

Sub-Recipient Funding Agreement (Example)

FEDERAL AWARD IDENTIFICATION NUMBER:
FEDERAL AWARD DATE TO VIA:
NAME OF AWARDED FEDERAL AGENCY: **FEDERAL TRANSIT ADMINISTRATION**
CFDA NUMBER: **20.513**
CFDA TITLE: **CAPITAL ASSISTANCE PROGRAM FOR ELDERLY PERSONS AND
PERSONS WITH DISABILITIES**
SUBRECIPIENT NAME:
SUBRECIPIENT DUNS#:
SUBAWARD AMOUNT:
SUBAWARD PERIOD OF PERFORMANCE: START _____ END _____
RESEARCH AND DEVELOPMENT GRANT (Y/N): **NO**
SUBAWARD OF FEDERAL FUNDS (Y/N): **YES**
INDIRECT COST RATE: **N/A**

**SUBRECIPIENT FUNDING AGREEMENT
BETWEEN
VIA METROPOLITAN TRANSIT AUTHORITY
And**

This Sub-Recipient Funding Agreement ("Agreement") is hereby made and entered into by and between VIA Metropolitan Transit (hereinafter referred to as "VIA"), and _____, (hereinafter referred to as the "Sub-Recipient"), collectively referred to herein as the "Parties".

RECITALS

Whereas, VIA acts as the designated recipient for the Federal Transit Administration (FTA), with regard to Formula Grant Funds that are identified on the Award Summary; and

Whereas, the FTA allows VIA to make sub-awards of the Formula Grant Funds it receives provided that a Sub-Recipient receiving a sub-award agrees to and is capable of performing the responsibilities for the Formula Grant Funds as a pass-through recipient that are required to be performed by VIA as the recipient; and

Whereas, the Sub-Recipient has submitted a project proposal ("project") for financial assistance as described on **Exhibit A** attached hereto and incorporated herein for all purposes and based on representations made the Sub-Recipient is eligible to receive such funds; and

Whereas, to the extent required, the project is included in an approved locally developed, coordinated public transit-human services transportation plan; and

Whereas, the Sub-Recipient has executed and has agreed to adhere to the federal fiscal year certifications and assurances for the FTA assistance programs as required at the start of each fiscal year grant period for consideration for state and/or federal grants;

and

Whereas, VIA has agreed to provide the Sub-Recipient with a sub-award of a portion of the Formula Grant Funds as a Sub-Recipient;

NOW THEREFORE, the PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM AND COMPLIANCE

1.1 The initial term of this Agreement shall begin on _____ and shall remain in effect until _____ unless terminated or otherwise modified in an amendment. Any cost incurred before or after the contract period shall be ineligible for reimbursement. Any project funds not utilized by the termination date of this Agreement are automatically released from this Agreement and may be redistributed by VIA for its own purposes, including but not limited to, making additional sub-awards.

1.2 As a Sub-Recipient of Section 5310 funds, the Sub-Recipient understands and agrees that receipt of such funding is contingent and conditioned on its compliance with all VIA and Federal requirements and that these requirements necessarily encompass all applicable Federal statutes, regulations, the terms and conditions of the Federal award as well as those set out in the FTA Master Agreement, as amended from time to time. The terms and conditions of the FTA Master Agreement are hereby incorporated herein and made a part hereof for all purposes as if fully set out. Any conflict between this agreement and the FTA Master Agreement shall be resolved in favor of the FTA Master Agreement. Any violation of a Federal requirement by the Sub-Recipient can result in an enforcement action undertaken by FTA and termination of this Agreement by VIA and/or FTA.

1.3 The Sub-Recipient shall not represent itself as an agent or employee of VIA and has no authority to bind VIA in contract or otherwise.

1.4 The Subrecipient agrees to maintain sufficient legal, financial, technical and managerial capacity to: (1) plan, manage and complete the Project and provide for the use of the Project services; (2) comply with the terms of this Agreement, the Approved Project Budget, and the Project schedule; and (3) comply with all applicable Federal laws, regulations and requirements, FTA's Master Agreement, and the annual Certifications and Assurances to FTA. The Subrecipient shall notify VIA as soon as possible but not more than thirty (30) days after the occurrence of any change in conditions (including its legal, technical, financial or managerial capacity), any change in local law, or any other event that may significantly affect the Subrecipient's ability to perform the Project in accordance with the terms of this Agreement. The Subrecipient shall provide immediate written notification to VIA of any current or prospective major dispute, breach, default or litigation that may affect VIA's or Federal Government's interest in the Project or the Federal Government's administration or enforcement of Federal laws or regulations, and shall also inform VIA and FTA in writing before naming the Federal Government as a

party to litigation. The Sub-Recipient agrees and understands that the FTA retains a right to concur in any compromise or settlement of any claim involving the Project.

1.5 The Parties agree and understand that any given term under this Agreement cannot be extended past the time-period of the Grant Award from which the funding is originating.

II. PROJECT DESCRIPTION

2.1 Sub-Recipient has submitted and shall be responsible for implementing and completing the project as described in **Exhibit A** attached hereto and incorporated herein for all purposes.

III. FUNDING

3.1 (a) To the extent that VIA receives Section 5310 funds for the Project, VIA shall reimburse the Sub-Recipient for its eligible expenses up to a maximum of **\$ 262,246** as designated in the Budget as described on **Exhibit B** attached hereto and incorporated herein for all purposes for the entire Grant Award for this Project, subject to the requirements set out in Article 1 of this agreement. VIA shall transfer the FTA funds for the Project to the Sub-Recipient on a reimbursement basis only.

