor:

City of Milwaukee  
Attention: Commissioner of Public Works  
Room 501, Zeidler Municipal Building  
841 North Broadway  
Milwaukee, Wisconsin 53202

Licensee:

Access Fiber Group, Inc.  
201 Summit Parkway  
Birmingham, Alabama 35209  
Attention: Ed Fleming  
(847) 692-5354

or at such other address as the parties hereto may specify from time to time by written notice delivered in accordance herewith.

M. GENERAL PROVISIONS

1. Liens and Encumbrances. Except as otherwise provided in this Agreement, Licensee has no power, authority or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of its Facilities installed within the Conduit System.

2. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to its choice of law principles.

3. Severability. In the event that any one or more of the clauses, covenants or provisions contained in this License should be held to be unenforceable under any federal, state or city law, statute, code, administrative or regulatory rule, such invalidity or unenforceability shall not affect the remainder of this License, which shall remain in full force and effect.

4. Limitation on Use. Licensee shall not use the Licensor's Conduit System for the provision of "cable service" as that term is defined in federal or state law unless Licensee has obtained a Franchise to provide cable service from the City under the terms of Chapter 99,

Milwaukee Code of Ordinances, or as a "cable communications system" or "cable system" as that term is defined in sec. 99-3-5, Milwaukee Code of Ordinances. Licensor's grant of this License is not intended nor should it be construed to be a grant of a cable television franchise under federal law or under Chapter 99, Milwaukee Code of Ordinances.

In Witness Whereof, The parties hereto have executed this License as of the day and year first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

\_\_\_\_\_

\_\_\_\_\_  
Commissioner of  
Public Works

COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_  
Comptroller  
(LICENSEE)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

Approved as to content  
this \_\_\_\_ day of \_\_\_\_\_, 2011.

---

Special Deputy City Attorney

Approved as to form and execution  
this \_\_\_\_ day of \_\_\_\_\_, 2011.

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Special Deputy City Attorney

PBMcD:dms  
11/30/98  
16051





Legislation Details (With Text)

**File #:** 100957      **Version:** 1  
**Type:** Ordinance      **Status:** In Committee  
**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE  
**On agenda:**      **Final action:**  
**Effective date:**  
**Title:** An ordinance relating to solid waste and recycling regulations.  
**Sponsors:** THE CHAIR  
**Indexes:** RECYCLING, SOLID WASTE DISPOSAL  
**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
11/24/2010	1	CITY CLERK	DRAFT SUBMITTED		
12/1/2010	1	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number  
100957  
Version  
SUBSTITUTE 1  
Reference

Sponsor  
THE CHAIR

Title  
An ordinance relating to solid waste and recycling regulations.

Sections

79-1-4.5 cr  
79-1-7 am  
79-1-8.5 cr  
79-1-8.7 cr  
79-1-12-a am  
79-2-12 cr  
79-2-13 cr  
79-6.5-2 am  
79-6.5-9 cr  
79-16-1-f cr  
79-23-4.5 cr  
79-23-23 rc  
79-23-27 am  
79-23-28 rc  
79-25-0 am  
79-25-1 rc  
79-25-2 rc  
79-27-1 am  
79-31 am  
79-33-1-0 am  
79-33-1-c am  
79-35-1-c am  
79-39-1 am

Analysis

This ordinance updates the city code provisions relating to solid waste and recycling regulations to make the code consistent with recent changes in state law banning of the placement or disposal of certain electronic devices and used oil filters and absorbents in landfills. This ordinance also clarifies the code to specifically include condominium complexes in the city's recycling regulations.

Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 79-1-4.5 of the code is created to read:

**79-1. Definitions.**

**4.5.** ELECTRONIC DEVICE has the meaning given in s. 287.17 (1) (gm), Wis. Stats.

Part 2. Section 79-1-7 of the code is amended to read:

7. LITTER shall include any waste or other things, substances or materials such as garbage, rubbish, used tires, manure, stones, gravel, sand, earth, grass, hay, leaves, twigs, shrubs, branches, ashes, cinders, sawdust, sweepings, dirt, glass, earthenware, wire, nails, construction waste, liquid waste, ice, snow, paper >> electronic devices, oil filters, oil absorbent materials<<, and all other debris and discarded materials of similar nature.

Part 3. Section 79-1-8.5 and 8.7 of the code is created to read:

8.5. OIL ABSORBENT MATERIALS means materials that are used to absorb waste oil.

8.7. OIL FILTER means a filter for motor vehicle engine oil.

Part 4. Section 79-1-12-a of the code is amended to read:

12. SOLID WASTE consists of the following categories:

a. Bulky waste is discarded articles including, but not limited to, furniture designed or manufactured for indoor use, including, but not limited to, upholstered furniture, left exposed in an outdoor area, including unenclosed porches. The term does not include >> electronic devices as defined in sub. 4.5 or << major appliances as defined in s. 79-23-10.

Part 5. Section 79-2-12 and 13 of the code is created to read:

**79-2. Collection Regulations.**

**12. OIL FILTERS AND OIL ABSORBENT MATERIALS.**

a. No person may place a used oil filter in mixed municipal solid waste.

b. No person may place oil absorbent materials of one gallon or more in mixed municipal solid waste.

**13. ELECTRONIC DEVICES.**

a. Electronic devices as specified in s. 287.07 (5), Wis. Stats., shall be collected by the department as provided under s.79-6.5-9.

b. No person may place an electronic device in mixed municipal solid waste or discard or otherwise dispose of an electronic device except by delivery to an electronic device collection or recycling facility.

Part 6. Section 79-6.5-2 of the code is amended to read:

**79-6.5. Special Collection Charges.**

2. DOMESTIC WASTE, OFFENSIVE OR HARMFUL. Liquid, manure and other offensive or harmful waste as specified in ~~[[s. 79-2-5]]~~ >>s. 79-2-6<<. Such waste depending on its nature and quantity may be collected without charge, refused or collected for a charge in accordance with this chapter and the rules of the commissioner.

Part 7. Section 79-6.5-9 of the code is created to read:

9. ELECTRONIC DEVICES may be collected for a charge as established by the commissioner or refused in accordance with this chapter and the rules of the commissioner.

Part 8. Section 79-16-1-f of the code is created to read:

**79-16. Penalty.**

1. FORFITURE. f. Each electronic device improperly disposed under s. 79-2-13-b shall constitute a separate violation.

Part 9. Section 79-23-4.5 of the code is created to read:

**79-23. Definitions.**

4.5. ELECTRONIC DEVICE has the meaning given in s. 287.17 (1) (gm), Wis. Stats.

Part 10. Section 79-23-23 of the code is repealed and recreated to read:

**23. RECYCLABLE MATERIAL** includes electronic devices, lead acid batteries, major appliances, waste oil, oil filters, yard waste, aluminum containers, bi-metal containers, corrugated paper or other container board, glass containers, magazines, newspapers, office paper, steel containers, waste tires and rigid plastic containers made of PETE and HDPE.

Part 11. Section 79-23-27 of the code is amended to read:

**27. SPECIAL RECYCLABLE MATERIALS** means >>electronic devices, << lead acid batteries, major appliances, waste oil >>, oil filters<< and yard waste.

Part 12. Section 79-23-28 of the code is repealed and recreated to read:

**28. STANDARD RECYCLABLE MATERIALS** means aluminum containers, bi-metal containers, corrugated paper or other container board, glass containers, magazines, newspapers, office paper, steel containers, waste tires and rigid plastic containers made of PETE and HDPE.

Part 13. Section 79-25-0 of the code is amended to read:

**79-25. Separation of Recyclable Materials Required.** Except as provided in s. 79-27, occupants of single family residences, 2 to 4-unit residences, >>condominium complexes,<< multiple-family dwellings and non-residential facilities and properties shall separate the following materials from postconsumer waste:

Part 14. Section 79-25-1 and 2 of the code is repealed and recreated to read:

1. SPECIAL RECYCLABLE MATERIALS.

- a. Electronic devices.
- b. Lead acid batteries.
- c. Major appliances.
- d. Waste oil and oil filters.
- e. Yard waste.

2. STANDARD RECYCLABLE MATERIALS.

- a. Aluminum containers.
- b. Bi-metal containers.
- c. Corrugated paper or other container board.
- d. Glass containers.
- e. Magazines.
- f. Newspapers.
- g. Office paper.
- h. Rigid plastic containers made of PETE and HDPE.

Part 15. Section 79-27-1 of the code is amended to read:

**79-27. Exemptions from Separation Requirements.**

1. Occupants of single family residences, 2 to 4-unit residences, >>condominium complexes,<< multiplefamily dwellings and non-residential facilities and properties that send their postconsumer waste to a licensed solid waste processing facility that recovers the materials specified in s. 79-25 from solid waste in as pure a form as is technically feasible.

Part 16. Section 79-31 of the code is amended to read:

**79-31. Residences, Except Multiple-Family Dwellings.** Occupants of single family residences, 2 to 4-unit residences and condominium complexes >>where collection service is provided by the

department<< shall provide for the preparation and collection of separated standard recyclable materials in accordance with the rules of the commissioner.

Part 17. Section 79-33-1-0 and c of the code is amended to read:

**79-33. Multiple-Family Dwellings. 1.** Except as provided under sub. 2, owners, lessees or designated agents of multiple-family dwellings, ~~[[except]]~~ >> as well as those<< condominium complexes >> where collection service is not provided by the department, << shall do all of the following to recycle standard recyclable materials:

c. Provide for the collection of the materials separated from the solid waste by the users, tenants and occupants and for the delivery of those materials to a recycling facility ~~[[by private collection]]~~.

Part 18. Section 79-35-1-c of the code is amended to read:

**79-35. Non-Residential Facilities and Properties.**

1. c. Provide for the collection of the materials separated from the solid waste by the users, tenants and occupants and for the delivery of those materials to a recycling facility ~~[[by private collection]]~~.

Part 19. Section 79-39-1 of the code is amended to read:

**79-39. Management of Special Recyclable Materials.**

1. Occupants of single family residences, 2 to 4-unit residences, >>condominium complexes, << multiplefamily dwellings and non-residential facilities and properties shall manage lead acid batteries as provided in s. 79-2-10, and shall handle >>electronic devices<<, major appliances, waste oil, >>oil filters,<< and yard waste in accordance with this section and the rules of the commissioner.

LRB:

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

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

ATTORNEY

IT IS OUR OPINION THAT THE ORDINANCE

IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

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

Department

Department of Public Works

Drafter

LRB123389-3

JWC

11/22/10





## Legislation Details (With Text)

**File #:** 100952      **Version:** 0  
**Type:** Resolution      **Status:** In Committee  
**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE  
**On agenda:**      **Final action:**  
**Effective date:**

**Title:** Resolution authorizing the issuance of a street occupancy permit to J.H. Findorff and Son as construction manager for The Moderne new construction project at 1141 North Old World Third Street allowing occupancy for 20 feet of the entire alleyway starting at West Juneau Avenue to a point 120 feet south.

**Sponsors:** THE CHAIR

**Indexes:** PERMITS, PERMITS APPROVAL

**Attachments:** Cover Letter, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number  
100952  
Version  
ORIGINAL  
Reference

Sponsor  
THE CHAIR  
Title

Resolution authorizing the issuance of a street occupancy permit to J.H. Findorff and Son as construction manager for The Moderne new construction project at 1141 North Old World Third Street allowing occupancy for 20 feet of the entire alleyway starting at West Juneau Avenue to a point 120 feet south.

Analysis

This resolution authorizes City officials to issue an occupancy permit to J.H. Findorff and Son allowing them to close 20 feet of the alleyway from West Juneau Avenue to a point 120 feet south.

Body

Whereas, J.H. Findorff and Son is acting agent as the construction manager for the new construction project of The Moderne; and

Whereas, J.H. Findorff and Son has requested to occupy 20 feet of the alleyway (the entire width of alley); and

Whereas, A man basket lift is required to move workers up and down the building, the dimensions of the lift are 14.5 feet x 14 feet; and

Whereas, The most ideal location for the lift is in the alley due to the configuration of the building, the west side is the only side that does not have an angle or curved walls or any obstructions coming out from the building; and

Whereas, The alley closure is expected to take place in November of 2010 and last until August of 2012; and

Whereas, J.H. Findorff and Son will be responsible for all required traffic control in accordance with City requirements and permits; and

Whereas, J.H. Findorff and Son will notify, in writing, all owners of affected and adjacent properties of the intended work and schedule; and

Whereas, The Commissioner of Public Works may approve temporary occupancy of up to one third of the public rights-of-way while temporary use beyond that point must be approved by the Common Council; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the appropriate City officials are hereby authorized to issue a permit to J.H. Findorff and Son allowing occupancy of the alley described herein for a period of twenty (22) months from the date the permit is issued.

Drafter  
DPW-ADM  
GK:mra  
November 16, 2010  
The Moderne Res

November 16, 2010

To the Honorable, the Common Council

Dear Honorable Members:

We are submitting for your consideration the attached resolution authorizing the issuance of a permit to J.H. Findorff and Son allowing occupancy of the section of Old World Third Street described herein for a period of twenty two (22) months from the date the permit is issued.

Please have this file introduced at the November 23<sup>rd</sup> Common Council meeting. If you have any questions or would like any additional information, please contact Ghassan Korban at extension 3304.

Very truly yours,

Jeffrey J. Mantes  
Commissioner of Public Works

JJM:GK:mra  
Attachment  
c: Ald. Bauman  
G. Korban  
File





## Legislation Details (With Text)

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**File #:** 100997      **Version:** 0  
**Type:** Resolution      **Status:** In Committee  
**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE  
**On agenda:**      **Final action:**  
**Effective date:**

**Title:** Resolution authorizing the issuance of a street occupancy permit to Dawes Rigging and Crane for work on the Milwaukee Area Technical College at 700 West State Street allowing for the occupancy of the south bound parking lane and traffic lane on North 6th Street for a total of 26 feet in addition of the 12 foot sidewalk area.

**Sponsors:** THE CHAIR

**Indexes:** MILWAUKEE AREA TECHNICAL COLLEGE, PERMITS, PERMITS APPROVAL

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100997

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution authorizing the issuance of a street occupancy permit to Dawes Rigging and Crane for work on the Milwaukee Area Technical College at 700 West State Street allowing for the occupancy of the south bound parking lane and traffic lane on North 6<sup>th</sup> Street for a total of 26 feet in addition of the 12 foot sidewalk area.

**Analysis**

Also authorizes the issuance of a street occupancy permit to Dawes Rigging and Crane allowing them to occupy the south bound parking lane and traffic lane on North 6<sup>th</sup> Street for a total of 26 feet in addition of the 12 foot sidewalk area starting at a point 120'+/- north of West State Street and continuing to a point 180'+/- north of West State St.

**Body**

Whereas, Dawes Rigging and Crane requested to occupy the south bound parking lane and traffic lane on North 6<sup>th</sup> Street for a total of 26 feet in addition of the 12 foot sidewalk area starting at a point 120'+/- north of West State Street and continuing to a point 180'+/- north of West State St and

Whereas, The most ideal location for the crane is on the east side of MATC due to the configuration of the building and the location of cooling towers and mechanical units; and

Whereas, The Street occupancy is expected to take place at the end of December 2010 and last for one (1) week; and

Whereas, Dawes Rigging and Crane will be responsible for all required traffic control in accordance with City requirements and permits; and

Whereas, The Commissioner of Public Works may approve temporary occupancy of up to one third of the public rights-of-way while temporary use beyond that point must be approved by the Common Council; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the appropriate City officials are hereby authorized to issue a permit to Dawes Rigging and Crane allowing occupancy of the public right-of-way described herein for a period of one (1) week from the date the permit is issued.

**Drafter**

DPW-ADM

GK:ejg

November 19, 2010

The Dawes Rigging





## Legislation Details (With Text)

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**File #:** 100909      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution authorizing the installation of a new traffic control signal at the intersection of West Bolivar Avenue and South 20th Street in the 13th Aldermanic District.

