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MEMORANDUM Transportation & Development Department - Memo No. TN13-06

DATE: APRIL 25, 2013

TO: MAYOR & COUNCIL

THRU: RICH DLUGAS, CITY MANAGER RD
MARSHA REED, ASSISTANT CITY MANAGER
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR ^{RJZ}
DANIEL W. COOK, TRANSPORTATION MANAGER ^{DWC}

FROM: ANN MARIE RILEY, TRANSIT SERVICES COORDINATOR ^{AMR}

SUBJECT: RESOLUTION NO. 4638 – APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (RPTA) FOR ALTERNATIVE TRANSPORTATION SERVICES (CAB COUPON PROGRAM) FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES FOR FY 2012/13

RECOMMENDATION: Staff recommends that Council pass and adopt Resolution No. 4638 approving an Intergovernmental Agreement (IGA) with the Regional Public Transportation Authority (RPTA) for Alternative Transportation Services (Cab Coupon Program) for senior citizens and persons with disabilities for FY 2012/13 for an estimated amount of \$66,717.

BACKGROUND/DISCUSSION: The City of Chandler initiated a subsidized taxicab coupon program with the RPTA in FY 2006/07. Staff recommends continuing the Cab Coupon Program through FY 2012/13.

This program provides subsidized taxicab coupons for Chandler residents. The program is intended to provide additional transportation options for senior citizens and persons with disabilities at a lower cost than traditional Dial-A-Ride service. Under this program, participants purchase coupon booklets valued at \$10 at a nominal co-pay of \$2.50 for one book. The coupons can then be applied toward the fares of participating cab companies. Coupons are purchased from Valley Metro.

In FY 11/12 Chandler citizens utilized 6,531 cab trips providing an estimated savings to the City of about \$251,000 in the Dial-A-Ride program.

The total amount of this contract is \$130,102. A federal New Freedom grant provides \$43,385. The City funds \$66,717 and coupon revenue is \$20,000. This funding enables the City to provide more cab service to our citizens and save on the Dial-A-Ride costs.

FINANCIAL IMPLICATIONS:

Net City Cost: \$66,717
Savings: \$43,385 (New Freedom Grant)
Long Term Costs: N/A

Fund Source:

<u>Acct. No:</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>Funds</u>
216.3340.5219.0000	LTAf (Fund Balance Savings)	Transit Operations	\$66,717

PROPOSED MOTION: Move that the City Council pass and adopt Resolution No. 4638 approving an Intergovernmental Agreement (IGA) with the Regional Public Transportation Authority (RPTA) for Alternative Transportation Services (Cab Coupon Program) for senior citizens and persons with disabilities for FY 2012/13 for an estimated amount of \$66,717.

Attachments: Resolution No. 4638
Intergovernmental Agreement

RESOLUTION NO. 4638

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (RPTA) AND THE CITY OF CHANDLER TO PROVIDE ALTERNATIVE TRANSPORTATION SERVICES (CAB COUPON) FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES FOR FY2012/13 FOR AN ESTIMATED AMOUNT OF \$66,717.

WHEREAS, the City of Chandler desires to provide subsidized taxicab coupons for Chandler residents and to provide additional transportation options for senior citizens and persons with disabilities; and

WHEREAS, it is deemed in the best interest of the City of Chandler and the citizens thereof to provide additional transportation options for senior citizens and persons with disabilities for FY2012/13; and

WHEREAS, an Intergovernmental Agreement (IGA) between the City of Chandler and the Regional Public Transportation Authority (RPTA) is required to operate the Alternative Transportation Services program; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor is authorized to sign and execute the Intergovernmental Agreement (IGA) with the Regional Public Transportation Authority (RPTA) to provide Alternative Transportation Services (Cab Coupon) for senior citizens and persons with disabilities for FY2012/13 for an estimated amount of \$\$66,717 on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4638 was duly passed and adopted by the City council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of ____, 2013, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY
Alvaro

AGREEMENT NO. 118-33-2013

INTERGOVERNMENTAL AGREEMENT

**THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
AND
CITY OF CHANDLER**

(Funding Agreement – Alternative Transportation
Services FY 2012-13)

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is made and entered into this 1st day of July, 2012, by and between the Regional Public Transportation Authority, a public agency duly organized and existing under the laws of the State of Arizona (hereinafter referred to as “RPTA”) and the City of Chandler, a municipal corporation duly organized and existing under the laws of the State of Arizona acting by and through its Public Transit Department (hereinafter referred to as “CITY”) and

WHEREAS, CITY has Charter authority to provide transit services and Charter and Statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. § 11-951, et seq.; Chapter 2, Section 2, Subsections (c), (i) and (l), Charter of the City of Chandler,]; and,