(b) The Sub-Recipient understands that the Federal funds to be provided under this Agreement are contingent on FTA's approval of the grant application and are subject to the Federal lapsing requirements. VIA assumes no responsibility for funding any portion of the Project. The entering into of this Agreement by VIA is subject to VIA's receipt of Federal funds adequate to carry out the provisions of this Agreement. VIA may cancel the Project and associated work if VIA determines that there will be a lack of adequate funding available for the Project. In such event, VIA shall notify the Sub-Recipient in writing within thirty (30) days in advance of the date that such cancellation is effective and the cancellation shall be treated as a termination for convenience under Article XIV of this Agreement. VIA is not responsible for providing any funding to substitute for the Federal funds in the event the grant is withdrawn or not provided for any reason. In the event the grant is closed, the Sub-Recipient shall reimburse VIA for any funds paid that were no longer available in the FTA grant award.

(c) This is a one-time Grant Award of Federal funds by VIA to the Sub-Recipient and does not imply or obligate VIA to any future funding commitment.

(d) The Sub-Recipient shall provide the full amount required for the Project in the form of local match for the Federal funds being provided in subsection (a). The Sub-Recipient agrees to provide sufficient funds, together with the Federal assistance, that will assure payment of the actual cost of each Project activity covered by the FTA Grant Award. No local match funds provided shall be derived from receipts from use of Project facilities or equipment or other Federal funds. The Sub-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. The Sub-Recipient also agrees to provide the proportionate amount of the local share promptly as it incurs Project costs or as Project costs become due. 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 funds is made to the Federal Government.

(e) The Project Budget is attached hereto as Exhibit B. The budget includes the total Project cost and the Sub-Recipient's funding commitment. The Sub-Recipient shall incur obligations and make disbursements of Project funds only in accordance with and as authorized in the approved Project Budget. If the Sub-Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Sub-Recipient shall report this to VIA on or before the sixtieth (60th) day prior to the date of termination set out under Section 1.1 of this Agreement.

(f) The Sub-Recipient shall expend Federal funds only for eligible Project costs, as set forth in FTA's Master Agreement and applicable FTA Circulars. To be eligible for Federal participation the costs must comply with all the following requirements:

- (1) be in conformance with the Project Description, the approved Project Budget and all other terms of this Agreement;
- (2) be necessary to accomplish the Project;
- (3) be reasonable for the goods or services purchased;
- (4) be the actual net costs to the Sub-Recipient;
- (5) be incurred for work performed after the effective date of this Agreement;
- (6) be satisfactorily documented;
- (7) be eligible for Federal participation under Federal laws, regulations or directives;
- (8) be treated consistently in accordance with accounting principles and procedures approved by VIA; and
- (9) be in compliance with Department of Transportation regulations pertaining to allowable costs (49 C.F.R. §18.22(b) or §19.27) which specify the applicability of Office of Management and Budget (OMB) Circulars.

(g) Sub-Recipient shall submit monthly reimbursement requests on or before the 25th of each month for actual and eligible Project costs incurred and paid by the Sub-Recipient consistent with the Project scope of work. Final reimbursement requests must be submitted no later than 60 days from the end date of this agreement. Failure to comply with submission deadlines shall be considered a material breach of this Agreement and may result in delay or denial of payment. All payments made by VIA are subject to audit.

(h) Reimbursement

- (1) Unless otherwise agreed to by both parties, the request for reimbursement shall include supporting documentation and the amount expended by the Sub-Recipient during the preceding 30-day period covered by the request. Requests for reimbursement must be consistent with the approved Project Budget, must be for eligible costs (as described in subsection (d) of this Section), and must indicate the actual Project costs incurred. Each request for reimbursement shall report the total of Project expenditures and specify the amount of funds to be reimbursed.

(2) Requests for reimbursement and required accompanying information shall be addressed to:

VIA Metropolitan Transit
Finance Department
Grant Coordinator
800 West Myrtle
P.O. Box 12489
San Antonio, Texas 78212

VIA will make payment within forty-five (45) days of the receipt of an undisputed request for reimbursement subject to the appropriation and availability of Federal funds for this grant. If Federal funds are not available to VIA for this grant, VIA, at its sole discretion, may defer payment to the Sub-Recipient until the Federal funds become available or terminate this Agreement for Convenience as provided for under Section 14.2 of this Agreement.

(3) VIA may withhold monthly payments until all reports and/or supporting documentation required by this Agreement are submitted by the Sub-Recipient in accordance with the time period specified.

(5) The Sub-Recipient is responsible for all cost overruns incurred as a result of this Project. Under no circumstance shall the total amount of funds that VIA reimburses the Sub-Recipient exceed the amount of Federal funds available as specified in Exhibit B of this Agreement.

(6) Because this Agreement provides for reimbursement of costs that have already been incurred, Sub-Recipient shall be responsible for paying all suppliers and vendors, if any, prior to submitting a request for reimbursement.

3.2 (a) The Sub-Recipient understands and agrees that payment for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation by the Sub-Recipient of the terms of this Agreement. The Sub-Recipient acknowledges that the Federal Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that VIA or Sub-Recipient is not entitled to receive any portion of the Federal assistance requested or paid, the Federal Government will notify VIA in writing, stating its reasons. The Sub-Recipient agrees that Project closeout will not alter the Sub-Recipient's responsibility to return any funds 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 funds provided for the Project on the basis of a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have.