**Sponsors:** THE CHAIR

**Indexes:** TRAFFIC CONTROL SIGNALS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100909

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution authorizing the installation of a new traffic control signal at the intersection of West Bolivar Avenue and South 20<sup>th</sup> Street in the 13<sup>th</sup> Aldermanic District.

**Analysis**

This resolution authorizes the Commissioner of Public Works to install a new traffic control signal at the intersection of West Bolivar Avenue and South 20<sup>th</sup> Street with funding from the Department of Public Works capital fund.

**Body**

Whereas, The traffic volumes at the intersection of West Bolivar Avenue and South 20<sup>th</sup> Street exceed federal warrants in the Manual on Uniform Traffic Control Devices (MUTCD) for the installation of a traffic control signal; and

Whereas, The installation of a traffic control signal at the intersection of West Bolivar Avenue and South 20<sup>th</sup> Street will provide for a better exchange of right-of-way over the existing all-way stop control resulting in a reduction in traffic congestion; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the Commissioner of Public Works is authorized to install a new traffic control signal at the intersection of West Bolivar Avenue and South 20<sup>th</sup> Street using funding from the Department of Public Works capital fund.

**Requestor**

Department of Public works

**Drafter**

Infrastructure Services Division

RWB: ns

November 4, 2010





## Legislation Details (With Text)

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**File #:** 100966      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution relative to the 2011 Capital Improvements Program to provide funds for traffic signs and signal work at various locations.

**Sponsors:** THE CHAIR

**Indexes:** SIGNS, TRAFFIC CONTROL SIGNALS

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100966

**Version**

Original

**Reference**

**Sponsor**

The Chair

**Title**

Resolution relative to the 2011 Capital Improvements Program to provide funds for traffic signs and signal work at various locations.

**Analysis**

This resolution provides funds for traffic control alterations at various locations in response to changes in traffic patterns, paving projects and other required traffic control upgrades, and authorizes 2011 fund transfers for the general purposes indicated.

**Body**

Resolved, By the Common Council of the City of Milwaukee, that the Department of Public Works is hereby authorized to modify and/or install traffic control signs and signals at various locations; and, be it

Further Resolved, That the Comptroller's Office is authorized to transfer from the Traffic Control Facilities Capital Improvements budget, Account Number ST220110000 up to \$1,912,250, to the general purpose sub-accounts indicated as follows:

General Engineering

Account Number: ST220110100

Miscellaneous Traffic Signal Modifications, Non-Paving

Account Number: ST220110200

Traffic Signal Reconstruction with Paving

Account Number: ST220110300

Miscellaneous Traffic Signs with Paving

Account Number: ST220110500

Traffic Control Signs, Non-Paving

Account Number: ST220110600

Uncollectable Traffic Control Knockdown Repair

Account Number: ST220110700

Total 2011 Funds Authorized: \$1,912,250

; and, be it

Further Resolved, That the City Comptroller is authorized to transfer funds as required without further Common Council authorization, the total amount of such transfer shall not exceed the amount authorized in the 2011 Traffic Control Facilities Capital Improvements budget.

**Requestor**

Department of Public Works

**Drafter**

Infrastructure Services Division

RWB: ns

November 17, 2010





## Legislation Details (With Text)

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**File #:** 100968      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution relative to the 2011 Capital Improvements Program to provide funds for street lighting work at various locations.

**Sponsors:** THE CHAIR

**Indexes:** CAPITAL IMPROVEMENTS, STREET LIGHTING

**Attachments:** Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100968

**Version**

Original

**Reference**

**Sponsor**

The Chair

**Title**

Resolution relative to the 2011 Capital Improvements Program to provide funds for street lighting work at various locations.

**Analysis**

This resolution provides funds for street lighting alterations at various locations in response to lighting needs and paving projects and authorizes 2011 fund transfers for the general purposes indicated.

**Body**

Resolved, By the Common Council of the City of Milwaukee, that the Department of Public Works is hereby authorized to modify and/or install street lighting at various locations; and, be it

Further Resolved, That the Comptroller's Office is authorized to transfer from the Street Lighting Capital Improvements budget, Account Number ST240110000 up to \$7,400,000, to the general purpose sub-accounts indicated as follows:

General Engineering

Account Number: ST240110100

Substation Repair

Account Number: ST240110200

Substation Enclosure Maintenance

Account Number: ST240110300

Street Lighting Related to Paving

Account Number: ST240110400

Street and Alley Lighting Conversion

Account Number: ST240110500

Remove Series Circuitry

Account Number: ST240110700

Pole, Cable and Miscellaneous Replacement

Account Number: ST240110800

Electrical Facilities Digitizing Project

Account Number: ST240110900

Uncollectable Pole Knockdown and Repair

Account Number ST240111000

Total 2011 Funds Authorized: \$7,400,000

; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer funds as required without further Common Council authorization, the total amount of such transfer shall not exceed the amount authorized in the 2011 Street Lighting Capital Improvements budget.

**Requestor**

Department of Public Works

**Drafter**

Infrastructure Services Division

RWB: ns

November 17, 2010



..Number

100956

..Version

ORIGINAL

..Reference

100323

..Sponsor

THE CHAIR

..Title

Resolution approving construction and appropriating funds for the rehabilitation of the Wisconsin Ave. Lift Bridge and the replacement of the Juneau Ave. Bascule Bridge, both spanning over the Milwaukee River, with \$21,500,000 in grant funding from the American Recovery and Reinvestment Act supplemental Transportation Investment Generating Economic Recovery program and \$1,320,000 in State/Federal Local Bridge Program funding, with the City construction cost estimated to be \$4,680,000 for a total estimated construction cost of these projects being \$27,500,000.

..Analysis

This resolution directs the installation and construction for the rehabilitation of the Wisconsin Ave. Lift Bridge and the replacement of the Juneau Ave. Bascule Bridge, both spanning over the Milwaukee River. These projects are receiving a grant in the amount of \$21,500,000 from the American Recovery and Reinvestment Act (ARRA) supplemental Transportation Investment Generating Economic Recovery (TIGER) grant program and \$1,320,000 in State/Federal Local Bridge Program funding for construction. The City construction cost of the projects approved by this resolution is estimated to be \$4,680,000 for a total estimated construction cost of \$30,325,000. The total estimated design and construction cost for these projects is \$30,325,000 with \$23,780,000 in grantor funds and \$6,545,000 in city funds.

..Body

Whereas, The City of Milwaukee applied for and received a grant in the amount of \$21,500,000 from the American Recovery and Reinvestment Act (ARRA) supplemental Transportation Investment Generating Economic Recovery (TIGER) grant program towards the construction of these two movable bridge projects; and

Whereas, Common Council Resolution File Number 100323, adopted on July 27, 2010, authorized the Commissioner of Public Works to execute a Grant Agreement with the Federal Highway Administration (FHWA) and the Wisconsin Department of Transportation, which will commit the federal grant funds for the construction of these two movable bridge projects; and

Whereas, Conditions of the TIGER Grant originally required construction funding be obligated by September of 2011, which was to be accomplished through the traditional Design Bid Build process; and

Whereas, The FHWA has requested the project schedule be accelerated to have the construction funds obligated by December 31, 2010, which necessitates the project delivery be switched to a Low Bid Design Build process; and

Whereas, Partial plans, specifications, and estimates have been prepared for these two movable bridge projects:

4<sup>th</sup> Aldermanic District

W. Wisconsin Ave Lift Bridge over the Milwaukee River (BR320090101/ST320090101) (2190-08-00) File Number 080845: Rehabilitate lift bridge including structural, mechanical, hydraulic, and electrical components; replace bridge approaches, curb and gutter, and sidewalk as necessary.

Grantor Non-Reimbursable Structure Fund (TIGER Grant) - \$7,500,000

Grantor Non-Reimbursable Structure Fund (State/Federal Local Bridge Program) - \$0

Grantor Reimbursable Structure Fund-\$0

City Share Non-Assessable Structure Fund- \$3,000,000

These funds are to be transferred to the construction account (BR320090110) (2653-03-71)

Previously authorized for bridge construction: \$0.00

Current estimated cost of the total project: \$11,700,000

Original estimated cost of the total project (File Number 080845): \$11,200,000

This project is anticipated to be completed during the 2011-2012 construction season.

3<sup>rd</sup> and 4<sup>th</sup> Aldermanic District

W. Juneau Ave. Bridge Lift Bridge over the Milwaukee River (BR100090106/BR100100102) (2653-03-00) File Number 090194/091432: Replace lift bridge, concrete pavement approaches, curb and gutter, and sidewalk as necessary.

Grantor Non-Reimbursable Structure Fund (TIGER Grant)-\$14,000,000

Grantor Non-Reimbursable Structure Fund (State/Federal Local Bridge Program)-  
\$1,320,000

Grantor Reimbursable Structure Fund-\$0

City Share Non-Assessable Structure Fund-\$1,680,000

These funds are to be transferred to the construction account (BR32009xxl 0) (2653-03-71)

Previously authorized for bridge construction: \$0.00

Current estimated cost of the total project: \$18,625,000

Original estimated cost of the total project (File Number 090194): \$8,300,000

This project is anticipated to be completed during the 2011-2012 construction season.

; now, therefore, be it

Further Resolved, That the Department of Public Works is authorized to use the funding as specified in the above description of work; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer such

funds which are available for this purpose to the appropriate capital Project/Grant accounts.

..Requestor

Department of Public Works

...Drafter

Infrastructure Services Division

CSL: ns

November 17, 2010

November 15, 2010

..Number

100956

..Version

Proposed Substitute A

..Reference

..Sponsor

THE CHAIR

..Title

Substitute resolution approving construction and appropriating funds for the rehabilitation of the Wisconsin Ave. Lift Bridge and the replacement of the Juneau Ave. Bascule Bridge, both spanning over the Milwaukee River, with \$21,500,000 in grant funding from the American Recovery and Reinvestment Act (ARRA) supplemental Transportation Investment Generating Economic Recovery (TIGER) program and \$1,320,000 in State/Federal Local Bridge Program funding, with the City construction cost estimated to be \$4,788,000 for a total estimated construction cost of these projects being \$27,608,000.

..Analysis

This resolution directs the installation and construction for the rehabilitation of the Wisconsin Ave. Lift Bridge and the replacement of the Juneau Ave. Bascule Bridge, both spanning over the Milwaukee River. These projects are receiving a grant in the amount of \$21,500,000 from the American Recovery and Reinvestment Act (ARRA) supplemental Transportation Investment Generating Economic Recovery (TIGER) grant program and \$1,320,000 in State/Federal Local Bridge Program funding for construction. The City construction cost of the projects approved by this resolution is estimated to be \$4,788,000 for a total estimated construction cost of \$27,608,000. The total estimated design and construction cost for these projects is \$30,433,000 with \$23,780,000 in grantor funds and \$6,653,000 in city funds.

..Body

Whereas, The City of Milwaukee applied for and received a grant in the amount of \$21,500,000 from the American Recovery and Reinvestment Act (ARRA) supplemental Transportation Investment Generating Economic Recovery (TIGER) grant program towards the construction of these two movable bridge projects; and

Whereas, Common Council Resolution File Number 100323, adopted on July 27, 2010, authorized the Commissioner of Public Works to execute a Grant Agreement with the Federal Highway Administration (FHWA) and the Wisconsin Department of Transportation, which will commit the federal grant funds for the construction of these two movable bridge projects; and

Whereas, Conditions of the TIGER Grant originally required construction funding be obligated by September of 2011, which was to be accomplished through the traditional Design Bid Build process; and

Whereas, The FHWA has requested the project schedule be accelerated to have the construction funds obligated by December 31, 2010, which necessitates the project delivery be switched to a Low Bid Design Build process; and

Whereas, partial plans, specifications, and estimates have been prepared for these two movable bridge projects:

4<sup>th</sup> Aldermanic District

W. Wisconsin Ave Lift Bridge over the Milwaukee River (BR320090101/ST320090101) (2190-08-00) File Number 080845: Rehabilitate lift bridge including structural, mechanical, hydraulic, and electrical components; replace bridge approaches, curb and gutter, and sidewalk as necessary.  
Grantor Non-Reimbursable Structure Fund (TIGER Grant) — \$7,500,000  
Grantor Non-Reimbursable Structure Fund (State/Federal Local Bridge Program) — \$0  
Grantor Reimbursable Structure Fund—\$0  
City Share Non-Assessable Structure Fund— \$2,128,000

These funds are to be transferred to the construction account (BR320090110) (2653-03-71)

Previously authorized for bridge construction: \$0.00  
Current estimated cost of the total project: \$10,828,000  
Original estimated cost of the total project (File Number 080845): \$11,200,000  
This project is anticipated to be completed during the 2011-2012 construction season.

3<sup>rd</sup> and 4<sup>th</sup> Aldermanic District

W. Juneau Ave. Bridge Lift Bridge over the Milwaukee River (BR100090106/BR100100102) (2653-03-00) File Number 090194/091432: Replace lift bridge, concrete pavement approaches, curb and gutter, and sidewalk as necessary.  
Grantor Non-Reimbursable Structure Fund (TIGER Grant)—\$14,000,000  
Grantor Non-Reimbursable Structure Fund (State/Federal Local Bridge Program)—\$1,320,000  
Grantor Reimbursable Structure Fund—\$0  
City Share Non-Assessable Structure Fund—\$2,660,000

These funds are to be transferred to the construction account (BR32009xx10) (2653-03-71)

Previously authorized for bridge construction: \$0.00  
Current estimated cost of the total project: \$19,605,000  
Original estimated cost of the total project (File Number 090194): \$8,300,000  
This project is anticipated to be completed during the 2011-2012 construction season.

Now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the Commissioner of Public Works is authorized and directed to proceed with said work; and, be it

Further Resolved, That the Department of Public Works is authorized to use the funding as specified in the above description of work; and, be it

Further Resolved, That the City Comptroller is authorized and directed to transfer such funds which are available for this purpose to the appropriate capital Project/Grant accounts.

..Requestor

Department of Public Works

...Drafter

Infrastructure Services Division

CSL: ns

December 2, 2010

**Capital Grant Resolution Certification from the  
Comptroller's Office**

The Comptroller's Office has reviewed Common Council Resolution File No. 100936 for construction costs for the rehabilitation of the Wisconsin Avenue Lift Bridge and the replacement of the Juneau Avenue Bascule Bridge (ARRA TIGER Grant) (City share \$4,680,000; Grantor Share \$22,820,000) and approved the resolution as to:

- Sufficiency of funds through 2011 Budget
- Funding sources (per estimated **grant funding agreement**)
- Sufficiency of reporting for purposes of internal auditing

The following deficiencies were noted:

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The resolution should be corrected and returned to the Comptroller's Office for review.

Signature: C Wisniewski

Date: 12/30/10

**Capital Grant Resolution Certification from the  
Comptroller's Office**

The Comptroller's Office has reviewed Common Council Resolution File No. 100956 for construction costs for the rehabilitation of the Wisconsin Avenue Lift Bridge and the replacement of the Juneau Avenue Bascule Bridge (ARRA TIGER Grant) (City share \$4,680,000; Grantor Share \$22,820,000) and approved the resolution as to:

- Sufficiency of funds
- Funding sources (per estimated **grant funding agreement**)
- Sufficiency of reporting for purposes of internal auditing

The following deficiencies were noted:

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The resolution should be corrected and returned to the Comptroller's Office for review.

Signature: C. Wisneski

Date: 11/17/10





## Legislation Details (With Text)

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**File #:** 100980      **Version:** 0  
**Type:** Resolution      **Status:** In Committee  
**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE  
**On agenda:**      **Final action:**  
**Effective date:**

**Title:** Resolution directing the Commissioner of Public Works and Comptroller to execute a Revised Project Agreement titled "State/Municipal Agreement for a Highway Improvement Project" between the City of Milwaukee and Wisconsin Department of Transportation for programming of the project known as Downtown to Bayview Bikeway and to fund the additional preliminary engineering with a total estimated cost of \$161,200 of which the estimated City share is \$32,240 and the estimated grantor share is \$128,960.