WHEREAS, RPTA is a political subdivision of the state of Arizona, i.e., a public improvement district, established for the purpose of planning and providing public transportation services [A.R.S. §48-5101, et seq.]; and,

WHEREAS, as a political subdivision of the state of Arizona, RPTA “may contract and enter into stipulations of any nature to do all acts necessary and convenient for the full exercise of” its powers granted under A.R.S. § 48-5101, et seq [A.R.S. §48-5123], including entering into intergovernmental agreements [A.R.S. § 11-951, et seq.); and,

WHEREAS, RPTA is the designated recipient of Public Transportation Funds (PTF) from the voter approved Proposition 400 and is charged with distributing PTF funds to local recipients such as CITY; and,

WHEREAS: The RPTA is authorized to contract for the provision of public transportation services pursuant to A.R.S. Sections 48-5122 and 48-5123; and

WHEREAS, CITY has been authorized by its City Council and RPTA has been authorized by its Board of Directors to enter into this IGA; and,

WHEREAS, the sums set forth herein have been approved for disbursement in RPTA's annual budget;

NOW, THEREFORE IT IS AGREED by and between the parties, as follows:

SECTION 1: UNDERTAKINGS OF THE PARTIES.

A. RPTA's Obligations: RPTA shall:

1. With respect to the Alternative Transportation Program, aka Ride Choice, the RPTA, in consultation with the CITY, shall:

- a. determine the method by which RPTA shall distribute cab coupons to CITY residents who are seniors and persons with disabilities;
- b. negotiate and coordinate the implementation of operating agreements;
- c. provide directly or through contractors service delivery for the Alternative Transportation Program;
- d. provide marketing and merchandising of the program to CITY residents who are seniors and persons with disabilities;
- e. RPTA will manage the program to stay within the city's budget.
- f. bill CITY on a monthly basis for CITY'S prorated share of administrative costs and redeemed cab coupons and mileage reimbursements; and
- g. provide professional staff as necessary to plan for, develop, contract for, monitor, and adjust service; and
- h. issue coupons with a stated expiration of not more than (180) days after issuance.
- i. The RPTA will draw down ADA PTF on behalf of the City as approved by the RPTA Board of Directors

2. RPTA will provide a financial reconciliation within 30 calendar days of the end of each quarter. This quarterly reconciliation will show all costs of service (including any administrative fees) for informational purposes only. At the end of the fiscal year a final reconciliation shall be performed. RPTA will provide the year-end financial reconciliation within 60 calendar days. If it is found that CITY has paid more than its share of the costs of service, RPTA shall credit such overpayment to CITY on its next invoice or refund the money to the City at the City's choice. Conversely, if CITY has under paid its share of the costs of services, RPTA shall bill the underpayment to CITY. CITY shall pay all invoices submitted by RPTA to CITY within 60 days.

3. The RPTA and the CITY may conduct service and financial audits, as desired, of the Alternative Transportation Program. RPTA will assist and cooperate in these audits as requested by the CITY.

4. The RPTA shall provide written performance reports to the CITY within 21 calendar days of the end of each month. Such reports shall include at a minimum:
 - a. Detailed costs of reimbursed cab coupons;
 - b. Details of administrative costs incurred to include printing, copying, postage, and percent of budget expended.
 - c. Detail report of program usage;
 - d. Details of marketing activity, including when, where, what quantity, and by what method cab coupons were distributed to Chandler residents.

B. CITY's Obligations: CITY shall:

1. Pay to RPTA Seventy-Five/100 of a dollar (\$.75) for each one dollar (\$1.00) cab coupon that is redeemed, that:
 - a. RPTA issues to Chandler residents between July 1, 2012 and June 30, 2013 pursuant to the guidelines established by RPTA.
 - b. Is used to pay for taxicab transportation pursuant to the Alternative Transportation Program.
 - c. Pay RPTA full value of one dollar each (\$1.00) for all coupons for cabs redeemed.
2. Inform RPTA of its funding commitment to this program

SECTION 2: STATUTORILY REQUIRED PROVISION. The following provisions are included herein to satisfy the requirements of A.R.S. § 11-952:

- A. **Purpose:** The purpose of this Agreement is to agree that RPTA shall provide the services required to administer, market, and manage the RideChoice program including Coupons for Cabs and Vouchers. The City of Chandler will pay for costs of these Alternative Transportation Services Programs. The City of Chandler authorizes that a \$10.00 book of Coupons for Cabs will be sold to customers for \$2.50 with Chandler paying \$7.50 (75% Subsidy). Vouchers in Chandler will be grandfathered for existing customers. no new customers will-be added to this program.
- B. **Budget** Refer to Attachment A.
- C. **Term and Renewal:** This agreement shall commence on July 1, 2012, and shall terminate on June 30, 2013, and may be extended for up to four (4) additional one (1) year amendments. Upon termination of this Agreement any and all property used in connection with this Agreement will be promptly returned to the party holding title thereto.