(b) The Sub-Recipient understands that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

(c) The Sub-Recipient shall reimburse VIA for any expenditures not in compliance with this Agreement or any FTA requirement, or otherwise disallowed by FTA.

3.3 In addition to any reimbursement request, on or before the twenty fifth (25th) of each month, Sub-Recipient shall submit, in a form acceptable to VIA, any and all data VIA deems necessary to comply with the 49 U.S.C. Section 5310 grant requirements including but not limited to Quarterly Financial and Milestone reporting and National Transit Database (“NTD”) obligations. Sub-Recipient agrees to and shall fully cooperate with VIA in securing the required information for any and all required reporting periods that may include but not necessarily be limited to monthly and annual reporting.

IV. AMENDMENTS

4.1 All amendments to this Agreement must be executed by both Sub-Recipient and VIA. A Party desiring an amendment must notify the other Party in writing before any changes to the Agreement are made by describing the revision and explaining the need.

V. SUBCONTRACTORS

5.1 Sub-Recipient is not anticipating entering into any subcontracts. Should Sub-Recipient decide a subcontract is necessary, it is agreed that any subcontract with individuals or organizations to provide services under this Agreement shall require VIA's prior authorization and consent to the subcontract in the form of an amendment executed as provided in Section 4.1. To the extent that the Sub-Recipient uses subcontractors for the Project, the Sub-Recipient shall include all applicable Federal requirements in those contract terms, including any necessary provisions requiring such subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

5.2 Sub-Recipient understands that it is the policy of the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R. 26, shall have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 C.F.R. 26 and VIA's DBE program apply to this contract as follows:

- a. If Sub-Recipient makes use of any subcontractor, it will strive to meet the annual DBE goal by offering DBEs, as defined in 49 C.F.R. 26, Subpart A, the opportunity to compete fairly for contracts and subcontracts. If subcontractors are used, DBE participation shall be reported monthly.
- b. Sub-Recipient and any subcontractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.
- c. The requirements in this Section 5.2 shall be included in any subcontract.
- d. Failure to carry out the requirements set forth above shall constitute a material breach of this Agreement.

5.3 The Sub-Recipient shall be solely responsible for the performance of all subcontractors and the fulfillment of all requirements of this Agreement. VIA has privity of contract with, and will recognize only the Sub-Recipient.

5.4 The Sub-Recipient shall assure that each of its subcontractors fully and properly perform their work under the subcontract.

5.5 The Sub-Recipient agrees that this section does not operate to relieve it of any duty or liability under this Agreement, nor does it create any duty or liability on the part of VIA to any subcontractor. The Sub-Recipient shall have sole responsibility for promptly settling any disputes between subcontractors and between the Sub-Recipient and any subcontractor. Upon request of VIA, the Sub-Recipient shall provide VIA with information regarding the status of any disputes involving any of its subcontractors.

5.6 The Sub-Recipient shall pay its subcontractors on a timely basis, for and on account of work performed by such subcontractors, in accordance with the terms of the respective subcontracts and in accordance with applicable State and Federal law. Upon request of VIA, the Sub-Recipient shall provide VIA with information regarding the current status of payments to subcontractors, including the reasons for any non-payment.

VI. ACCOUNTING AND AUDIT REQUIREMENTS

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

(a) The Sub-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 Sub-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 VIA and 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 Sub-Recipient agrees to deposit in a financial institution 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 applicable Federal laws, regulations, and 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 Sub-Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Sub-Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Sub-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. With regard to Project Income, Sub-Recipient agrees to adhere to the terms and conditions set out in Article VIII of this Agreement.

(d) Reports to VIA -- The Sub-Recipient shall provide for control and accountability for

all Federal and Project funds consistent with any applicable grant requirements. The Sub-Recipient shall report its cash disbursements and balances to VIA on a monthly basis and in compliance with Federal requirements.

(e) Accounting -- The Sub-Recipient shall establish and maintain proper accounting procedures and cash management records and documents in accordance with general accepted accounting principles.

6.2 Sub-Recipient will meet or exceed all applicable audit requirements outlined in Title 48, Code of Federal Regulations (C.F.R.), Federal Acquisition Regulations (FAR). Unless permitted otherwise by Federal statute or regulation, Sub-Recipient will comply with all applicable provisions of 2 CFR Part 200, Sub-Recipient will perform, if applicable, and provide as promptly as possible, any financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*; 2 CFR Part 200, and the most recent applicable OMB Compliance Supplement provisions for the U.S. DOT. Sub-Recipient will provide VIA a copy of the audit reports and bring to VIA's attention any audit findings relevant to Sub-Recipient's use of 49 U.S.C. 5310 funds, along with a statement that clearly describes the expected action of Sub-Recipient to repay any disallowed costs, make financial adjustment, or take other action. VIA may impose conditions on further funding based on such audit findings. In the event Sub-Recipient fails to provide any and all required audits, or if Sub-Recipient is unable or unwilling to have a required audit(s) as provided in this agreement, VIA may:

- a. Withhold a percentage of the grant funds until the audit(s) is completed;
- b. Withhold any disallowed costs;
- c. Suspend or condition further grant funding until the audit(s) is completed; or,
- d. Terminate this Agreement.