**Sponsors:** THE CHAIR

**Indexes:** AGREEMENTS, STREET IMPROVEMENTS, WISCONSIN DEPARTMENT OF TRANSPORTATION

**Attachments:** Cover Letter, Project Agreement, Comptroller's Certificate, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100980

**Version**

ORIGINAL

**Reference**

060275

**Sponsor**

THE CHAIR

**Title**

Resolution directing the Commissioner of Public Works and Comptroller to execute a Revised Project Agreement titled "State/Municipal Agreement for a Highway Improvement Project" between the City of Milwaukee and Wisconsin Department of Transportation for programming of the project known as Downtown to Bayview Bikeway and to fund the additional preliminary engineering with a total estimated cost of \$161,200 of which the estimated City share is \$32,240 and the estimated grantor share is \$128,960.

**Analysis**

This resolution authorizes the Commissioner of Public Works to execute a Revised Project Agreement with the Wisconsin Department of Transportation (WISDOT) for programming of the Downtown to Bayview Bikeway, Project I.D. 1300-06-01 and for construction of a part of this project known as South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue, Project I.D. 1302-00-70. The Revised Project Agreement provides for 80 percent Federal/State aid and 20 percent local cost share for the increased costs of the project. The total additional preliminary engineering cost of \$161,200 of which the estimated City share is \$32,240 and the estimated grantor share is \$128,960. The total estimated cost of the entire project for preliminary engineering of the Downtown to Bayview Bikeway project and for construction of the South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue is \$1,849,850, of which \$377,970 is the City of Milwaukee's share and \$1,471,880 is the grantor share. Construction funds will be requested in a future Common Council resolution.

**Body**

Whereas, The Common Council of the City of Milwaukee adopted Resolution File Number 060275 authorizing and directing the Commissioner of Public Works to execute an agreement with the Wisconsin Department of Transportation (WISDOT) for programming of the Downtown to Bayview Bikeway with 80 percent Federal and/or State aid participation and 20 percent local cost sharing; and

Whereas, It is currently proposed to construct a part of this project known as South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue, Project I.D. 1302-00-70, in 2011 to expend Federal Congestion Relief fund (3610) and to meet Federal deadlines for committal of this funding ; and

Whereas, As part of the preliminary engineering process and escalated scheduling requested by the WISDOT, the project costs have been refined and increased from the original agreement drafted four years ago; and

Whereas, The WISDOT has submitted a Revised Project Agreement for City execution that includes additional monies for programming of the Downtown to Bayview Bikeway, Project I.D. 1300-06-01 and for construction of South and East Bay Street from East Potter Avenue to South Kinnickinnic Ave, Project I.D. 1302-00-70; and

Whereas, South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue is scheduled for construction in 2011 and construction funds will be requested in a separate resolution; and

Whereas, Design on the second phase of this project Downtown to Bayview Bikeway, Project I.D. 1300-06-01 will be completed and construction tentatively scheduled for 2012 and construction funds will be requested in a future resolution, now therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the Commissioner of Public Works is hereby authorized to execute the Revised Project Agreement updating and revising the project costs for programming of the

Downtown to Bayview Bikeway, Project I.D. 1300-06-01 and for construction of the South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue, Project I.D. 1302-00-70, a copy of which is attached to Common Council File Number 100980 and incorporated in this resolution as though set forth therein in full; and, be it

Further Resolved, That the City Comptroller is hereby authorized to create within the Capital Grant and Aid Projects Fund the appropriate Project/Grant Chartfield Value for this project; and transfer to these accounts the amount required under the grant agreement and City accounting policy, but not to exceed a ten percent increase of the total amounts reserved for the grantor's share and local share or \$5,000, whichever is greater as follows:

Downtown to Bay View Bicycle Route  
Preliminary Engineering  
Project I.D. 1300-06-01  
ST320061401

Local Share  
Fund Number 0333  
Project Grant Number ST320100000  
\$32,240

Federal Grantor Reimbursable Share  
Fund Number 0306  
Project Grant Number SP032100100  
\$128,960

Previously authorized for preliminary engineering: \$445,500  
Current estimated cost of total project including this resolution: \$1,849,850  
Original estimated cost of total project (Resolution No. 060275): \$2,428,851

Further Resolved, That the City Engineer is hereby authorized and directed to approve and make periodic payments to WisDOT upon receipt of invoices for the local share of the project.

**Requestor**

Department of Public Works

**Drafter**

Infrastructure Services Division

LCG: amh

November 15, 2010

Reso D-Twn B-View Bkwy 111210.rtf

November 16, 2010

To the Honorable, the Common Council

Subject: Project ID 1300-06-01 and 1302-00-70  
Downtown to Bayview Bikeway

Dear Council Members:

Common Council Resolution File Number 060275, adopted July 12, 2006, authorized the Commissioner of Public Works to execute a project agreement with the Wisconsin Department of Transportation (WisDOT) for programming of the project known as Downtown to Bayview Bikeway and funding of the additional preliminary engineering. The project agreement provided funding participation of 80 percent Federal and/or State aid with 20 percent City participation.

The project originally called for construction on this project in one segment. It is currently proposed to construct a part of this project known as South and East Bay Street from East Potter Avenue to South Kinnickinnic Avenue, Project I.D. 1302-00-70, in 2011 to expend Federal Congestion Relief fund (3610) and to meet Federal deadlines for committal of this funding. Design on the second phase of this project Downtown to Bayview Bikeway, Project I.D. 1300-06-01 will be completed and construction tentatively scheduled for 2012.

As part of the preliminary engineering process and escalated scheduling requested by the WISDOT, the project costs have been refined and increased from the original agreement drafted four years ago. Consequently, the WISDOT has requested a revised project agreement for the first segment of this project. A second revised project agreement is currently being reviewed by the WISDOT and will be presented in a future resolution.

We have prepared and recommend adoption of the attached resolution authorizing the Commissioner of Public Works to execute the revised project agreement. The construction funds for this project will be requested in a future resolution.

To the Honorable, the Common Council  
November 16, 2010  
Page 2

Very truly yours,

Jeffrey S. Polenske, PE  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

LCG:amh

Attachment

c: Alderman Anthony Zielinski  
Alderman Jim Witkowiak  
Alderman Robert Bauman

To the Honorable, the Common Council  
November 16, 2010  
Page 2

Very truly yours,

Jeffrey S. Polenske, PE  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

LCG:amh

Attachment

c: Alderman Anthony Zielinski  
Alderman Jim Witkowiak  
Alderman Robert Bauman

**REVISED STATE/MUNICIPAL AGREEMENT  
FOR A  
HIGHWAY IMPROVEMENT PROJECT  
(Replaces previous agreement dated January 25, 2006)**

Date:	November 9, 2010	ID:	1300-06-01	ID:	1302-00-70
Description:	Downtown to Bayview Bikeway	Description:	South and East Bay Street	Limits:	E Potter Ave to S Kinnickinnic Ave
Limits:	Lincoln Memorial Drive to Erie St	County:	Milwaukee	County:	Milwaukee

The signatory city, village, town or county, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Section 86.25(1), (2) and (3) of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:** Federal Congestion Relief funds (3610) and State Enhancement Funds (220) will fund the Federal portion of the project. Alternative #9 of the Bayview Bikeway Study has been selected as the preferred alternative.

**Existing Facility - Describe and give reason for request:**

*In 1997 WisDOT sponsored the Bayview Bikeway Study to plan, design, and construct a facility which would enhance the use of bicycles as an alternative mode of transportation between downtown Milwaukee and the Bayview neighborhood for both commuter and recreational travel with an emphasis on commuter travel.*

**Proposed Improvement - Nature of work:**

*The proposed improvement is an implementation of the south segment of Alternative #9 of the Bayview Bikeway Study. Construction under ID 1302-00-70 will include resurfacing of South Bay Street from East Potter Avenue to South Lenox Street and will include raised marked bicycle lanes. Improvements will also include signing and pavement marking for bike lanes on East Bay Street from South Lenox Street to South Kinnickinnic Avenue.*

*An additional segment of the Bikeway will be constructed on former railroad right of way between Maple Street and Washington Street under a separate project ID 2984-24-70 (Kinnickinnic River Bike Trail).*

The apportionment of costs for work necessary to finish the project (including non-participating work and work which will be undertaken by the Municipality) is as follows:

	Total Estimated Cost	Federal Funds	%	Municipal Funds	%
Design(3610) Plan Development	\$340,000	\$272,000	80%	\$68,000	20%
Design (Bike/Ped(220))(1300-06-01)	\$161,200	\$128,960	80%	\$32,240	20%
Design Review(3610) (1300-06-01)	\$65,000	\$52,000	80%	\$13,000	20%
Construction Roadway(3610)(1302-00-70)	\$1,095,101	\$876,081	80%	\$219,020	20%
Construction Bike/Ped(220)(1302-00-70)	\$178,549	\$142,839	80%	\$35,710	20%
Non-Participating Construction Items	\$10,000			\$10,000	100%
<b>Total Cost Distribution</b>	<b>\$1,849,850</b>	<b>\$1,471,880</b>		<b>\$377,970</b>	

Federal funds for ID 1300-06-01 are capped at \$452,960. Federal funds for ID 1302-00-70 are capped at \$1,018,920.

This request is subject to the terms and conditions that follow (pages 3 and 4) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon acceptance by the State shall constitute agreement between the Municipality and the State.

<b>Signed for and on behalf of City of Milwaukee:</b>	
Signature	Title
Name (Written Clearly)	Date
<b>Signed for and on behalf of City of Milwaukee:</b>	
Signature	Title
Name (Written Clearly)	Date

*-Terms and Conditions Begin on the Next Page-*

## TERMS AND CONDITIONS

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal and State regulations.
2. The Municipality will pay to the State all costs incurred by the State in connection with the improvement which exceeds Federal/State financing commitments or are ineligible for Federal/State financing. The Municipality's concurrence is required before award of the contract for the improvement when the contracts exceed 5% of the estimate. The Municipality must also concur with contract modifications to contracts awarded by the State over \$25,000.00, unless the authorized representative of the State determines that a prompt change order is needed to preserve the work in progress, prevent extraordinary damage avoid unreasonable & costly delay, or other extraordinary condition of necessity, safety or emergency exists. The authorized representative of the State shall provide notice of the prompt change order to the Municipality or its authorized representative as soon as practicable thereafter and the Municipality shall pay its share of the prompt change order cost.
3. Funding of each project phase (preliminary engineering, real estate, construction, and other) is subject to inclusion in an approved program. Federal aid and/or State transportation fund financing will be limited to participation in the costs of the following items as specified in the estimate summary:
  - a. Preliminary engineering and State review services.
  - b. The grading, base, pavement, and curb and gutter.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
  - d. Construction engineering incidental to inspection and supervision of actual construction work.
  - e. Signing and pavement marking, including detour routes.
  - f. Storm sewer mains necessary for the surface water drainage.
  - g. Construction or replacement of sidewalks and surfacing of private driveways.
  - h. New installations or alteration of street lighting and traffic signals or devices.
  - i. Real Estate for the improvement, if required
4. Work necessary to complete the improvement to be financed entirely by the Municipality or other utility or facility owner or other responsible party (not including the State) includes the following items:
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property due to change in street or sidewalk widths, grades or drainage.
  - c. Conditioning, if required, and maintenance of detour routes.

- d. Repair of damages to roads or streets caused by reason of their use in hauling materials incidental to the improvement.
  - e. Bridge width in excess of standards.
5. As the work progresses, the Municipality will be billed for work completed which is not chargeable to Federal/State funds. Upon completion of the project, a final audit will be made to determine the final division of costs.
  6. If the Municipality should withdraw from the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
  7. The work will be administered by the State and may include items not eligible for Federal/State participation.
  8. The Municipality will at its own cost and expense:
    - a. Maintain all portions of the project that lie within its jurisdiction for such maintenance through statutory requirements, in a manner satisfactory to the State and will make ample provision for such maintenance each year.
    - b. Prohibit angle parking.
    - c. Regulate or prohibit all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
    - d. Regulate and prohibit parking at all times in the vicinity of the proposed improvements during their construction.
    - e. Assume general responsibility for all public information and public relations for the project and to make fitting announcements to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.
    - f. Provide complete plans, specifications, relocation order, real estate plat, and estimates, *except as provided in Paragraph 3 above.*
    - g. Use the WisDOT Utility Accommodation Policy unless it adopts a policy which has equal or more restrictive controls.
  9. **Basis for local participation: 80% Federal; balance by Municipality. Federal funds for ID 1300-06-01 are capped at \$452,960. Federal funds for ID 1302-00-70 are capped at \$1,018,920.**

(End of Document)

**Capital Grant Resolution Certification from the  
Comptroller's Office**

The Comptroller's Office has reviewed Common Council Resolution File No. 100980 for the revised State Municipal Agreement for Downtown to Bayview Bikeway additional preliminary engineering (City Share \$32,240; Grantor Share \$128,960) and approved the resolution as to:

- Sufficiency of funds
- Funding sources (per estimated **grant funding agreement**)
- Sufficiency of reporting for purposes of internal auditing

The following deficiencies were noted:

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The resolution should be corrected and returned to the Comptroller's Office for review.

Signature: C. Wasieleski

Date: 11/17/10





## Legislation Details (With Text)

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**File #:** 100981      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution authorizing the Commissioner of Public Works to execute a Cost Sharing Agreement with Milwaukee County for the planned improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue.

**Sponsors:** THE CHAIR

**Indexes:** STREET IMPROVEMENTS

**Attachments:** Cover Letter, Agreement, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100981

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution authorizing the Commissioner of Public Works to execute a Cost Sharing Agreement with Milwaukee County for the planned improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue.

**Analysis**

This resolution authorizes the Commissioner of Public Works to execute a Cost Sharing Agreement with Milwaukee County for the City of Milwaukee's construction costs associated with the improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue with an estimated total cost of the project at approximately \$7,954,000 (Milwaukee County is lead agency) of which the City of Milwaukee's estimated share of construction costs is \$354,000 - approval for construction costs will be in a separate resolution.

**Body**

Whereas, The Common Council of the City of Milwaukee on November 29, 1999, adopted Resolution File Number 991245 authorizing and directing the City participation in a grade separation study as an initial intention to participate in the preliminary engineering cost of East College Avenue; and

Whereas, The Common Council of the City of Milwaukee on August 2, 2001, adopted Resolution File Number 010498 authorizing and directing the City participation in the preliminary engineering for the improvement of East College Avenue; and

Whereas, Milwaukee County's Department of Public Works has scheduled the improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue in the summer of 2011; and

Whereas, Milwaukee County has undertaken the necessary preliminary engineering and plan preparation for the improvement; and

Whereas, The City of Milwaukee has requested and Milwaukee County has agreed to undertake work, as shown in attached agreement, with their paving contractor in conjunction with the improvement project at City of Milwaukee cost; and

Whereas, A separate resolution will address the construction funding for this project; and

Whereas, Milwaukee County has prepared a Cost Sharing Agreement to address those costs that will be the responsibility of the City of Milwaukee as part of the project; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Commissioner of Public Works is hereby authorized to execute a Cost Sharing Agreement with the Milwaukee County for its share of the construction costs associated with the improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue, a copy of which is attached to the Common Council File No. 100981 and is incorporated by reference as though set forth in full; and, be it

Further Resolved, That the City Engineer is hereby authorized and directed to approve and make periodic payments to Milwaukee County upon receipt of invoices for the City's share of costs of the above project.

**Requestor**

Department of Public Works

**Drafter**

Infrastructure Services Division

LCG:amh

November 16, 2010

Reso E Colg Av (CTH ZZ) Howl - Penn 111610.rtf

November 16, 2010

To the Honorable, the Common Council

Subject: East College Avenue (CTH ZZ)  
South Howell Avenue to  
South Pennsylvania Avenue

Dear Council Members:

Milwaukee County's Department of Public Works has programmed the improvement of East College Avenue (CTH ZZ) from South Howell Avenue to South Pennsylvania Avenue in the summer of 2011.