SECTION 3: GENERAL PROVISIONS

The following provisions are material and essential to the parties' entry in to this Agreement. A breach of any of the provisions of this Section shall constitute a material breach of contract.

- A. Entire Agreement; Modification (No Oral Modification): This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. This Agreement, and its terms, may not be modified or changed except in writing signed by both parties. There shall be no oral alteration or modification of this Agreement.
- B. Invalidity of Any Provisions: This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.
- C. Applicable Law and Litigation This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
- D. Conflicts of Interest: All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of § 38-511, Arizona Revised Statutes.
- E. Non-waiver: Should either party fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.
- F. Federal Funding Limitation: CITY understands that funds to pay for CITY's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. RPTA's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, RPTA shall terminate or suspend CITY's services without penalty or shall work with the City to determine a revised program. RPTA shall notify CITY promptly in writing of the non-allocation, delay, or disapproval of funding.
- G. Non-Appropriation: Funds may not be presently available for performance under this Agreement beyond the current fiscal year. CITY may reduce payments or terminate this Agreement without further recourse, obligation or penalty in the event that insufficient funds are appropriated. CITY shall not be liable for any purchases or subcontracts entered into by the RPTA in anticipation of such funding respectively. The CITY shall have the

discretion in determining the availability of funds. Funds may not be presently available for performance under this Agreement beyond the current fiscal year. RPTA may reduce payments or terminate this Agreement without further recourse, obligation or penalty in the event that insufficient funds are appropriated. RPTA shall not be liable for any purchases or subcontracts entered into by the CITY in anticipation of such funding respectively. The RPTA Procurement Officer shall have the discretion in determining the availability of funds.

- H. Notice: Any notice, consent, or other communication (“NOTICE”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for RPTA:

Stephen R Banta, Chief Executive Officer.
Regional Public Transportation Authority
101 North First Avenue, Suite 1100,
Phoenix, AZ 85003
Telephone: (602) 262-7433
FAX: (602) 523-6099

If intended for Chandler:

City Manager
City of Chandler
Mail Stop 605
P.O. Box 4008
Chandler, Arizona 85244-4008

Copy to:

Transportation Manager
City of Chandler
Mail Stop 412
P.O. Box 4008
Chandler, Arizona 85244-4008

Notice shall be deemed received at the time it is personally served or; on the day it is sent by e-mailed PDF file or facsimile transmission; on the second day after its deposit with any commercial air courier or express service or; if mailed, three (3) working days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by e-mailed PDF file or facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

- I. Compliance with the E-Verify Program. Warrant of Compliance - Under the provisions of A.R.S. §41-4401, both Parties warrant to the other that each Party will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

Breach of Warranty - A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

Right to Inspect - Both Parties retain the legal right to inspect the papers of any employee who works on this Contract or subcontract to ensure compliance with the warranty given above.

Random Verification - Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.

Federal Employment Verification Provisions – No Material Breach, A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

Inclusion of Article in Other Contracts - The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

- J. Legal Compliance and Prohibition. To the extent applicable, RPTA and CITY each warrant compliance with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction over transit services provided via this Agreement, and all applicable employment laws, rules and regulations, including to the extent applicable, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Parties acknowledge that a breach of this warranty is a material breach of this Agreement and parties are subject to penalties for violation(s) of this provision, including termination of this Agreement. CITY and RPTA each retain the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to this Agreement to ensure compliance with this warranty. Any and all costs associated with inspections are the sole responsibility of the party subject to inspection. RPTA and CITY each hereby agree to indemnify, defend and hold each other harmless for, from and against all losses and liabilities arising from any and all violations thereof. In addition, the parties each certify that it does not have a scrutinized business operation in either Iran or Sudan. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06,