6.3 During this agreement and the retention period set out in Section 6.4, VIA will monitor and may conduct fiscal and/or program audits of Sub-Recipient and its contractors under the terms of the Agreement. Representatives of VIA and/or the Federal Government shall have access to Project facilities, records and financial statements at all reasonable times relevant to this Agreement for these purposes, including those within the possession of any subcontractors. Sub-Recipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as VIA and/or the Federal Government deem necessary.

6.4 Sub-Recipient agrees to maintain all documentation and materials relevant to this Agreement for a period as required by the appropriate retention statutes but in no case less than four (4) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Sub-Recipient agrees to maintain same until all such litigation, appeals, claims or exceptions related thereto have been conclusively resolved.

VII. PROCUREMENT, PROPERTY AND EQUIPMENT STANDARDS

7.1 For any and all procurements, Sub-Recipient shall meet or exceed all applicable

procurement requirements that may include but not be limited to, 49 C.F.R. Part 18.36 inclusive of the standards for competitive procurements; methods of procurement; contracting with small and minority firms, women's business enterprise and labor surplus area firms; contract cost and price; awarding agency review; insurance and bonding. Sub-Recipient's procurement system must include, but not be limited to, the following procurement standards:

- a. Procurement procedures must promote full and open competition while conforming to the applicable federal, state and local laws and regulations.
- b. A contract administration system that ensures that the contractor performs in accordance with the terms, conditions, and specifications of their contracts.
- c. A written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts under this Agreement. No employee, officer, or agency of Sub-Recipient shall participate in selection or in the award or administration of a contract supported by state or federal funds if there is a conflict of interest, real or apparent.
- d. A process for review of proposed procurements to avoid purchase of unnecessary or duplicative services or items.
- e. Use of state and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency.
- f. A mechanism to make awards to only responsible contractors possessing the ability to perform successfully under the terms and conditions of the contract. The mechanism should provide assurances regarding the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources.
- g. Records sufficient to detail the significant history of procurement, including rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- h. Mechanisms that use good administrative practices and sound business judgment to settle contractual and administrative issues arising out of procurements made in accordance with this Agreement.
- i. Protest procedures to handle and resolve disputes relating to procurements. The protest procedure should provide a way to promptly disclose information regarding a protest to VIA.
- j. The equipment and program provisions survive the contract duration.

7.2 Sub-Recipient agrees and understands that VIA must consent to the award of all purchase orders for non-expendable personal property as defined in 49 C.F.R. §18.32 and §18.33. The Acquisition of real property must comply with 49 C.F.R. §18.31. Equipment management standards must be met for any assets purchased using federal funds. Although not anticipated, to the extent Sub-Recipient uses any federal funding to purchase transit assets, Sub-Recipient agrees to and must adhere to the management standards under 49 U.S.C. 5326 and the related regulatory requirements.

7.3 Sub-Recipient's Equipment Management standards shall include, but not be limited to the following:

- a. Equipment records that include: a description of the equipment; a serial number or other identification number; the source of equipment; who holds title; the acquisition date and cost of the equipment; percentage of Federal participation in the cost of the equipment; the location, use and condition of the equipment; maintenance history for each vehicle; and ultimate disposition data including the date of disposal and sale price.
- b. Conducting a physical inventory of the equipment at least once every two (2) years and reconciling the inventory with equipment records described in the preceding paragraph.
- c. Developing a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.
- d. Developing and following procedures to keep the equipment maintained and in good condition. At a minimum, Sub-Recipient shall follow the vehicle maintenance schedule recommended by the manufacturer, showing the date the maintenance was performed. Maintenance records shall be provided to VIA upon request.
- e. Requesting disposition instructions from VIA, and if authorized to sell the equipment, using proper sales procedures to ensure the highest possible return.

7.4 Sub-Recipient shall comply with all applicable law including but not limited to FTA Circular 5010.1E, Award Management Requirements and Title 43, Texas Administrative Code §31.53 and §31.55, to protect the public investment in real property and equipment purchased in whole or in part with Federal or State funds.

7.5 In the event that project equipment is not used in the proper manner or is withdrawn from public transportation services, Sub-Recipient shall immediately notify VIA. VIA reserves the right to direct the sale or transfer of property acquired under this Agreement upon determination by VIA that said property has not been fully or properly used upon termination of this Agreement, or as otherwise allowed by applicable rules and regulations.

7.6 All vehicles purchased under this Agreement shall comply with the Motor Vehicle Safety Standards established by the US Department of Transportation and state law.

7.7 Irrespective of coverage by insurance, unless otherwise approved in writing by VIA, in the event of loss or damage to project property, whether by casualty or fire, the fair market value will be the value of the property immediately before the casualty or fire.

7.8 Sub-Recipient shall notify VIA immediately of theft, wreck, vandalism or other destruction of project-related facilities or equipment.

VIII. STANDARDS FOR FINANCIAL ADMINISTRATION AND PROGRAM INCOME

8.1 For purposes of this agreement, Sub-Recipient agrees that its standards for financial administration will conform to the requirements of 49 C.F.R. Part 18, §18.20.

8.2 Except for income from royalties and proceeds from the sale of real property or equipment, Sub-Recipient shall retain program income, if any, and apply such income to allowable capital or operating expenses. If federally funded, Program Income from royalties and proceeds from sale of real property or equipment shall be handled as specified in Federal Provisions.

8.3 Sub-Recipient shall comply with standards governing the receipt and application of program income as set forth in 49 C.F.R. §18.25, Program Income. Program income means gross income received by Sub-Recipient directly generated by a grant supported activity, or earned only as a result of this Agreement

8.4 Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under an Agreement similar to this Agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in federal regulations, program income does not include interest on grant funds, rebates, credits discounts, refunds, etc., and interest earned on any of them.