Milwaukee County has submitted an agreement to the City of Milwaukee for the cost of items requested by the City to be included in the paving project. Non assessable and assessable costs are included in the agreement. Total cost of the County project is estimated at \$7,954,000 with the City of Milwaukee's share of construction costs to be \$354,000.

We have prepared and recommend adoption of the attached resolution authorizing the Commissioner of Public Works to execute a Cost Sharing Agreement with Milwaukee County for the City of Milwaukee's estimated share of the project's construction costs.

Very truly yours,

Jeffrey S. Polenske, P.E.  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

LCG:amh

Attachment

c: Alderman Terry L. Witkowski  
Ms. Cynthia Wisneski  
Ms. Molly King

**LOCAL/COUNTY AGREEMENT  
FOR A  
HIGHWAY IMPROVEMENT PROJECT**

DATE: September 21, 2010  
ID: 2355-05-15  
HIGHWAY: East College Avenue (CTH "ZZ")  
LIMITS: S. Howell Ave. to S. Pennsylvania Ave

THIS AGREEMENT is made and entered into and by between Milwaukee County, a body corporate, and the City of Milwaukee, a municipal corporation.

The portion of East College Avenue between South Howell Avenue and South Pennsylvania Avenue has been designated County Trunk Highway "ZZ" pursuant to Section 83.025 of the Wisconsin Statutes.

The County has budgeted funds for the improvement of CTH "ZZ" between South Howell Avenue and South Pennsylvania Avenue with completed plans to be submitted to advance to the construction contract bidding process, scheduled for March 2011, and construction to begin in April 2011.

The Milwaukee County Department of Transportation and Public Works, hereinafter called the County, through its undersigned duly authorized officers or officials, hereby requests the City of Milwaukee, hereinafter called the Municipality, to participate in the street improvements hereinafter described in the estimated cost summary.

The authority for the Municipality to enter into this agreement with the County is provided by Section 86.25(1), (2) and (3) of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

**Existing Facility – Describe and give reason for request:**

East College Avenue is a two-lane rural type road with gravel shoulders and grass ditches. The pavement and shoulders are in poor condition. The ditches are inadequate to carry storm runoff. Development in the project area has increased and traffic volume has increased to a level that requires additional roadway capacity. The box culvert for a drainage ditch needs to be extended.

**Proposed Improvement – Nature of work:**

The road is scheduled for a major reconstruction. The work consists of excavating the existing concrete pavement, a new concrete pavement, new curb and gutter, sidewalk and box culvert extension.

**Estimated Cost Summary\***

<b>Item</b>	<b>Est. Quantity</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Item Cost</b>
Removing Pavement	1400	SY	\$5.64	\$ 7,899.56
Base Aggregate Dense 1 ¼ - Inch	1100	TON	\$15.00	\$16,500.00
Base Aggregate Open Graded	600	TON	\$20.00	\$12,000.00
Concrete Pavement 9 ½ - Inch	2300	SY	\$40.00	\$92,000.00
Incentive Strength Conc. Pavement	700	DOL	\$1.00	\$700.00
Concrete Driveway 7 - Inch	70	SY	\$35.00	\$ 2,450.00
Concrete Curb & Gutter 31 - Inch	1500	LF	\$18.56	\$27,842.04
Concrete Sidewalk 5 – Inch	29,500	SF	\$5.00	\$147,500.00
Topsoil	80	SY	\$7.09	\$567.20
Fertilizer Type A	0.04	CWT	\$50.00	\$2.00
Seeding Mixture No. 10	3.00	LB	\$10.00	\$30.00
Sod Lawn	80	SY	\$8.02	\$641.72
<b>Cost of Non-Participating Items</b>				<b>\$308,132.52</b>
<b><u>+15% E &amp; C</u></b>				<b><u>\$ 46,219.88</u></b>
<b>Total Cost</b>				<b>\$354,352.40</b>

\* The above costs reflect the County's best estimates to-date. The actual number of units installed may vary from this estimate depending on field conditions. The Municipality will be billed for each item at the actual construction cost.

This agreement is subject to the terms and conditions that follow and is executed by the undersigned under proper authority to execute such an agreement for the designated Municipality and upon acceptance by the County shall constitute an agreement between the Municipality and the County.

**Signed for and on behalf of Milwaukee County:**

_____	Director, Department of Transportation & Public Works	_____
Signature	Title	Date

\_\_\_\_\_  
Jack H. Takerian  
Name (Written Clearly)

**Signed for and on behalf of the City of Milwaukee:**

_____	Commissioner of Public Works	_____
Signature	Title	Date

\_\_\_\_\_  
Jeffrey J. Mantes  
Name (Written Clearly)

## TERMS AND CONDITIONS

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal and State regulations.
2. The Municipality will pay to the County such project related costs for items as outlined below and listed in the Estimated Cost Summary.
3. Funding of each project phase (preliminary engineering, real estate, construction, other) is subject to inclusion in an approved program. County financing will be limited to participation in the costs of the following items as specified in the estimate summary:
  - a. Preliminary engineering and review services (100%).
  - b. The grading, base, pavement, and curb and gutter of the roadway (100%).
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main, if required (100%).
  - d. Construction engineering incidental to inspection and supervision of actual construction work of the roadway(100%).
  - e. Signing and pavement marking, including detour routes (100%).
  - f. Surfacing of private driveways due to change in grade of the improvement (100%).
  - g. Replacement of any sidewalk removed as a result of a change in street grade (100%).
4. Work necessary to complete the improvement to be financed entirely by the Municipality or other utility or facility owner or other responsible party (not including the County) includes, but is not limited to, the following items:
  - a. New installations or alterations of sidewalks, sanitary sewers or connections, water, gas, electric, telephone, telegraph, fiber optic, fire or police alarm facilities, parking meters, pipelines, and similar utilities.
  - b. Repair of damages to roads and streets caused by reason of their use in hauling materials incidental to the improvement.
5. As the work progresses, the Municipality will be billed quarterly, for work completed as outlined above and as listed in the Estimated Cost Summary. Upon completion of the project, a final audit will be made to determine the final division of costs.
6. If the Municipality should withdraw from the project, it will reimburse the County its proportionate local share of all construction and construction engineering costs incurred by the County to complete the construction phase of the project (construction), up to the date the notification of withdrawal is received by Milwaukee County.
7. The work will be administered by the County or its designee and may include items not eligible for County participation. The County shall notify the Municipality of such items prior to inclusion of the work and get written authorization for their inclusion and cost participation by the Municipality.
8. The Municipality grants to the County the rights for ingress and egress to maintain the box culvert extension.

9. The Municipality at its own cost and expense and using its own labor forces and equipment will:
  - a. Prohibit angle parking.
  - b. Regulate parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - c. Regulate parking at all times in the vicinity of the proposed improvements during their construction.
  - d. Furnish TES manhole castings to the contractor where the City has indicated replacement is required.

(End of Document)





## Legislation Details (With Text)

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**File #:** 100983      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution authorizing the Commissioner of Public Works to execute a cost sharing agreement with the City of West Allis for the planned improvement of South 76th Street from West Pierce Street to West Greenfield Avenue, with an estimate City cost of \$5,000 for preliminary engineering and plan review.

**Sponsors:** THE CHAIR

**Indexes:** AGREEMENTS, INTERGOVERNMENTAL AGREEMENTS, STREET IMPROVEMENTS, WISCONSIN DEPARTMENT OF TRANSPORTATION

**Attachments:** Cover Letter, Agreement, Comptroller's Certificate, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100983

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution authorizing the Commissioner of Public Works to execute a cost sharing agreement with the City of West Allis for the planned improvement of South 76<sup>th</sup> Street from West Pierce Street to West Greenfield Avenue, with an estimate City cost of \$5,000 for preliminary engineering and plan review.

**Analysis**

This resolution authorizes the Commissioner of Public Works to execute an agreement with the City of West Allis for the City of Milwaukee's preliminary engineering and construction costs associated with the improvement of South 76<sup>th</sup> Street from West Pierce Street to West Greenfield Avenue. The City of West Allis has agreed to include the portions of the roadway that lie within the City of Milwaukee's jurisdictional boundaries with their programmed improvement of South 76<sup>th</sup> Street from West Pierce Street to West Greenfield Avenue. The City of Milwaukee will owe 1.38% of the preliminary engineering and construction costs for the entire project currently estimated at \$5,000 for engineering and plan review and \$10,000 for construction. This resolution also directs the City Comptroller to establish the necessary subaccounts for preliminary engineering.

**Body**

Whereas, The City of West Allis in conjunction with the Wisconsin Department of Transportation (WisDOT) has programmed the improvement of South 76<sup>th</sup> Street from West Pierce Street to West Greenfield Avenue; and

Whereas, The northwest quadrant of the South 76<sup>th</sup> Street and West Pierce Street intersection lie within the City of Milwaukee's jurisdictional boundaries; and

Whereas, The City of West Allis is willing to incorporate this segment of street that lies within the City of Milwaukee into their project; and

Whereas, The City's portion will be the City's funding responsibility; and

Whereas, The City of West Allis has forwarded an agreement for City of Milwaukee execution which details cost sharing responsibilities for the City of Milwaukee's engineering and construction costs associated with the project; and

Whereas, The Cost Sharing Agreement between the City of West Allis and the City of Milwaukee indicates that the City of Milwaukee's share is 1.38% of the project's total cost; and

Whereas, Detailed cost estimates for construction have not yet been calculated for this project and will be addressed in a future resolution; and

Whereas, Final project costs will be based on actual measured quantities of materials placed within the City of Milwaukee; now, therefore be it

Resolved, By the Common Council of the City of Milwaukee that the Commissioner of Public Works is hereby authorized to execute an agreement with the City of West Allis for the City of Milwaukee's engineering and construction costs associated with the improvement of South 76<sup>th</sup> Street from West Pierce Street to West

Greenfield Avenue, a copy of which is attached to Common Council Resolution File No. 100983, and is incorporated by reference as though set forth in full; and, be it

Further Resolved, That City Comptroller is hereby authorized to create within the Capital Projects Fund, Grand and Aid Projects, the necessary Project/Grant Chartfield Values for preliminary engineering for the project (Expenditure) and transfer to any of these accounts the amount required under the grant Agreement and City Accounting Policy but not to exceed a 10 percent increase of the total amounts reserved for the grantor's share and local share or \$5,000, whichever is greater, as follows:

Infrastructure Services Division Accounts

South 76<sup>th</sup> Street  
West Pierce Street to  
West Greenfield Street

City Share Non-Assessable Fund Paving  
Account No. ST320100000  
Fund 0333  
\$5,000

Estimated Total  
\$5,000

; and, be it

Further Resolved, That the City Engineer is hereby authorized to approve and make periodic payments to the City of West Allis upon receipt of invoices for the City of Milwaukee's share of the project costs.

**Requester**

Department of Public Works

**Drafter**

Infrastructure Services Division

LCG:CTC

November 16, 2010

Reso S 76 St W Pierce - W Greenfield 111110.rtf

November 16, 2010

To the Honorable, the Common Council

Subject: South 76<sup>th</sup> Street  
West Pierce Street to  
West Greenfield Avenue

Dear Council Members:

The City of West Allis, in conjunction with the Wisconsin Department of Transportation (WISDOT), has programmed the improvement of South 76<sup>th</sup> Street from West Pierce Street to West Greenfield Avenue for the summer of 2013. The northwest quadrant of the West Pierce Street and South 76<sup>th</sup> Street intersection lies within the jurisdictional boundaries of the City of Milwaukee. The City of West Allis has agreed to undertake the area that lies within the City of Milwaukee with their project at the City of Milwaukee's cost. They have forwarded an agreement for the City's execution, which details the funding responsibilities for engineering and construction of the subject project. The City of Milwaukee will owe 1.38% of the total project costs, currently estimated at \$5,000 for engineering and plan review and \$10,000 for construction.

We have prepared the attached resolution which authorizes the Commissioner of Public Works to execute an agreement with the City of West Allis for the City of Milwaukee's engineering and construction costs associated with the improvement of South 76<sup>th</sup> Street between West Pierce Street and West Greenfield Avenue. This agreement indicates that the City of Milwaukee's estimated share was arrived at by estimating the cost to reconstruct the road segment that lies within the City of Milwaukee as a portion of the cost of the entire project.

This resolution also directs the City Comptroller to establish the necessary subaccounts for preliminary engineering.

Very truly yours,

Jeffrey S. Polenske, P.E.  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

LCG:amh  
Attachment  
c: Ms. Molly King  
Ms. Cindy Wisneski  
Mr. Peter Daniels, Principal Engineer-West Allis

PROJECT I.D. 2160-14-00  
SOUTH 76<sup>TH</sup> STREET  
W. PIERCE STREET TO W. GREENFIELD AVENUE

**COST SHARING AGREEMENT  
BETWEEN  
THE CITY OF WEST ALLIS AND THE CITY OF MILWAUKEE**

1. The City of Milwaukee will pay its share of the preliminary engineering costs, defined as all engineering work performed prior to the actual commencement of construction, for the subject project at the written request of the City of West Allis, which, as the lead agency in the billing process, will review the contract invoices, prepared and distributed by the Wisconsin Department of Transportation (WISDOT), and bill the City of Milwaukee based on such invoices as the project progresses. Each community's share for design and construction shall be based on the cost to reconstruct the agreed road segment that is located within the respective community's municipal boundaries as a portion of the cost of the entire project, calculated using current project estimates. Using this method the City of Milwaukee's share is presently calculated as 1.38% of the total project costs.
2. There shall be a later reconciliation of the amount billed to the City of Milwaukee under paragraph 1 above, as follows. The final preliminary engineering costs for each municipality will be calculated by prorating the actual preliminary engineering expenditures using the final construction costs within each municipality as the percentage of proration. If the City of Milwaukee's actual share is less than the paid amount, the difference will be refunded to the City of Milwaukee; if the City of Milwaukee's share is greater than the amount paid, the City of Milwaukee will make additional payments to cover the balance of their share.
3. The City of Milwaukee will pay its share of construction engineering and construction costs for the subject project at the written request of the City of West Allis, who, as the lead agency in the billing process, will review the invoices, prepared by the WISDOT, and bill the City of Milwaukee accordingly as the project progresses. Non-participating items, defined as that work which is to be paid by the community undertaking such work and not cost-shared, will be paid for, in full, by the respective municipality. The estimated share of the construction costs for the City of Milwaukee is 1.38%. An actual percentage will be calculated when final costs are received from WISDOT.

4. The final roadway construction costs for each municipality will be determined based on actual measured quantities within each respective municipality and the prorating of the lump sum items, if applicable.
5. The City of West Allis agrees to consult with and seek concurrence with the City of Milwaukee during the project design process and plan preparation for the improvement. The City of West Allis agrees to consult and seek concurrence with the City of Milwaukee regarding any field change orders that would result in additional construction costs after the project has been awarded.
6. Construction engineering costs will be prorated between each municipality using final construction costs in each municipality as the percentage of proration, in the same fashion as were apportioned in paragraph 1 above.
7. A final reconciliation using actual roadway construction and construction engineering costs shall be undertaken in the same fashion as in paragraph 2 above. If, as a result of such reconciliation, the city of Milwaukee's actual share for roadway construction and construction engineering is less than the deposited amount, the difference will be refunded to the City of Milwaukee, or if the City of Milwaukee's share is greater than the deposited amount, the City of Milwaukee will remit additional funds to cover the balance of its share.
8. Cost sharing for maintenance of roadway related drainage items (mainline sewer, laterals, and other appurtenances) will be subject to a separate agreement to be determined and entered into upon a mutually agreeable design, if applicable.
9. Cost sharing for maintenance of street lighting items, traffic signalization work items, and roadway maintenance will be subject to separate agreements to be determined and entered into upon a mutually agreeable design, as necessary.
10. The costs of any additional or unforeseen items not covered in the above will be paid by the municipality in which the additional or unforeseen item occurs.