each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

- K. Civil Rights. The parties agree that as a condition of this Agreement they will each 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, those civil rights laws and regulations set forth on Exhibit A, as such civil rights laws and regulations may be amended from time to time.
- L. New Freedom. CITY has received New Freedom grant funding to be administered by RPTA to help support the Alternative Transportation program in Chandler. All New Freedom grant monies must be used exactly as described in the approved grant application. New Freedom grants are identified by the calendar year in which they are submitted and approved. New Freedom funded projects allow for expenses to be incurred following approval notice to RPTA by the City of Phoenix. However, reimbursements will not be processed until final award by the Federal Transit Administration and execution of an IGA between the City of Phoenix and RPTA. RPTA will credit the City of Chandler for New Freedom Grant Funds reimbursements after RPTA receives these funds from the grant. The City of Chandler will receive such credit in the period that the grant funds are received in accordance with all terms of the Agreement and the attached Schedule B. Any unused New Freedom grant monies designated for Chandler will be made available for the following fiscal year(s) and can be used up to 30 months following the actual FTA award date.
- M. Indemnification. Each party to this Agreement agrees to defend, indemnify, save and hold harmless the other (and each of their respective directors, officers, agents and employees) from and against all liabilities, suits, obligations, claims, demands, damages, fines, costs and expenses (including reasonable attorney's fees) arising under this Agreement to the extent that such are attributable, directly or indirectly, to the indemnifying party's negligence, error, omission or intentional act. An indemnifying party's negligence, error, or omission or intentional act, as that phrase is used herein, includes the negligence, error, omission or intentional act of its officers, agents and employees. This provision shall survive the termination of this Agreement.
- N. Records. The Federal Transit Administration (FTA), the Arizona Department of Transportation, the Comptroller General of the United States, RPTA, the CITY, or any designee shall have access to any books, documents, papers and records which are pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. All required records shall be maintained for a minimum of three years after all pending matters are closed.
- O. Covenant Against Contingent Fees. Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of Congress, City Council, the RPTA Board or any employee of CITY or RPTA, has any interest, financially or otherwise, in this Agreement.

- P. Alteration In Character of Work. Minor alterations in the character of work shall be authorized in writing by RPTA and acknowledged by CITY by letter.
- Q. Termination. RPTA and CITY hereby agree to full performance of the covenants and obligations contained herein, except that each reserves the right, at its option and sole discretion, to terminate or abandon the service provided for in this Agreement, or any portion thereof.

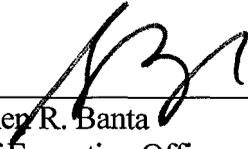
Termination of this Agreement may be at any time and for any reason, with or without cause, upon providing thirty (30) calendar days prior written notice. Termination shall be effected by delivery of a Notice of Termination specifying the extent to which performance of work under this Agreement is terminated, and the date upon which such termination becomes effective.

SECTION 4: TERM

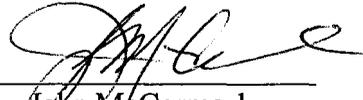
If the parties are not able to agree upon renewal terms for the existing Agreement prior to the expiration of the term of the existing Agreement, the CITY shall make the payments required to be paid under this Agreement on or before July 1 for the new fiscal year and thereafter for a one hundred eighty (180) day period provided the amount paid in the new fiscal year does not exceed 10% of the amount of this agreement unless the parties agree upon renewal terms prior to the expiration of such one hundred eighty (180) day period. For example, if there is a disagreement with the proposed rate for the new fiscal year, or if the renewal Agreement is not signed, for any reason, the CITY shall make payments at the old rate (the previous year's rate) until such time that renewal Agreement can be fully approved and executed. RPTA realizes that CITY cannot remit payments to RPTA until City Council approves such new agreement or amendment. However, that does not relieve CITY from its obligation to pay RPTA all sums due within thirty (30) days of City Council approval.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day
of _____, 2013.

By: _____
Jay Tibshraeny
Mayor

By: _____

Stephen R. Banta
Chief Executive Officer

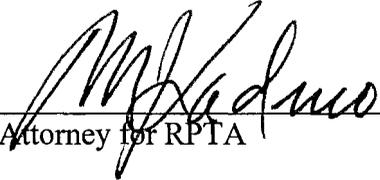
By: _____
Chandler City Clerk

By: _____

John McCormack
Chief Financial Officer

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of §11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Attorney for City of Chandler



Attorney for RPTA

SCHEDULE A

The City of Chandler agrees to participate and financially support the Alternative Transportation Services program for Fiscal Year 2012-2013. The City of Chandler shall fund this project in the amount of \$66,717.00 for the period July 1, 2012 to June 30, 2013. The City of Chandler will pay the RPTA for the project in twelve (12) monthly installments of \$5,559.75. Payment of invoices shall become due within thirty (30) calendar days after the receipt of an invoice from RPTA.

City of Chandler	
RideChoice Program	
Fiscal Year 2013	
Expenditures:	
Payments to Taxi Cab Companies	\$67,300
Mileage Reimbursement Program	N/A
Dialysis Voucher Program	\$37,200
Contractor Administrative Cost	\$18,163
Program Cost	\$122,663
Administrative Support and Printing	\$7,439
Total Expenditures	\$130,102
Sources:	
New Freedom Grants	\$43,385
Coupon Revenue	20,000
City Contributions	\$66,717
Total Funding	\$130,102

EXHIBIT A

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.