IX. COORDINATION

9.1 According to Title 43 of the Texas Administrative Code, §31.49, Sub-Recipient will at all times coordinate the provision of public transportation services with other transportation operators in the area, both public and private. Sub-Recipient will furnish VIA copies of any agreement resulting from such coordination. Agreements that authorize the payment of project funds to another entity are subject to the approval requirements described in Article V, Subcontracts.

X. LABOR PROTECTION PROVISIONS

10.1 Sub-Recipient agrees to follow and abide by any and all applicable labor provisions required by federal law or regulation. If applicable, Sub-Recipient will comply with any of the labor protection provisions as listed below for the protection of employees in the mass passenger transportation industry in the area where the transportation services are provided under this agreement:

- a. The transportation services shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the area where the transportation services are being provided.
- b. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.
- c. Sub-Recipient shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the Project.

Sub-Recipient Funding Agreement (Example)

- d. In the event an employee is terminated or laid off as a result of this Project, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training is required by such employment or reemployment, Sub-Recipient shall provide or provide for such training or retraining at no cost to the employee.
- e. Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the Project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits allowed for by applicable Federal, State or local law or regulation. An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the Project" as used herein shall include events occurring in anticipation of, during, and subsequent to the Project.
- f. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, Sub-Recipient and the employees or their representatives may, to the extent applicable, invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.
- g. Sub-Recipient agrees that any controversy respecting the Project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.
- h. Sub-Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph.
- i. Sub-Recipient agrees and understands that the funding received under this Agreement is subject to Section 13(c) labor protection requirements (49 U.S.C. § 5333(b)). The Subrecipient agrees that it is bound by and will comply with the terms of 13(c) protections the Department of Labor applies to the certification of these funds, and the terms of the Department of Labor's certification letter. Sub-Recipient will post, in a prominent and accessible place, a notice stating that Sub-Recipient is a recipient of federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). The notice shall also specify the terms and conditions set forth herein for the protection of employees.

10.2 The Parties acknowledge that to the best of their knowledge and interpretation of this Agreement, the Project currently does not implicate the Federal Department of Labor (DOL) requirements of the Davis-Bacon Act. However, the Parties agree that to the extent

the Agreement is found to so implicate or that any future amendment to the Agreement implicates such DOL requirements, the contractual requirements mandated under the DOL regulations at 29 C.F.R. Section 5.5 are hereby incorporated into and made a part of this Agreement.

XI. MONITORING AND AUDITS

11.1 In addition to any other provision herein contained, VIA will monitor the progress of the Project authorized in this Agreement using appropriate and necessary inspections, including but not limited to periodic reports, physical inspection of Project facilities, telephone conversations, letters, and conferences.

11.2 In addition to any other provision herein contained, including the terms and conditions set out under Article VI, VIA will monitor and conduct financial and/or program audits of Sub-Recipient to verify compliance with the terms of this Agreement. Representatives of VIA or the Federal government shall have access to project facilities and audit the books and records relating to the Project at all reasonable times.

XII. REPORTS

12.1 In addition to any other requirement contained in this agreement, with the more specific provision controlling over these general terms, Sub-Recipient agrees to the following:

- a. Reports -- The Sub-Recipient shall, at a minimum, submit the following reports to VIA for the duration of the Project:
 1. Monthly Requests for Reimbursement
 2. Monthly Milestone Progress Report
 3. Annual FTA Certifications and Assurances;
 4. The Subrecipient's annual financial report; and
 5. Any other reports or documents that may be requested by VIA or FTA.
- b. Report Deadlines -- Monthly reports shall be submitted to VIA within twenty-five (25) days of the end of a month.
- c. Submittal -- Reports required to be submitted to VIA shall be addressed to:

VIA Metropolitan Transit
Finance Department
Grant Coordinator
800 West Myrtle
P.O. Box 12489
San Antonio, Texas 78212
- (d) Reviews -- The Sub-Recipient shall cooperate in and comply with any and all management reviews, triennial reviews, financial audits, and compliance reviews that VIA or FTA may undertake with regard to the Project.

12.3 Sub-Recipient shall promptly notify VIA, in writing, any time the transportation services being funded under this agreement will be negatively impacted, including problems, delays or adverse conditions that will materially affect Sub-Recipient's ability to provide the transportation services contracted for under this agreement. This disclosure shall be accompanied by a statement of the action taken, or contemplated by Sub-Recipient.

12.4 With regard to reports, the Sub-Recipient agrees to submit to VIA all reports required by Federal laws, regulations, and directives, this Agreement, and any other reports VIA or FTA may specify. All reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to VIA or FTA must be prepared and submitted in electronic and or typewritten hard copy formats as VIA or FTA may specify. As part of the audit requirements under Article VI of this Agreement, during the course of the Project and for four (4) years thereafter from the date of transmission of the final expenditure report, the Sub-Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.

12.4 The Sub-Recipient agrees to permit the U.S. Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, upon request to examine and inspect all Project records, documents, and papers, including contracts, related to the Project as required by 49 U.S.C. § 5325(g).