Accepted by:

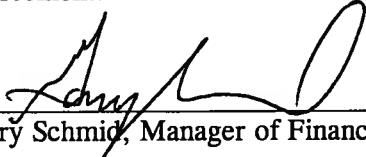
**CITY OF WEST ALLIS**

  
\_\_\_\_\_  
Director of Public Works/City Engineer

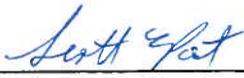
  
\_\_\_\_\_  
Date

**COMPTROLLER'S CERTIFICATE**

Countersigned this 22 day of October, 2010  
and I certify that the necessary funds have been  
provided to pay the liability that may be  
incurred by the City of West Allis under this  
Agreement.

  
\_\_\_\_\_  
Gary Schmid, Manager of Finance/Comptroller

Approved as to form this 18 day of October, 2010.

  
\_\_\_\_\_  
Scott Post, City Attorney

**CITY OF MILWAUKEE**

\_\_\_\_\_  
Commissioner of Public Works

\_\_\_\_\_  
Date

**COMPTROLLER'S CERTIFICATE**

Countersigned this \_\_\_\_ day of October, 2010  
and I certify that the necessary funds have been  
provided to pay the liability that may be  
incurred by the City of Milwaukee under this  
Agreement.

\_\_\_\_\_  
Comptroller

Approved as to form this \_\_\_\_ day of October, 2010.

\_\_\_\_\_  
City Attorney

**Capital Grant Resolution Certification from the  
Comptroller's Office**

The Comptroller's Office has reviewed Common Council Resolution File No. 100983 for the cost sharing agreement with the City of West Allis for preliminary engineering and plan review of South 76<sup>th</sup> Street from W Pierce St to W Greenfield Ave (City Share \$5,000) and approved the resolution as to:

- Sufficiency of funds
- Funding sources (per estimated **grant funding agreement**)
- Sufficiency of reporting for purposes of internal auditing

The following deficiencies were noted:

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The resolution should be corrected and returned to the Comptroller's Office for review.

Signature: C. Wisniewski

Date: 11/17/10





## Legislation Details (With Text)

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**File #:** 100982      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 11/23/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution authorizing the City Comptroller to transfer funds to various State and Federal Aid project subaccounts for the estimated remaining Wisconsin Department of Transportation and City of Milwaukee preliminary engineering \$15,000 City share.

**Sponsors:** THE CHAIR

**Indexes:** MILWAUKEE PUBLIC SCHOOLS, SIDEWALK IMPROVEMENTS, STREET IMPROVEMENTS, WISCONSIN DEPARTMENT OF TRANSPORTATION

**Attachments:** Comptroller's Certificate, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
11/23/2010	0	COMMON COUNCIL	ASSIGNED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

**Number**

100982

**Version**

ORIGINAL

**Reference**

**Sponsor**

THE CHAIR

**Title**

Resolution authorizing the City Comptroller to transfer funds to various State and Federal Aid project subaccounts for the estimated remaining Wisconsin Department of Transportation and City of Milwaukee preliminary engineering \$15,000 City share.

**Analysis**

This resolution authorizes the City Comptroller to transfer funds to the previously established subaccounts for the remaining Wisconsin Department of Transportation and City of Milwaukee preliminary engineering \$15,000 City share.

**Body**

Whereas, The Common Council has previously adopted resolutions authorizing the City Comptroller to transfer funds to various State and Federal Aid project subaccounts for preliminary engineering; and

Whereas, Additional planning and review during the design stage have resulted in increased costs charged against the projects; and

Whereas, The grantor funding is capped and has been reached for these projects; and

Whereas, Additional funds are, therefore, necessary for the estimated remaining Wisconsin Department of Transportation and City of Milwaukee preliminary engineering costs for the projects; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that the City Comptroller is hereby authorized and directed to transfer funds to the project grant chartfields as follows:

Project Grant Value

State I.D. 1009-00-17

ST320071101

Hopkins Street Elementary School Improvements

City Share Non-Assessable Fund Paving

ST320100000

Fund 0333

\$5,000

Previously authorized for engineering: \$12,000

Current estimated cost of total project including this resolution: \$72,500

Original estimated cost of total project (Resolution File No. 070954): \$ 62,500

Project Grant Value

State I.D. 2135-04-00

ST320061601

North Avenue Pedestrian Improvement

City Share Non-Assessable Fund Paving

ST320100000

Fund 0333  
\$10,000

Previously authorized for engineering (DCD \$15,535): \$108,889  
Current estimated cost of total project including this resolution: \$551,128  
Original estimated cost of total project (Resolution File No. 060347):\$509,914

Summary of projects in this resolution:

City of Milwaukee Share Non-Assessable (0333): \$15,000

Resolution total: \$15,000

**Requestor**

Department of Public Works

**Drafter**

Infrastructure Services Division

MK:amh

November 16, 2010

(18) Reso Cvr Ltr Vari Fed Sta Aid Pjec Saccou 111610.rtf

**Capital Grant Resolution Certification from the  
Comptroller's Office**

The Comptroller's Office has reviewed Common Council Resolution File No. 100982 for additional preliminary engineering costs for various State and Federal Aid projects (City Share \$15,000; Grantor Share \$0) and approved the resolution as to:

- Sufficiency of funds
- Funding sources (per estimated **grant funding agreement**)
- Sufficiency of reporting for purposes of internal auditing

The following deficiencies were noted:

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The resolution should be corrected and returned to the Comptroller's Office for review.

Signature: C. Wisniewski

Date: 11/17/10





## Legislation Details (With Text)

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**File #:** 070481      **Version:** 1

**Type:** Resolution      **Status:** In Committee

**File created:** 7/11/2007      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Substitute resolution amending a special privilege for change of ownership to Old World Development, LLC for encroachment into the public right-of-way of a wooden fence dumpster enclosure for the premises at 1103 North Old World 3rd Street, in the 4th Aldermanic District.

**Sponsors:** THE CHAIR

**Indexes:** FENCES, SPECIAL PRIVILEGE PERMITS

**Attachments:** Cover Letter, Petition for Special Privilege, Map, Photos, Fiscal Impact Statement, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
7/11/2007	0	COMMON COUNCIL	ASSIGNED TO		
7/12/2007	0	PUBLIC WORKS COMMITTEE	REFERRED TO		
11/29/2010	1	CITY CLERK	DRAFT SUBMITTED		
12/1/2010	1	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		
12/1/2010	1	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number

070481

Version

SUBSTITUTE

Reference

000827

Sponsor

THE CHAIR

Title

Substitute resolution amending a special privilege for change of ownership to Old World Development, LLC for encroachment into the public right-of-way of a wooden fence dumpster enclosure for the premises at 1103 North Old World 3<sup>rd</sup> Street, in the 4<sup>th</sup> Aldermanic District.

Analysis

Substitute resolution amending a special privilege for change of ownership to Old World Development, LLC for encroachment into the public right-of-way of West Highland Avenue of a wood fence dumpster enclosure abutting the premises at 1103 North Old World 3<sup>rd</sup> Street.

Body

Whereas, 800 LLC Milwaukee requested permission to install and maintain a wooden fence to enclose dumpsters in order to provide security and keep the dumpsters from public view; and

Whereas, Permission for said wooden fence dumpster enclosure was granted in 2000 under Common Council File Number 000827; and

Whereas, Old World Development, LLC now owns the property; and

Whereas, For the liability to be formally transferred to the current property owner, the Common Council needs to adopt an amending resolution; now, be it

Resolved, By the Common Council of the City of Milwaukee that Common Council Resolution File Number 000827 is hereby rescinded; and, be it

Further Resolved, Old World Development, LLC, 1661 North Water Street, Suite 509, Milwaukee, WI 53202, is hereby granted the following special privilege:

To keep and maintain a 6-foot tall wooden fence dumpster enclosure projecting 6 feet into the north, 15-foot wide, fully paved sidewalk area of West Highland Avenue. Commencing at a point approximately 50 feet west of the westline of North Old World Third Street, said fence extends west 36 feet 6 inches. There are four gate swing openings in the fence, one at the west end of the enclosure and three facing Highland Avenue.

Said above-mentioned wooden fence dumpster enclosure shall be used, kept and maintained to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

Said wooden fence dumpster enclosure shall be maintained or removed from the public right-of-way, at such future time as they are no longer needed, to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

; and, be it

Further Resolved, That this special privilege is granted only on condition that by acceptance of this special privilege, the grantee, Old World Development, LLC shall:

1. Become primarily liable for damages to persons or property by reason of the granting of this special privilege.

2. File with the Commissioner of Public Works a certificate of insurance indicating applicant holds a public liability policy in the sum of at least \$25,000 covering bodily injury to any one person and \$50,000 covering bodily injury to more than one person in any one accident and \$10,000 covering property damage to any one owner on the area or areas included within the special privilege and naming the City of Milwaukee as an insured. The insurance policy shall provide that it shall not be cancelled until after at least thirty days' notice in writing to the Commissioner of Public Works.
3. Pay to the City Treasurer an annual fee, which has an initial amount of \$687.12. The subsequent annual fee is subject to change pursuant to the annual fee schedule in effect at the time of annual billing.
4. Whenever this special privilege is discontinued for any reason whatsoever, including public necessity whenever so ordered by resolution adopted by the Common Council not only remove all construction work executed pursuant to this special privilege, but shall also restore to its former condition and to the approval of the Commissioner of Public Works and curb, pavement or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Such grantee shall be entitled to no damages due to the alteration and/or removal for such purposes.
5. Waive the right to contest in any manner the validity of Section 66.0425 of the Wisconsin Statutes (1999), or the amount of the annual fixed fee, payable on or before July 1<sup>st</sup> of each year.
6. Put this special privilege into use within one year after approval by the Common Council of the City of Milwaukee; failing to do so in the time specified, the Commissioner of Neighborhood Services shall have the authority to seek, by resolution, revocation of said special privilege.

Requestor

Department of Public Works

Drafter

Infrastructure Services Division

MDL: ns

November 17, 2010

070481

November 17, 2010

To the Public Works Committee

Subject: Common Council Resolution File Number 070481

Dear Honorable Members:

Returned herewith is Common Council Resolution File Number 070481, being a resolution to amend a special privilege for change of ownership to Old World Development, LLC to keep and maintain a wooden fence dumpster enclosure in the public right-of-way for the premises at 1103 North Old World Third Street.

800 LLC Milwaukee requested permission to install and maintain a wooden fence to enclose dumpsters in order to provide security and keep the dumpsters from public view. Permission for said dumpster enclosure was granted in 2000 under Common Council Resolution File Number 000827. Over the years, the dumpster enclosure fell into some disrepair; however, upon notification from the Department of Public Works, the current owner has cooperated to make repairs and to paint the enclosure.

We are not aware that the presence of said dumpster enclosure has had or will have an adverse effect on the general use of the public right-of-way. We have, therefore, prepared the attached special privilege resolution, which, if adopted, will allow said dumpster enclosure to continue to occupy the public right-of-way and will amend the grantee name to Old World Development, LLC.

Very truly yours,

Jeffrey S. Polenske, P.E.  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

Art Dahlberg, Commissioner  
Department of Neighborhood Services

MDL: ns  
Attachment  
c: Alderman Robert Bauman

# PETITION FOR A SPECIAL PRIVILEGE AMENDMENT

SP 2333

**\$250.00 Publication Fee**  
**Must Accompany This Petition**  
**SUBMIT PETITION IN DUPLICATE**

SP: 1949 CC: 000827

JUN 26 2007 20

To the Honorable, The Common Council of the City of Milwaukee:

The undersigned OLD WORLD DEVELOPMENTS, LLC  
(Name of Individual, Partners, Corporation or LLC)

being the owners of the following property known by street address as 1101 Old World Third St (02)  
(Street Address and Zip Code)

in the 4th Aldermanic District respectfully petition the Common Council of the City of Milwaukee according to the provisions of Section 66.0425 of the Wisconsin Statutes, that the following privilege be granted:

Amendment for change of ownership for wood fence/dumpster enclosure  
(Here describe the privilege)

Of which a plan or sketch is herewith submitted. Petitioner agrees to comply with all laws and all ordinances of the City of Milwaukee, to abide by any order or resolution of the Common Council affecting this privilege, to be primarily liable for damages to person or property by reason of the granting of such privilege, to furnish a bond and pay annual compensation as provided by law in the sum to be fixed by the proper city officers, and to file and keep current throughout the existence of the privilege, a certificate of insurance indicating applicant holds a public liability policy in at least the sums of \$25,000.00/\$50,000.00 bodily injury, and \$10,000.00 property damage, insuring the city against any liability that might arise by reason of the privilege.

Petitioner further agrees to remove said privilege whenever public necessity so requires when so ordered upon resolution adopted by the Common Council or other legislative body.

Should this special privilege be discontinued for any reason whatsoever, petitioner agrees to remove all construction work executed pursuant to this special privilege, to restore to its former condition and to the approval of the Commissioner of Public Works, any curb, pavement, or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Petitioner further agrees not to contest the validity of Section 66.0425 of the Wisconsin Statutes, or the legality of this special privilege in any way.

Name (Please Print): ROBERT JOSEPH (MANAGING MEMBER)  
(Individual, Partner, or Agent if corporation or LLC)

Signature: [Handwritten Signature] Managing Member

Corporation or LLC Name: OLD WORLD DEVELOPMENTS, LLC  
(If applicable)

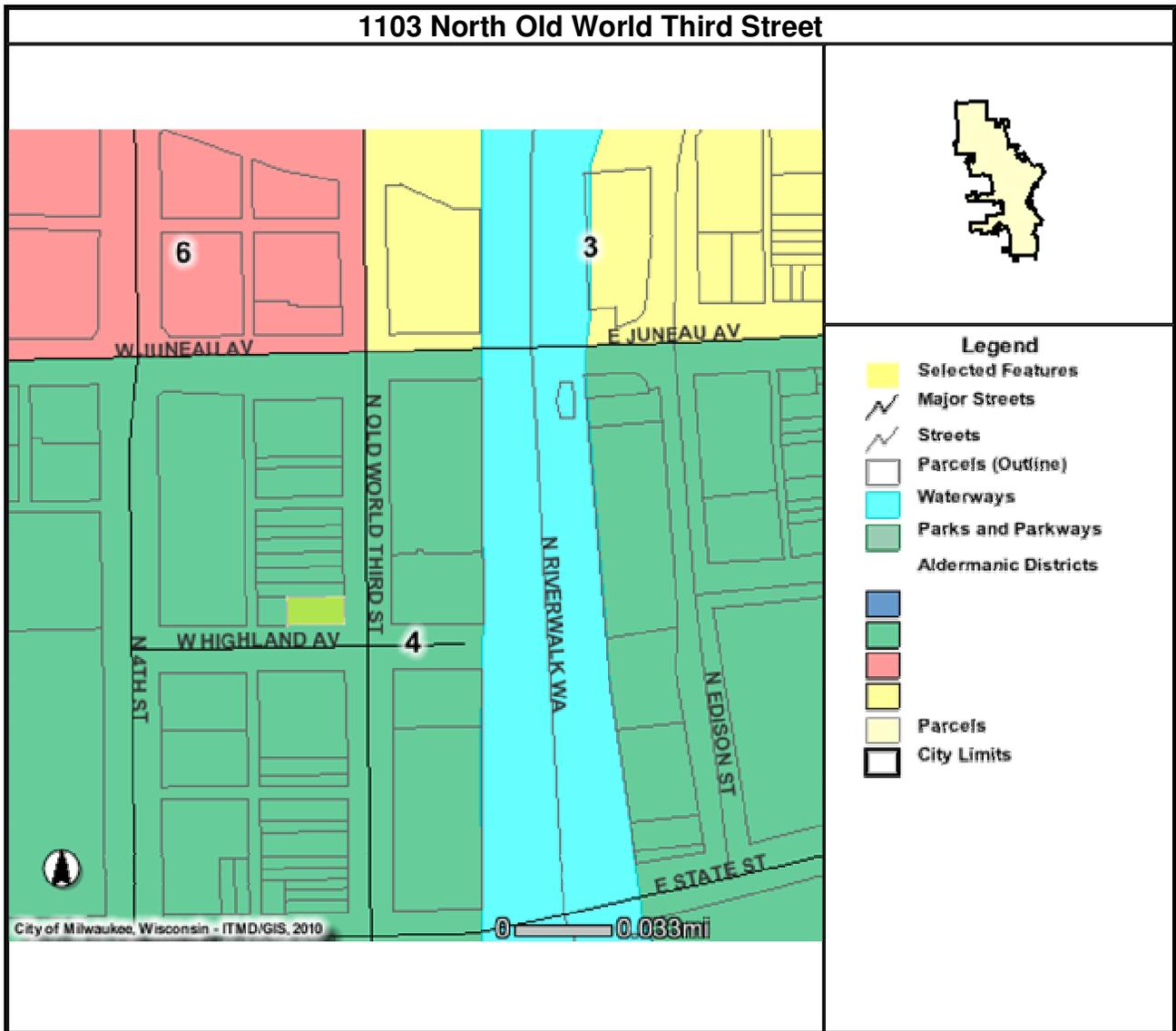
Mailing Address (If different than above): 1061 N. WATER ST. - #509

City: MILWAUKEE State: WI Zip: 53202

Telephone: (414) 277-7725 E-Mail: rbemstein@w.d.m.com

(OVER)

2007 JUL -3 AM 8:50  
RONALD C. LEONARDI  
CITY CLERK  
MILWAUKEE





CCF 070481          1103 North Old World Third Street          1-9-2009  
Looking northwesterly across Highland Avenue at the dumpster  
enclosure.