XIII. DISPUTES AND REMEDIES

13.1 (a) General Requirement -- Any dispute arising under or related to this Agreement which is not disposed of by agreement between VIA and the Sub-Recipient shall be decided in accordance with the provisions of this Section, provided that by mutual agreement the matter may be taken immediately to any higher step in the dispute resolution process or to litigation. Pending final resolution of a dispute, the Sub-Recipient shall proceed diligently with the performance of the Agreement in accordance with the decision or determination of VIA, provided that the action of the Sub-Recipient in proceeding with such performance shall not prejudice its position in the dispute resolution process.

(b) Notice of Dispute -- All disputes shall be initiated through a written dispute notice submitted by either party to the other party within ten (10) days after the date the dispute first arises. Within fifteen (15) days after delivery of the dispute notice, the receiving party shall submit a written response to the other party. The dispute notice and written response shall include: (1) a statement of the party's position and a summary of the arguments supporting that position; (2) any evidence supporting the party's position; and (3) the name of the person who will represent that party and any other person who will participate in negotiations and/or dispute resolution.

(c) Negotiation -- Following a dispute notice and response under subsection (b), the parties shall first attempt in good faith to promptly resolve the dispute by discussion and negotiation between persons who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. The parties shall meet at a mutually acceptable time and place within

fifteen (15) days after delivery of the dispute response, and thereafter as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information by one party to the other shall be honored.

(d) Second Level Review -- (1) If the dispute is not resolved within forty-five (45) days after delivery of the dispute notice, either party may submit the dispute (together with the dispute notice, the response, and any minutes from the subsection (c) process) to a two (2) person panel consisting of the Vice President of Finance of VIA and an individual in a comparable executive position with the Sub-Recipient. These two individuals shall meet within thirty (30) days after the date of the submittal and shall attempt to reach a fair and equitable resolution of the dispute. (2) If the two-person panel resolves the dispute, they shall issue a written decision that shall be administratively final and conclusive. If the panel is unable to resolve the dispute, either party may proceed to mediation under subsection (e).

(e) Mediation -- Any dispute which is not resolved by the parties through the operation of the preceding provisions of this Section may be submitted by either party to mediation in accordance with the requirements of the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code. The mediator shall be mutually agreeable to and selected by both Parties and each party shall pay half the cost of the mediator. If not resolved by mediation, either Party may pursue its case in a court of competent jurisdiction.

(f) Pending final resolution of a dispute under this Section, the Sub-Recipient shall proceed diligently with the performance of its obligations under the Agreement (including those matters giving rise to the dispute) in accordance with the direction of VIA; provided that the action of the Sub-Recipient in proceeding with such performance shall not prejudice its position in the dispute resolution process.

(g) Alternative Dispute Resolution -- If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process, including arbitration, which may include structured negotiations different from that specified in this Section, mediation, arbitration, or fact finding.

13.2 This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed by any party and shall be cumulative.

XIV. TERMINATION

14.1 For Cause:

- a. VIA reserves the right, with fifteen (15) days advance written notice of default to the Sub-Recipient, to terminate this Agreement and withhold all payments of funds in the event of any of the following circumstances:
 1. the Sub-Recipient has breached or failed to perform any term or condition of this Agreement;
 2. the Sub-Recipient has violated the terms of FTA's Master Agreement or other Federal requirement; or

3. the Sub-Recipient fails to make progress in the performance of the project so as to endanger its performance.

Termination of any financial assistance for the Project will not invalidate obligations properly incurred by the Sub-Recipient by the termination date, to the extent such obligations cannot be cancelled. If, however, VIA determines that the Sub-Recipient has willfully misused funds by failing to make adequate progress, failing to make appropriate use of the funds, or failing to comply with the terms of this Agreement, VIA reserves the right to require the Sub-Recipient to refund the entire amount of Federal funds provided for the Project.

- b. In the discretion of VIA, the Sub-Recipient may be given the opportunity to cure a default within a period of fifteen (15) days (or such long period as VIA may authorize in writing) after receipt of notice from VIA specifying the occurrence of such default.
- c. Except as otherwise provided, settlement of claims under this termination clause shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.
- d. If a determination is made, either pursuant to a dispute resolution process or by a court of competent jurisdiction, that VIA's termination of this Agreement for default was improper or otherwise contrary to this Agreement, then that termination will automatically convert to a Termination by Convenience under Section 14.2, unless the parties otherwise agree.
- e. The rights and remedies of VIA under this section are not exclusive and are in addition to any other rights and remedies VIA may have under this Agreement or applicable law.
- f. This Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties.

14.2 Termination for Convenience

- a. This Agreement may be terminated by either Party in accordance with this Section in whole, or from time to time in part, whenever a Party determines that such termination is in their best interest. Any such termination shall be affected by delivery to the other Party a written notice of termination, provided not less than thirty (30) days prior to the termination date, specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective.
- b. Upon receipt of a notice of termination under this Section 14.2, and except as otherwise directed by VIA, the Sub-Recipient shall:
 1. stop work under the Agreement on the date and to the extent specified in the notice of termination;

2. place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
3. terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
4. assign to VIA in the manner, at the times, and to the extent directed by VIA, all of the right, title and interest of the Sub-Recipient under the orders and subcontracts so terminated;
5. settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of VIA, to the extent VIA may require, which approval or ratification shall be final for all the purposes of this Section;
6. transfer title to VIA and deliver in the manner, at the times, and to the extent, if any, directed by VIA, supplies, equipment, and other material produced as a part of or acquired in connection with the performance of the work terminated, and any information and other property which, if the Agreement had been completed, would have been required to be furnished to VIA;
7. complete any such part of the work as shall not have been terminated by the notice of termination; and
8. take such action as may be necessary, or as VIA may direct, for the protection and preservation of the property related to this agreement which is in the possession of the Sub-Recipient and in which VIA has or may acquire an interest. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

14.3 Sub-Recipient shall not be in default for failure in performance of this agreement if such failure arises out of causes beyond the control and without the fault or negligence of Sub-Recipient. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

XV. OPEN MEETINGS AND PUBLIC INFORMATION

15.1 Sub-Recipient will comply with Texas Government Code, Chapters 551 and 552, regarding open meetings and public access to information. Sub-Recipient agrees to and shall cooperate with VIA at no charge to VIA to comply with these statutes including but not limited to allowing access to any and all documents sought by a requestor.

XVI. INDEMNIFICATION AND INSURANCE

16.1 To the extent permitted by law, **SUB-RECIPIENT** covenants and agrees to **FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND VIA** and its Trustees, employees, officers, director and representatives, individually or collectively, from and against any

and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, personal or bodily injury, death and property damage, made upon VIA, caused by Sub-Recipient's activities under this Agreement, including any acts or omissions of SUB-RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor and their respective officers, agents, employees, directors and representatives while exercising or performance the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of VIA, its officers or employees. **IN THE EVENT SUB-RECIPIENT AND VIA ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO EITHER PARTY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.** The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Each Party shall promptly advise the other in writing of any claim or demand made known to said Party related to or arising out of activities under this Agreement.

16.2 Sub-Recipient acknowledges that it is not an agent, servant or employee of VIA and that it is responsible for its own acts and deeds and for those of its agents, employees or volunteers during the performance of the Agreement.

16.3 With regard to insurance,

- a. Sub-Recipient understands and agrees that any and all directors, employees, agents, representatives of Sub-Recipient while engaged in the performance of any work for Sub-Recipient or any work related to this Agreement shall be considered directors, employees, agents, representatives of Sub-Recipient under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law.
- b. On or before the Commencement date of this Agreement, Sub-Recipient shall furnish all original completed Certificates of Insurance and applicable endorsements to VIA which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed directly to VIA.
- c. VIA reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal of the term thereof and to modify insurance coverage and their limits when deemed necessary and prudent by VIA's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance, will VIA allow modification whereupon VIA may incur increased risk.
- d. Sub-Recipient's financial integrity is of interest to VIA, therefore, subject to Sub-

Sub-Recipient Funding Agreement (Example)

Recipient's right to maintain reasonable deductibles, Sub-Recipient shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Sub-Recipient's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-VII or better by A.M. Best Company or otherwise acceptable to VIA, in the types and amounts with limits of liability not less than the following:

1. **Workers' Compensation Insurance:** Coverage is required for workers' compensation providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other state or Federal law as may be applicable.
2. **Employer's Liability Insurance:** Coverage is required for employer's liability with limits of liability not less than:

\$ 1,000,000 Each Accident

3. **Commercial General Liability Insurance (Broad Form):** Coverage is required for general liability, including coverage for the following where exposure exists:

- 1) Premises/Operations
- 2) Independent Contractors
- 3) Personal Injury
- 4) Contractual Liability
- 6) Broad Form Property Damage

\$ 2,000,000 General Aggregate

\$ 1,000,000 Personal Injury per occurrence

\$ 1,000,000 Each Occurrence

\$ 1,000,000 Fire Damage to Premises rented to you

4. **Commercial Automobile Liability Insurance:** Coverage is required for automobile liability, covering all owned/leased, hired and non-owned motor vehicles:

\$ 1,000,000 Combined Single Limit

16.4 VIA shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by VIA, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Upon such request by VIA, Sub-Recipient shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

16.5 Sub-Recipient agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name VIA and its officers, employees, and Board of Trustees as additional insureds by endorsement as respects operations and activities of, or on behalf of, the named insured performed under contract with VIA, with the exception of the workers compensation;
- Sub-Recipient's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by VIA for liability arising pursuant to matters under this Agreement;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of VIA

16.6 Sub-Recipient shall notify VIA in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) day notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to VIA at the following address and identified as "*Insurance for Sub-Recipient Agreement*":

VIA Metropolitan Transit
Finance Department
Grant Coordinator
800 West Myrtle
P.O. Box 12489
San Antonio, Texas 78212

16.7 If Sub-Recipient fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, VIA may determine Sub-Recipient to be in default of this Agreement.

16.8 Nothing herein contained shall be construed as limiting in any way the extent to which Sub-Recipient may be held responsible for payments of damages to persons or property under this Agreement.

16.9 It is understood and agreed that the insurance required herein is in addition to and separate from any other obligation contained in this Agreement.

16.10 To the extent applicable, the insurance terms and conditions, as outlined in this Article XVII, may be satisfied by and through a Sub-Recipient's self-insurance program. Self-insurance certificates showing the equivalent in coverage must be provided to VIA on or prior to the date this Agreement is signed by Sub-Recipient. Upon request, Sub-Recipient agrees to submit evidence of such self-insurance program coverages to VIA by providing, at a minimum, a then current self-insurance certificate.

XVII. COMPLIANCE WITH LAWS

17.1 Sub-Recipient shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this agreement. When required, Sub-Recipient shall furnish VIA with satisfactory proof of compliance therewith. This includes any and all VIA policies that are effective or become effective during the term.