**Note:** Permission for the stairway structure was granted under  
CCF 001163 in 2001.



CCF 070481      1103 North Old World Third Street      1-9-2009  
Looking westerly at dumpster enclosure prior to repairs and repainting.



CCF 070481      1103 North Old World Third Street      11-15-2010  
Looking northeasterly from Highland Avenue at dumpster enclosure after  
repainting and repairs .



CCF 070481          1103 North Old World Third Street          11-15-2010  
Looking west towards North 4<sup>th</sup> Street at dumpster enclosure located in the north sidewalk area of West Highland Avenue. At the light pole there is an approximate clear sidewalk width of 5 feet.



# City of Milwaukee Fiscal Impact Statement

Date

File Number

Original

Substitute

A

Subject

B

Submitted By (Name/Title/Dept./Ext.)

C

This File

- Increases or decreases previously authorized expenditures.
- Suspends expenditure authority.
- Increases or decreases city services.
- Authorizes a department to administer a program affecting the city's fiscal liability.
- Increases or decreases revenue.
- Requests an amendment to the salary or positions ordinance.
- Authorizes borrowing and related debt service.
- Authorizes contingent borrowing (authority only).
- Authorizes the expenditure of funds not authorized in adopted City Budget.

D

This Note

- Was requested by committee chair

E

Charge To

- |  |  |
|--|--|
| <input type="radio"/> Department Account   | <input type="radio"/> Contingent Fund          |
| <input type="radio"/> Capital Projects Fund                                      | <input type="radio"/> Special Purpose Accounts |
| <input type="radio"/> Debt Service   | <input type="radio"/> Grant & Aid Accounts     |
| <input type="radio"/> Other (Specify) <input style="width: 600px;" type="text"/> |  |

F

Purpose	Specify Type/Use	Expenditure	Revenue
Salaries/Wages			
Supplies/Materials			
Equipment			
Services			
Other			
<b>TOTALS</b>			

**For expenditures and revenues which will occur on an annual basis over several years check the appropriate box below and then list each item and dollar amount separately.**

G

1-3 Years     3-5 Years

1-3 Years     3-5 Years

1-3 Years     3-5 Years

**List any costs not included in Sections E and F above.**

H

**Assumptions used in arriving at fiscal estimate.**

I

**Additional information.**

J





## Legislation Details (With Text)

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**File #:** 100391      **Version:** 1

**Type:** Resolution      **Status:** In Committee

**File created:** 7/27/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Substitute resolution granting a special privilege to Johnston Center Re-Use LLC to construct and maintain a raised planter in the public right-of-way for the premises at 1220 West Windlake Avenue, also known as 2150 South 13th Street, in the 12th Aldermanic District.

**Sponsors:** THE CHAIR

**Indexes:** SPECIAL PRIVILEGE PERMITS

**Attachments:** Cover Letter, Special Privilege Petition, Drawings, Photos, Map, Fiscal Impact Statement, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
7/27/2010	0	COMMON COUNCIL	ASSIGNED TO		
9/1/2010	0	CITY CLERK	REFERRED TO		
11/29/2010	1	CITY CLERK	DRAFT SUBMITTED		
12/1/2010	1	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number

100391

Version

SUBSTITUTE

Reference

Sponsor

THE CHAIR

Title

Substitute resolution granting a special privilege to Johnston Center Re-Use LLC to construct and maintain a raised planter in the public right-of-way for the premises at 1220 West Windlake Avenue, also known as 2150 South 13<sup>th</sup> Street, in the 12<sup>th</sup> Aldermanic District.

Analysis

This resolution grants a special privilege to Johnston Center Re-Use LLC to construct and maintain a raised planter in the public right-of-way for the premises at 1220 West Windlake Avenue, also known as 2150 South 13<sup>th</sup> Street.

Body

Whereas, Johnston Center Re-Use LLC is requesting permission to construct and maintain a raised planter in the public right-of-way; and

Whereas, Said planter may only legally encroach into the public right-of-way by granting of a special privilege resolution adopted by the Common Council; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that Johnston Center Re-Use LLC, 120 South Laselle Street, Suite 1850, Chicago, IL 60603, is hereby granted the following special privilege:

To construct and maintain a raised planter projecting 3 feet 8 inches into the east, 13-foot wide sidewalk area of South 13<sup>th</sup> Street and commencing at a point approximately 200 feet north of the northline of West Windlake Avenue. Said planter is surrounded by a concrete curb that measures 91 feet 8 inches long, 6 inches wide and 6 inches tall.

Said above-mentioned planter shall be used, kept and maintained to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

Said planter shall be maintained or removed from the public right-of-way, at such future time as they are no longer needed, to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

; and, be it

Further Resolved, That this special privilege is granted only on condition that by acceptance of this special privilege the grantee, Johnston Center Re-Use LLC, shall:

1. Become primarily liable for damages to persons or property by reason of the granting of this special privilege.
2. File with the Commissioner of Public Works a certificate of insurance indicating applicant holds a public liability policy in the sum of at least \$25,000 covering bodily injury to any one person and \$50,000 covering bodily injury to more than one person in any one accident and \$10,000 covering property damage to any own owner on the area or areas included within the special privilege and naming the City of Milwaukee as an insured. The insurance policy shall provide that it shall not be cancelled until after at least thirty days' notice in writing to the Commissioner of Public Works.
3. Pay to the City Treasurer an annual fee, which has an initial amount of \$35.00. The subsequent annual fee is subject to change pursuant to the annual fee schedule in effect at the time of annual billing.
4. Whenever this special privilege is discontinued for any reason whatsoever, including public necessity whenever so ordered by resolution adopted by the Common Council not only remove all construction work executed pursuant to this special privilege, but shall also restore to its former condition and to the approval of the Commissioner of Public Works

and curb, pavement or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Such grantee shall be entitled to no damages due to the alteration and/or removal for such purposes.

5. Waive the right to contest in any manner the validity of Section 66.0425 of the Wisconsin Statutes (1999), or the amount of the annual fixed fee, payable on or before July 1<sup>st</sup> of each year.

6. Put this special privilege into use within one year after approval by the Common Council of the City of Milwaukee; failing to do so in the time specified, the Commissioner of Neighborhood Services shall have the authority to seek, by resolution, revocation of said special privilege.

Requestor

Department of Public Works

Drafter

Infrastructure Services Division

MDL:ns

November 16, 2010

100391

November 16, 2010

To the Public Works Committee

Subject: Common Council Resolution File Number 100391

Dear Honorable Members:

Returned herewith is Common Council Resolution File Number 100391, being a resolution to grant a special privilege to Johnston Center Re-Use LLC to construct and maintain a raised, permanent planter in the public right-of-way for the premises at 1220 West Windlake Avenue, also known as 2150 South 13<sup>th</sup> Street.

Johnston Center Re-Use LLC is requesting permission to construct and maintain a raised planter in the public right-of-way in order to create a green space adjacent to its new building addition. The planter projects 3 feet 8 inches into the east, 13-foot wide, fully paved sidewalk area of South 13<sup>th</sup> Street. Said planter, which is surrounded by a concrete curb that measures 91 feet 8 inches long, 6 inches wide and 6 inches tall, commences at a point approximately 200 feet north of the northerly line of West Windlake Avenue.

We are not aware that the presence of said planter will have an adverse effect on the general use of the public right-of-way. We have, therefore, prepared the attached special privilege resolution, which, if adopted, will allow said planter to project into the public right-of-way.

Very truly yours,

Jeffrey S. Polenske, P.E.  
City Engineer

Jeffrey J. Mantes  
Commissioner of Public Works

Art Dahlberg, Commissioner  
Department of Neighborhood Services

MDL: ns

Attachment  
cc: Alderman James Witkowiak



# PETITION FOR A SPECIAL PRIVILEGE ccl-246 (6/09)

SP 2518

- New application \$250.00 Fee**
- Amendment to add items to Special Privilege # \_\_\_\_\_ (\$125.00 Fee)**
- Amendment to remove items from Special Privilege # \_\_\_\_\_ (No fee)**
- Amendment for change of ownership for Special Privilege # \_\_\_\_\_ (No fee)**

- File petition with the City Clerk License Division, City Hall, 200 E. Wells Street, Room 105, Milwaukee, WI 53202, telephone (414) 286-2238. [www.milwaukee.gov/license](http://www.milwaukee.gov/license)
- Fee must be submitted with petition. Checks should be made payable to the City of Milwaukee.
- Petition must be submitted in duplicate.

To the Honorable, The Common Council of the City of Milwaukee:

The Licensee Mercy Housing Lakefront CORP.  
(Name of Individual, Partners, Corporation or LLC)

being the owners of the following property known by street address as 2150 S 13<sup>th</sup> St. 53215  
(Street Address and Zip Code)

in the 12th Aldermanic District respectfully petition the Common Council of the City of Milwaukee according to the provisions of Section 66.0425 of the Wisconsin Statutes, that the following privilege be granted:

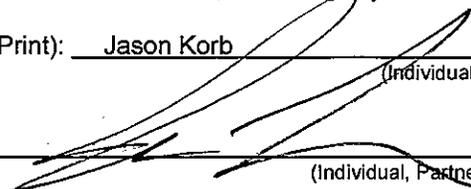
Description of Special Privilege: Addition of a raised planting bed at 13<sup>th</sup> Street which would be integral to the building's primary façade design as illustrated in the attached Exhibit Drawings (Site Plan, Floor Plan, and West Elevation Drawings). The objective of this initiative to create a landscaped buffer between sidewalk and building in the same spirit as the adjacent residential properties along 13<sup>th</sup> street as illustrated in the attached photo exhibit.

Of which a plan or sketch is herewith submitted. Petitioner agrees to comply with all laws and all ordinances of the City of Milwaukee, to abide by any order or resolution of the Common Council affecting this privilege, to be primarily liable for damages to person or property by reason of the granting of such privilege, pay annual compensation as provided by law in the sum to be fixed by the proper city officers, and to file and keep current throughout the existence of the privilege, a certificate of insurance indicating applicant holds a public liability policy in at least the sums of \$25,000.00/\$50,000.00 bodily injury, and \$10,000.00 property damage, insuring the city against any liability that might arise by reason of the privilege.

Petitioner further agrees to remove said privilege whenever public necessity so requires when so ordered upon resolution adopted by the Common Council or other legislative body.

Should this special privilege be discontinued for any reason whatsoever, petitioner agrees to remove all construction work executed pursuant to this special privilege, to restore to its former condition and to the approval of the Commissioner of Public Works, any curb, pavement, or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Petitioner further agrees not to contest the validity of Section 66.0425 of the Wisconsin Statutes, or the legality of this special privilege in any way.

Name (Please Print): Jason Korb  
(Individual, Partner, or Agent if corporation or LLC as shown above)

Signature:   
(Individual, Partner, or Agent if corporation or LLC)

Corporation or LLC Name: Korb Tredo Architects  
(If applicable, as shown above)

(OVER)

Mailing Address (if different than property address above): 790 N. Milwaukee Street, Suite 210\_\_\_\_\_

City: Milwaukee State: WI Zip: 53202

Telephone: 414-273-8230 E-Mail: jason@korbtredo.com

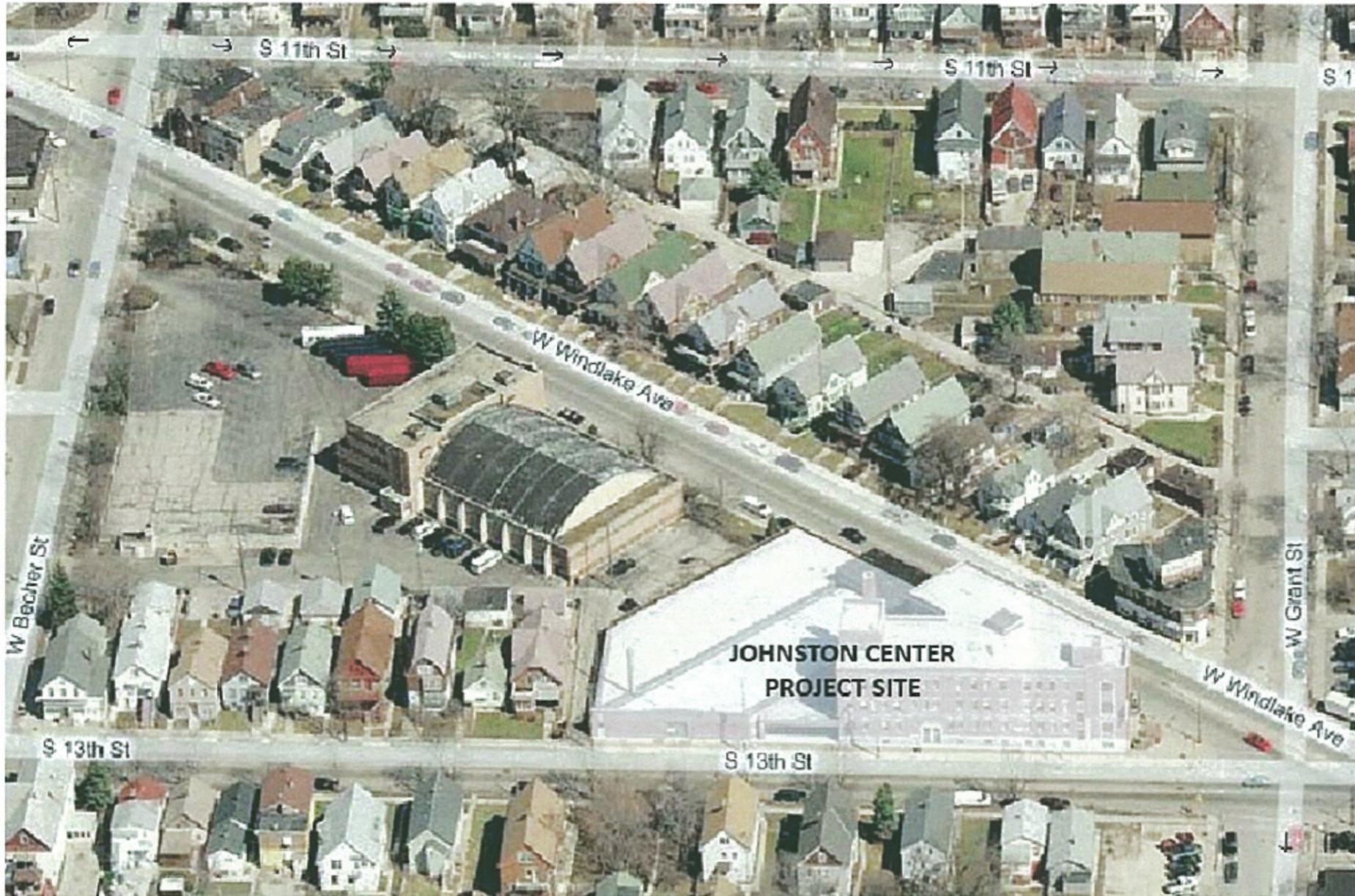
Architect/Engineer/Contractor (If Applicable)