XVIII. NONCOLLUSION

18.1 Sub-Recipient warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this agreement. If Sub-Recipient breaches or violates this warranty, VIA shall have the right to annul this agreement without liability or, in its discretion, to deduct from the amount in Section 3.1 of this Agreement, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

XIX. CIVIL RIGHTS

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

19.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this agreement:

- a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 U.S.C. §2000e), and federal transit law at 49 U.S.C. §5332, Sub-Recipient agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. Sub-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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Sub-Recipient agrees to comply with any implementing requirements FTA may issue.
- b. Age Discrimination. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and federal transit law at 49 U.S.C. §5332, Sub-Recipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, SUB-RECIPIENT agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended (42 U.S.C. §12112), Sub-Recipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. 1630, pertaining to employment of persons with disabilities. In addition, SUB-RECIPIENT agrees to comply with any implementing requirements FTA may issue.

XX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

20.1 Sub-Recipient agrees that no otherwise qualified person with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under this agreement. Sub-Recipient shall ensure compliance with applicable regulations set forth at 49 C.F.R. 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and the Americans with Disabilities Act.

XXI. SPECIAL PROVISIONS

21.1 Sub-Recipient certifies that it is not suspended or debarred from receiving federal funds and there are no pending proceedings for suspension or debarment. Further, Sub-Recipient represents that it is not named on any list of suspended or debarred entities as shown on any list maintained by the U.S. government (Debarment List) and has not been on any such list for the last three years. Sub-Recipient may not subcontract with any entity that is suspended or debarred from receiving federal fund as listed on any Debarment List or has been on any such list in the last three years. Sub-Recipient must verify that such entity (and its principals as defined in 2 CFR 180.995) is not suspended or debarred from receiving federal funds (nor are there pending proceedings to do so) and that such entity or its principals are not named on any Disbarment List, that such entity (or its principals) has not been on any such list for the last three years, and Sub-Recipient shall maintain documentation of verification of compliance. The verification may be accomplished by (1) checking the System for Award Management (SAM) maintained by

the U.S. General Services Administration (GSA) and available at <https://www.sam.gov/portal/public/SAM/>, or (2) collecting a certification from the entity.

21.2 As indicated in Section 2.1 of this Agreement, Sub-Recipient has obtained a Data Universal Numbering System (DUNS) number as set forth in 2 CFR 25 and provided such number to VIA.

21.3 Sub-Recipient shall at all times comply with applicable FTA and other federal regulations, policies and directive as they may be amended or promulgated from time to time during the term of this agreement. Failure to do so may result in the termination of this agreement.

21.4 All FTA and other federally mandated terms shall be deemed to control in the event of a conflict with any provisions contained in this agreement. Notwithstanding any other provision in this Agreement, Sub-Recipient shall not perform any act, fail to conform, or refuse to comply with any requests necessary for VIA to comply with federal laws and regulations, as may be amended from time to time.

21.5 Sub-Recipient shall specifically comply with the federal contracting requirements as set forth in the Federal Transit Administration Master Agreement (Master Agreement) which is part of this Agreement and which may be amended from time to time.

21.6 a. This Agreement incorporates by reference the following:

1. The Approved Project Description (**Exhibit A**);
2. The Approved Project Budget (**Exhibit B**);
3. Federal Fiscal Year Certifications and Assurances for Federal Transit Administration Assistance Programs; and
4. FTA Master Agreement

b. This Agreement together with **Exhibit A** and **Exhibit B** along with the **Federal Fiscal Year Certifications and Assurances for Federal Transit Administration Assistance Programs** and the **FTA Master Agreement** represents the entire agreement between the Parties concerning the subject matter herein and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations.

c. The Parties agree and understand that a statutory or regulatory reference made in this Agreement means and refers **to the then current statutory or regulatory provision as it is or has been amended from time-to-time**. Furthermore, the cited references are included only to the extent they are applicable to this use of the grant funds and/or this Agreement.

XXII. SUCCESSORS AND ASSIGNS

22.1 Sub-Recipient binds itself, its successors, assigns, executors and administrators in respect to all covenants of this Agreement. Sub-Recipient shall not sign, sublet or transfer their interest in this Agreement without the written consent of VIA.

XXIII. LEGAL CONSTRUCTION

23.1 If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. All Exhibits referenced herein are incorporated herein for all purposes. This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Facsimile signatures shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase “facsimile signature” includes without limitation, an image of an original signature made by an electronic scanner.

XXIV. AWARD SUMMARY AND RECITALS

24.1 The Award Summary on Page 1 and the Recitals on Page 2 of this Agreement are true and correct and are hereby incorporated into this Agreement and are made a part of this Agreement for all purposes.

XXV. SIGNATORY WARRANTY

25.1 The undersigned signatory for Sub-Recipient hereby warrants and represents that they are an officer of the organization for whom they have executed this agreement and that they have full and complete authority to enter into this agreement on behalf of the organization and bind the organizations to the terms and conditions herein stated.

Signatures appear on the next page

IN TESTIMONY WHEREOF, the Parties have caused these presents to be executed in duplicate counterparts on the dates identified below.

SUB-RECIPIENT

Signature of Authorized Official

Date

Printed Name/Title of Authorized Official

VIA METROPOLITAN TRANSIT

Jeffrey C. Arndt, President/CEO

Date

ATTACHMENTS:

- Exhibit A: Project Description and Scope of Work
- Exhibit B: Project Budget

Exhibit A
PROJECT DESCRIPTION

Exhibit B
PROJECT BUDGET