Name: Beyer Construction – Tom Smith

Address: 3080 South Calhoun Road

City: New Berlin State: WI Zip: 53151-3549

Telephone: 262-789-6040 E-Mail: tom.smith@beyer.com



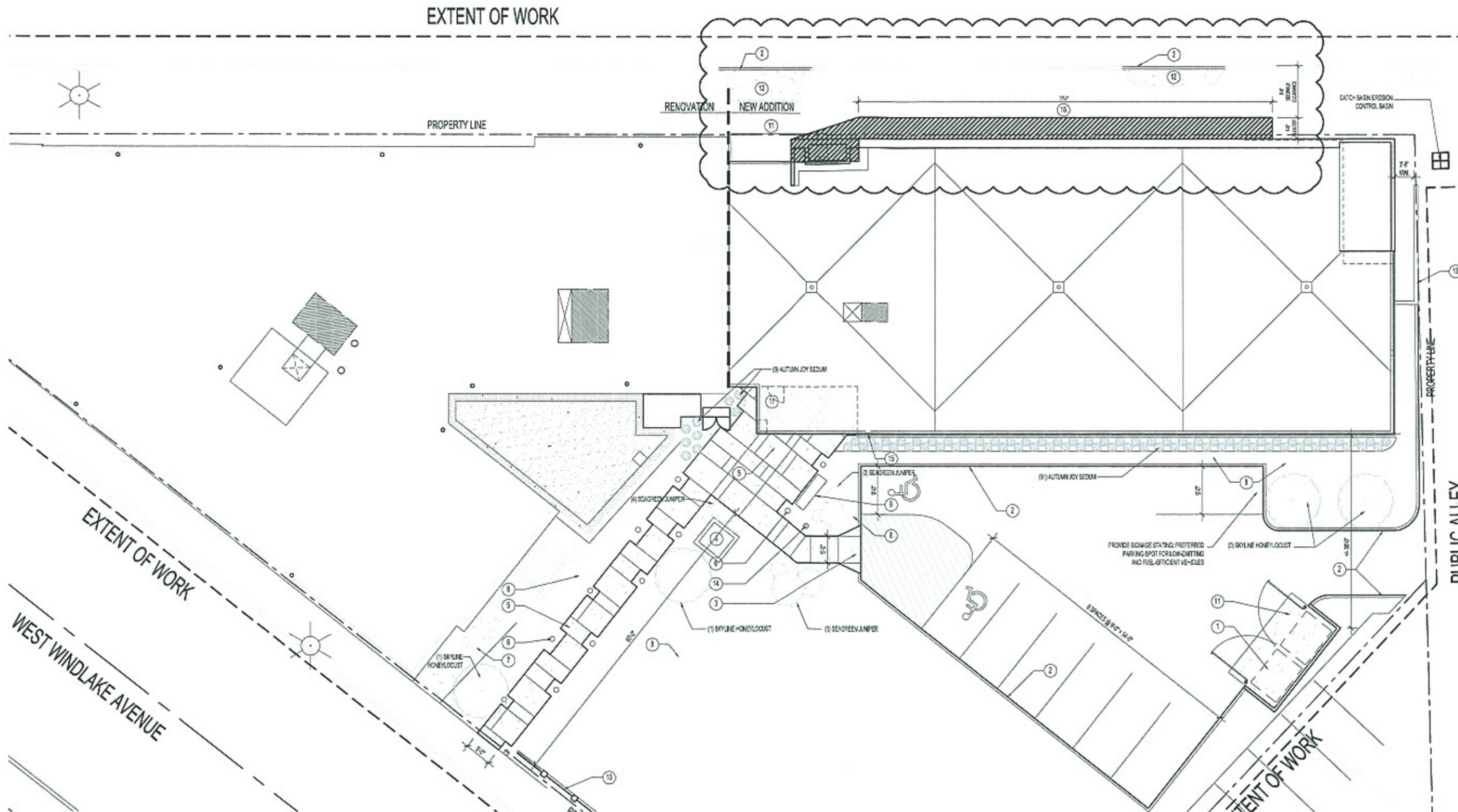
AERIAL VIEW LOOKING EAST



VIEW OF WEST EDGE OF SOUTH 13 STREET FROM PROJECT SITE



VIEW OF EAST EDGE OF WIND LAKE AVENUE FROM PROJECT SITE

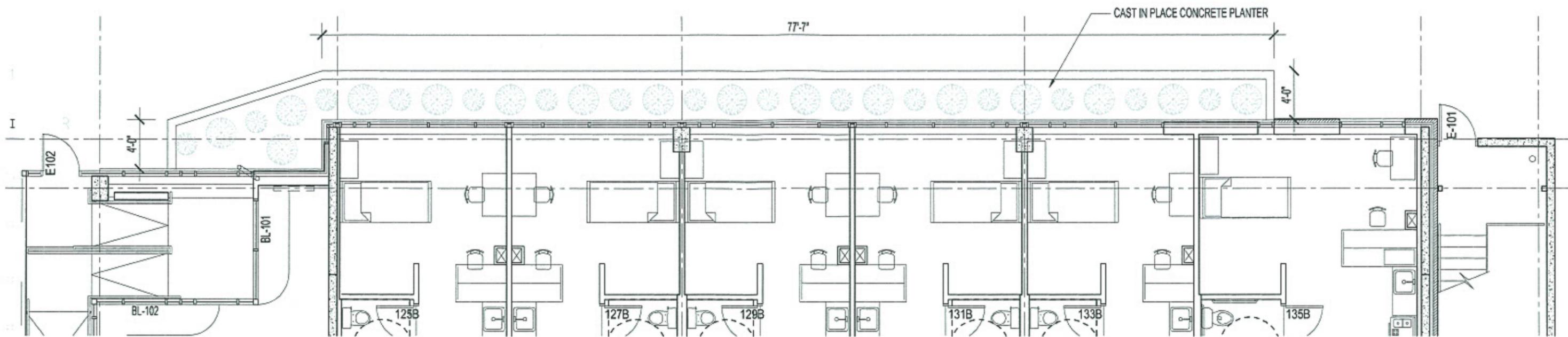


- SITE PLAN KEYNOTES:**
1. NEW DUMPSTER ENCLOSURE - SEE A041 FOR DETAILS
  2. NEW 6" CURB & CUTTER
  3. NEW ACCESSIBLE CURB CUT
  4. NEW TRANSFORMER LOCATION
  5. NEW POURED CONCRETE SIDEWALK RAMPED TO ENTRANCE - SEE A041 FOR DETAILS
  6. LIGHTING BOLLARDS
  7. PATCH REPAIR OR REPLACE EXISTING CONCRETE
  8. APPLY GRASS SEED TO ALL UNPAVED AREAS UNLESS NOTED OTHERWISE
  9. BENCH - SEE SPECIFICATIONS FOR PRODUCT INFORMATION
  10. ALTERNATE #2 - 100' LONG DECORATIVE ALUMINUM FENCE PER SPECIFICATION
  11. NEW CONCRETE STOOP - SEE STRUCTURAL PLANS TYP. FOR LOCATIONS
  12. INFILL EXISTING ABANDONED CURB CUTS AND MATCH EXISTING SIDEWALK GRADES & FINISH
  13. POURED CONCRETE RETAINING WALL
  14. ASH RECEPTACLE. LOCATE MINIMUM 2'-0" FROM ENTRANCE
  15. HOSE BIB. SEE PULLING
  16. PROPOSED PLANTING BED

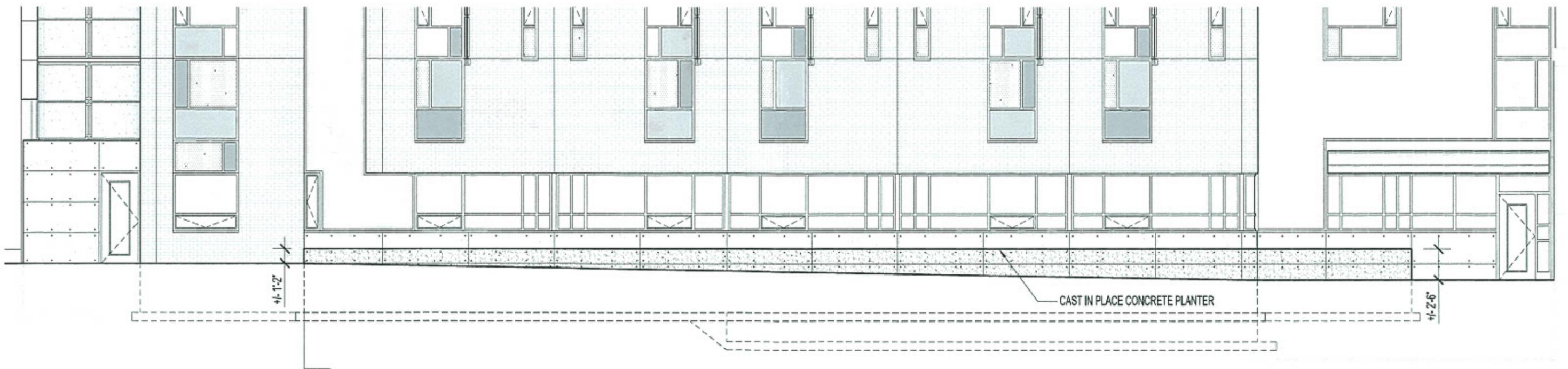
1 SITE PLAN



PROJECT NO:	07011	REVISION NO:		DATE:	
SCALE:	AS NOTED				
PHASE:	CA				
DATE:	25 JUNE 2010				



1 FIRST FLOOR PLAN



2 WEST ELEVATION

**KORB TREDO ARCHITECTS**

Korb Tredo Architects Inc. 790 N. Milwaukee Street, Suite 210 Milwaukee, Wisconsin 53202 414.273.8230 www.korbtredo.com

PROJECT NAME:  
**MERCY HOUSING LAKEFRONT  
 JOHNSTON CENTER RESIDENCES**  
 PROJECT ADDRESS:  
 2150 S. 13TH STREET, MILWAUKEE WI 53215

PROJECT NO:	07011	REVISION NO:	DATE:
SCALE:	AS NOTED		
PHASE:	CA		
DATE:	25 JUNE 2013		

PLAN AND ELEVATION  
**3 OF 3**

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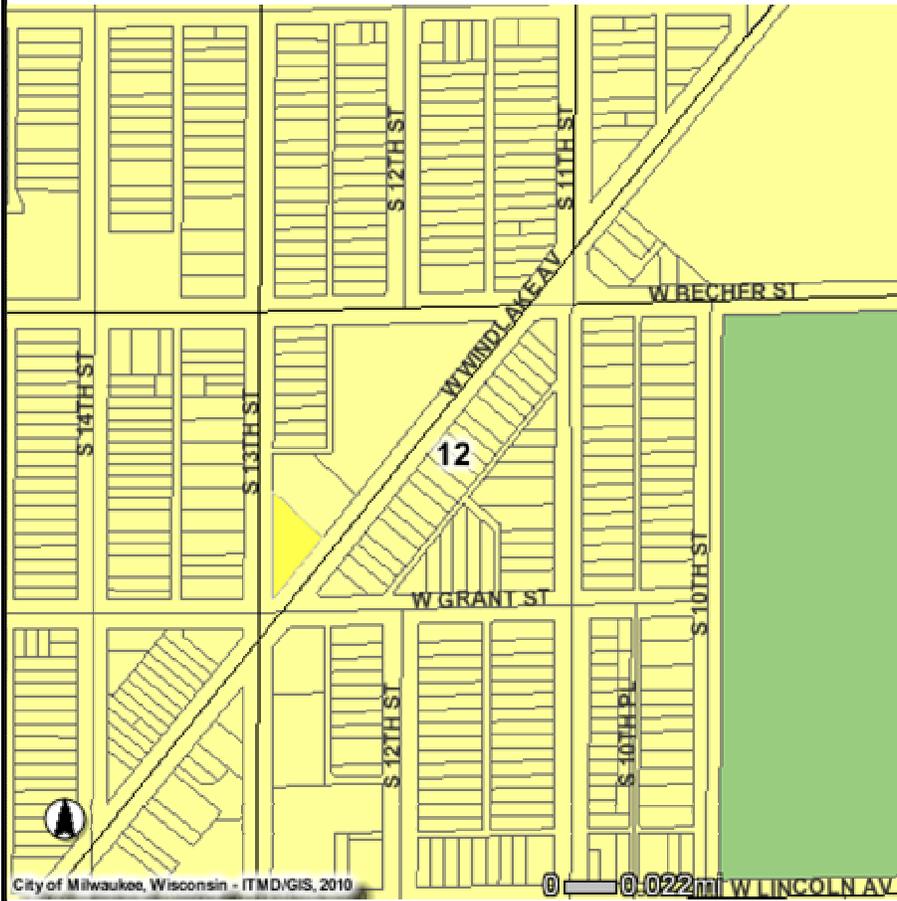


CCF 100391      2150 South 13<sup>th</sup> Street      11-11-2010  
Looking southeast at planter in east sidewalk area of S 13<sup>th</sup> St.



CCF 100391          2150 South 13<sup>th</sup> Street          11-11-2010  
Looking North away from West Windlake Avenue at east sidewalk  
area of South 13<sup>th</sup> Street.

### 1220 West Windlake Avenue a.k.a. 2150 South 13th Street



#### Legend

-  Selected Features
-  Major Streets
-  Streets
-  Parcels (Outline)
-  Parks and Parkways
-  Aldermanic Districts
- 
- 
- 
-  Parcels
-  City Limits

City of Milwaukee, Wisconsin - ITMD/GIS, 2010

0 0.022 mi



# City of Milwaukee Fiscal Impact Statement

Date

File Number

Original

Substitute

A

Subject

B

Submitted By (Name/Title/Dept./Ext.)

C

This File

- Increases or decreases previously authorized expenditures.
- Suspends expenditure authority.
- Increases or decreases city services.
- Authorizes a department to administer a program affecting the city's fiscal liability.
- Increases or decreases revenue.
- Requests an amendment to the salary or positions ordinance.
- Authorizes borrowing and related debt service.
- Authorizes contingent borrowing (authority only).
- Authorizes the expenditure of funds not authorized in adopted City Budget.

D

This Note

- Was requested by committee chair

E

Charge To

- Department Account
- Contingent Fund
- Capital Projects Fund
- Special Purpose Accounts
- Debt Service
- Grant & Aid Accounts
- Other (Specify)

F

Purpose	Specify Type/Use	Expenditure	Revenue
Salaries/Wages			
Supplies/Materials			
Equipment			
Services			
Other			
<b>TOTALS</b>			

**For expenditures and revenues which will occur on an annual basis over several years check the appropriate box below and then list each item and dollar amount separately.**

G

1-3 Years     3-5 Years

1-3 Years     3-5 Years

1-3 Years     3-5 Years

**List any costs not included in Sections E and F above.**

H

**Assumptions used in arriving at fiscal estimate.**

I

**Additional information.**

J





## Legislation Details (With Text)

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**File #:** 091348      **Version:** 0

**Type:** Resolution      **Status:** In Committee

**File created:** 2/9/2010      **In control:** PUBLIC WORKS COMMITTEE

**On agenda:**      **Final action:**

**Effective date:**

**Title:** Resolution to grant a special privilege to Johnston Center Re-Use LLC to construct and maintain five vertical sunshades for the premises at 2150 S. 13th Street, in the 12th Aldermanic District.

**Sponsors:** THE CHAIR

**Indexes:** SPECIAL PRIVILEGE PERMITS

**Attachments:** Special Privilege Petition and Drawings

Date	Ver.	Action By	Action	Result	Tally
2/9/2010	0	COMMON COUNCIL	ASSIGNED TO		
2/11/2010	0	PUBLIC WORKS COMMITTEE	REFERRED TO		
12/1/2010	0	PUBLIC WORKS COMMITTEE	HEARING NOTICES SENT		

Number

091348

Version

ORIGINAL

Reference

Sponsor

THE CHAIR

Title

Resolution to grant a special privilege to Johnston Center Re-Use LLC to construct and maintain five vertical sunshades for the premises at 2150 S. 13th Street, in the 12<sup>th</sup> Aldermanic District.

Drafter

CC-CC

dkf

2/1/10

spec-priv



# PETITION FOR A SPECIAL PRIVILEGE

ccl-246 (6/09)

SP 2508

- New application \$250.00 Fee**
- Amendment to add items to Special Privilege # \_\_\_\_\_ (\$125.00 Fee)**
- Amendment to remove items from Special Privilege # \_\_\_\_\_ (No fee)**
- Amendment for change of ownership for Special Privilege # \_\_\_\_\_ (No fee)**

- File petition with the City Clerk License Division, City Hall, 200 E. Wells Street, Room 105, Milwaukee, WI 53202, telephone (414) 286-2238. [www.milwaukee.gov/license](http://www.milwaukee.gov/license)
- Fee must be submitted with petition. Checks should be made payable to the City of Milwaukee.
- Petition must be submitted in duplicate.

To the Honorable, The Common Council of the City of Milwaukee:

The Licensee **Johnston Center Re-Use LLC**  
(Name of Individual, Partners, Corporation or LLC)

being the owners of the following property known by street address as 2150 S 13<sup>th</sup> St  
(Street Address and Zip Code)

in the 12th Aldermanic District respectfully petition the Common Council of the City of Milwaukee according to the provisions of Section 66.0425 of the Wisconsin Statutes, that the following privilege be granted:

Description of Special Privilege: Install five 20' tall vertical sunshades, the bottom of which are 16' above grade on the west façade of the new building at 2150 S. 13<sup>th</sup> Street. The sunshades will overhang the public right of way by a maximum of 30".

Of which a plan or sketch is herewith submitted. Petitioner agrees to comply with all laws and all ordinances of the City of Milwaukee, to abide by any order or resolution of the Common Council affecting this privilege, to be primarily liable for damages to person or property by reason of the granting of such privilege, pay annual compensation as provided by law in the sum to be fixed by the proper city officers, and to file and keep current throughout the existence of the privilege, a certificate of insurance indicating applicant holds a public liability policy in at least the sums of \$25,000.00/\$50,000.00 bodily injury, and \$10,000.00 property damage, insuring the city against any liability that might arise by reason of the privilege.

Petitioner further agrees to remove said privilege whenever public necessity so requires when so ordered upon resolution adopted by the Common Council or other legislative body.

Should this special privilege be discontinued for any reason whatsoever, petitioner agrees to remove all construction work executed pursuant to this special privilege, to restore to its former condition and to the approval of the Commissioner of Public Works, any curb, pavement, or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Petitioner further agrees not to contest the validity of Section 66.0425 of the Wisconsin Statutes, or the legality of this special privilege in any way.

Name (Please Print): David Lyon  
(Individual, Partner, or Agent if corporation or LLC as shown above)

Signature:   
(Individual, Partner, or Agent if corporation or LLC)

Corporation or LLC Name: **Johnston Center Re-Use LLC**  
(If applicable, as shown above)

(OVER)

Mailing Address (If different than property address above): 120 S. LaSalle St. Ste 1850

City: Chicago State: IL Zip: 60603

Telephone: 312-447-4560 E-Mail: dlyon@mercyhousing.org

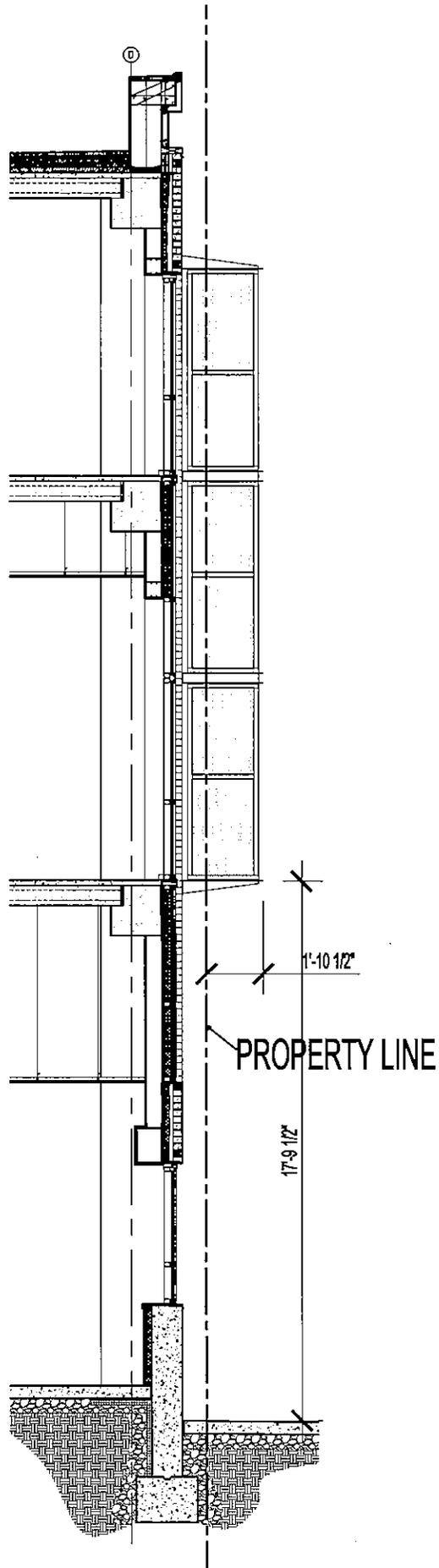
*Architect/Engineer/Contractor (If Applicable)*

Name: Jason Korb/ Korb Tredo Architects

Address: 790 N. Milwaukee St Ste 210

City: Milwaukee State: WI Zip: 53202

Telephone: 414-273-8230 E-Mail: Jason@korbtredo.com

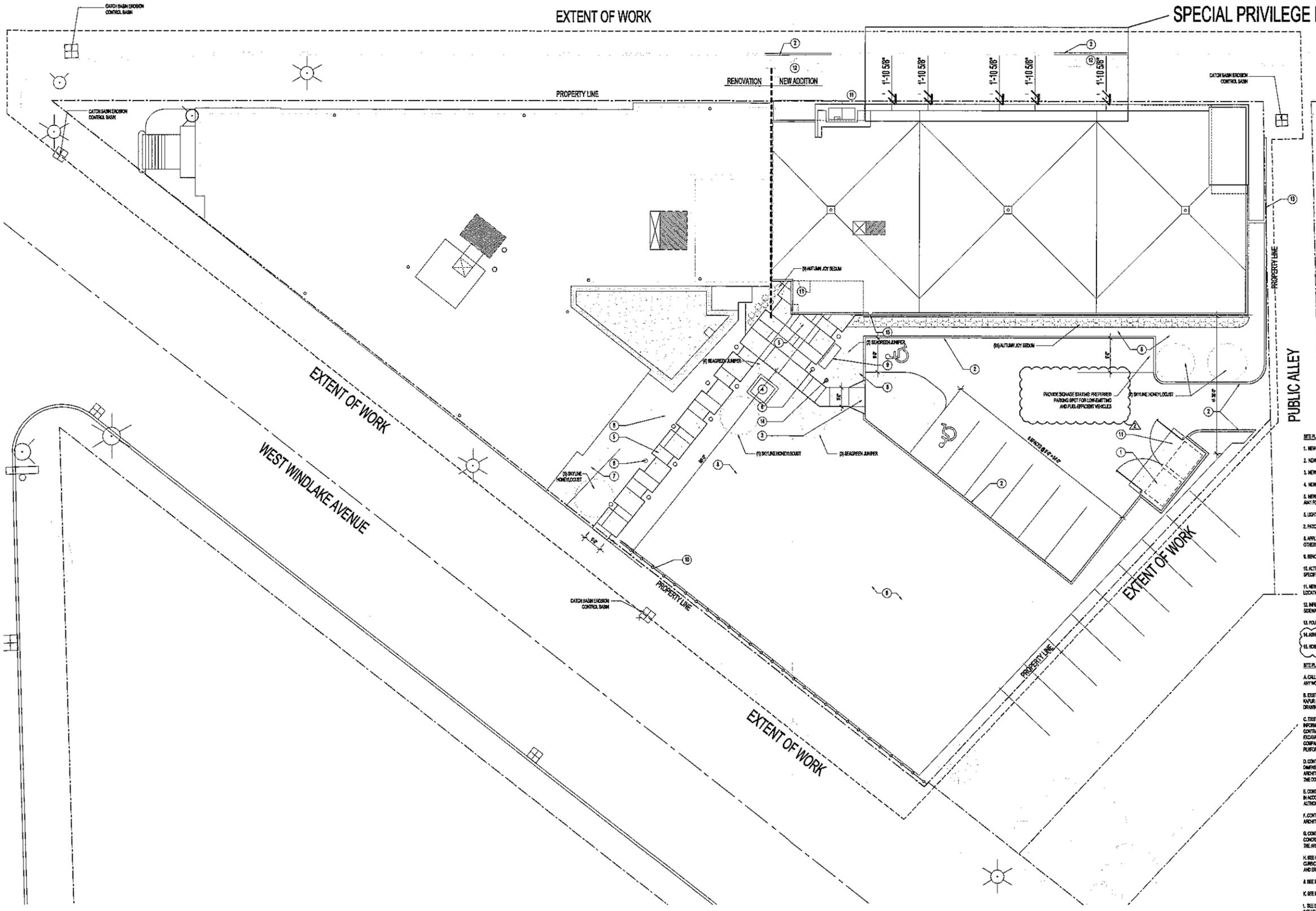


QUANT.	STATIC USE	SCIENTIFIC NAME	COMMON NAME	MIN SIZE	SYMBOL	NOTES
4	●	OLEIFRA TETRAHYDRA NERVIS	SPYRINE HONEYLOCUST	2 1/2" CAL.	CH	# MIN. BENCHING DIST.
10	●	JAMPELIS OMBENSIS SEA GREEK	SEA GREEN JAMPER	18" CAN	SEA	SPACE 4' O.C.
100	●	SEDUM AUTUMNALIS	AUTUMN JOY SEDUM	DEL. POT.	AJB	SPACE 18" O.C.
2,000 L.	●	POA PRATENSIS & PHE BLADE FESCUE BLEND MIXTURE	LAWN BOD.			

SOUTH 13TH STREET

SPECIAL PRIVILEGE LOCATION

EXTENT OF WORK



- SITE PLAN NOTES:**
1. NEW DUMPSTER ENCLOSURE - SEE A411 FOR DETAILS
  2. NEW 4' CURB & GUTTER
  3. NEW ACCESSIBLE CURB CUT
  4. NEW TRANSFORMER LOCATION
  5. NEW PAVED CONCRETE SIDEWALK RAMPED TO ENTRANCE - SEE A411 FOR DETAILS
  6. LIGHTING BOLLARDS
  7. PATCH, REPAIR OR REPLACE EXISTING CONCRETE
  8. APPLY GRASS SEED TO ALL UNPAVED AREAS UNLESS NOTED OTHERWISE
  9. BENCH - SEE SPECIFICATIONS FOR PRODUCT INFORMATION
  10. ALTERNATE #1 - 100' LONG DECORATIVE ALUMINUM FENCE PER SPECIFICATION
  11. NEW CONCRETE STUOP - SEE STRUCTURAL PLANS TYP. FOR LOCATION
  12. INFILL EXISTING ABANDONED CURB CUTS AND MATCH EXISTING SIDEWALK GRADES & TRIMS
  13. PAVED CONCRETE RETAINING WALL
  14. NEW RECEIPT TABLE LOCATED IMMEDIATELY FROM ENTRANCE
  15. NEW SIG. SEE PLUMBING

- SITE PLAN GENERAL NOTES:**
- A. CALL DESIGNER HOTLINE THREE (3) WORKING DAYS PRIOR TO THE START OF ANY WORK, 1-800-361-8886
  - B. EXISTING TOPOGRAPHIC INFORMATION DERIVED FROM NEW G.L.M BY KAJIURA & ASSOCIATES. COORDINATE INFORMATION WITH SURVEY & CIVIL DRAWINGS
  - C. EXISTING UTILITIES ARE SHOWN ACCORDING TO THE BEST AVAILABLE INFORMATION. HORIZONTAL LOCATIONS MAY NOT BE 100% ACCURATE OR COMPLETE. CONTRACTOR SHALL HAVE ALL UTILITIES LOCATED PRIOR TO IMPACTING EXISTING UTILITIES. CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES AS NECESSARY TO PROVIDE SERVICE TO THE SITE AND TO PERFORM WORK
  - D. CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS, DIMENSIONS, AND COORDINATES. THE CONTRACTOR SHALL NOTIFY THE ARCHITECT OF ANY DISCREPANCIES BETWEEN EXISTING CONDITIONS AND THE CONTRACT DOCUMENTS
  - E. CONTRACTOR SHALL OBTAIN ALL PERMITS REQUIRED TO PERFORM WORK IN ACCORDANCE WITH LOCAL, STATE, AND FEDERAL LAWS AND ALL APPLICABLE JURISDICTION
  - F. CONTRACTOR SHALL REVIEW TOPICAL DAMAGE AND REVIEW WITH ARCHITECT PRIOR TO STARTING WORK
  - G. CONTRACTOR SHALL PROVIDE ALL PAVING LOT STRIPING, SPECIALTY CONCRETE WALLS, SPECIALTY EQUIPMENT, AND SIGNAGE AS INDICATED ON THE ARCHITECTURAL DRAWINGS
  - H. SEE CIVIL DRAWINGS FOR ADDITIONAL SITE INFORMATION INCLUDING CURB/CURB CUT, PAVING, DRAINAGE, UTILITIES, FENCE/SIG. SIGNAGE DETAILS, AND SIGNAGE CONTROL PLAN
  - I. SEE STRUCTURAL DRAWINGS FOR PLACEMENT OF STUOPS
  - J. SEE MECHANICAL DRAWINGS FOR LOCATION OF ON GRADE EQUIPMENT
  - K. SEE ELECTRICAL PLANS FOR LOCATIONS OF SITE ELECTRICAL ITEMS, INCLUDING ON GRADE EQUIPMENT, CONDUITS AND ELECTRICAL LINES, AND LIGHTING
  - L. SEE LANDSCAPE DRAWINGS FOR LOCATION OF LANDSCAPE ITEMS AND FOR ADDITIONAL PAVING INFORMATION

PROJECT NAME  
**JOHNSTON CENTER**  
Proposed Addition & Alterations

PROJECT ADDRESS  
1230 WEST GRANT STREET  
MILWAUKEE, WISCONSIN 53215

REVISION NO.	DATE
ADDENDUM #1	08.22.2019
ADDENDUM #2	08.22.2019

PROJECT NO: 17116  
SCALE: AS NOTED  
PHASE: WORKING DRAWINGS  
DATE: 14 AUGUST 2019

SITE PLAN

**A040**

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