

Item 5F.
BCWMC 9-17-15

**AGREEMENT
BETWEEN THE METROPOLITAN COUNCIL
AND BASSET CREEK WATERSHED MANAGEMENT COMMISSION
FOR REIMBURSEMENT OF STAFF TIME**

This Agreement is made and entered into by and between the **Metropolitan Council** (“Council”), a public corporation and political subdivision of the State of Minnesota, and the **Basset Creek Watershed Management Commission**, a special purpose local unit of government located in Hennepin County, Minnesota (“BCWMC”).

WHEREAS:

1. Minnesota Statutes Section 473.405 Subd. 4 gives the Council the authority to engineer, construct, equip, and operate transit and paratransit systems, projects, or any parts thereof, including facilities useful or related to public transit; and
2. The Council is engaged in various planning and preparation activities regarding the development of a METRO Blue Line Light Rail Train (BLRT) Extension between downtown Minneapolis and Brooklyn Park, Minnesota (the “Project”). The Council has adopted light rail transit (“LRT”) as the Locally Preferred Alternative (“LPA”) for the transitway. The Council is in the “Project Development” phase of the Federal Transit Administration (“FTA”) New Starts process and is authorized to engage in project development activities to secure the appropriate federal, state, and local approvals to advance the Project into the Engineering Phase.
3. The LPA shows the proposed BLRT Extension as crossing through the Basset Creek Watershed, which is governed by BCWMC.
4. The BCWMC is a local unit of government created by a joint powers agreement (“JPA”) between multiple municipalities for the purpose of controlling flooding, maintaining and enhancing the quality of the surface and groundwater resources in the watershed.
5. The BCWMC is authorized by its JPA and implements through its Watershed Management Plan a program to review development and improvement projects to ensure that they conform to the policies and requirements of the BCWMC and to collect established fees for such reviews.
6. BCWMC review of large and complicated improvement projects such as the Project include attendance at multiple meetings with Project, agency and city staff; consultation regarding plans for stormwater management and hydraulic processes; and assistance with and review of hydrologic modeling.
7. The current BCWMC project review fee structure does not enable it to recoup the total costs of the activities in section 6 above.
8. Further, the BCWMC is the Local Government Unit authorized to implement the Minnesota Wetland Conservation Act (“WCA”) for land within the Basset Creek Watershed within the City of Robbinsdale.
9. The Cities of Crystal, Golden Valley, and Minneapolis have requested assistance from BCWMC with tasks associated with the Project which fall under the WCA.
10. The BCWMC project review fee structure authorizes the BCWMC to charge applicants, including the Council, for the actual cost of tasks completed during WCA administration including

participating on a Technical Review Panel, reviewing wetland delineation reports and wetland assessments, and reviewing determination requests and mitigation plans.

11. The Parties wish to enter an Agreement to govern the Council's reimbursement of the actual costs of BCWMC staff time spent performing work under this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

I. SCOPE

The purpose of this Agreement is to provide a mechanism through which the Council can reimburse BCWMC for Commission staff time spent on reviewing the Project and other activities associated with the Project as specified in this section. BCWMC staff will engage in consultation regarding hydrology and hydraulics and stormwater management, including attending meetings with Project staff and reviewing associated modeling. BCWMC staff will review project designs and provide information about standard BCWMC requirements. BCWMC staff may also engage in wetland delineation review, review of potential incidental wetland determination requests, potential Minnesota Routine Assessment Method (MNRAM) review, pre-application communication, attending related meetings, and wetland permitting. BCWMC agrees to perform these activities in a satisfactory and proper manner under applicable federal, state, and local law. The projected cost of these activities is shown in Exhibit A, which is incorporated by reference. The Council will reimburse BCWMC for actual costs of staff and consultant time spent on activities supporting the Project in an amount not to exceed \$30,000 pursuant to the terms of this Agreement.

II. COMPENSATION, METHOD OF PAYMENT

2.01 Maximum Total Compensation. The maximum total compensation to be paid to BCWMC for work performed under this Agreement must not exceed \$30,000.

2.02 Method of Payment. BCWMC will submit to the Council a monthly, written invoice referencing this Agreement number and containing a detailed list of project labor and hours showing, for each task described in Section I above, the hours, rate, titles, and amounts actually paid for the Project work, and any supporting documentation. Upon verification and acceptance by the Council, the Council will pay BCWMC within 30 days.

2.03 Flat Fees. In consideration of the Council's payment of actual costs as specified in this Agreement, BCWMC shall not charge the Council its standard, flat fees which would otherwise apply for the work anticipated by this Agreement.

III. GENERAL TERMS

3.01 Term and Termination. This Agreement is effective as of June 29, 2015 and will terminate on the earlier of December 31, 2017 or the date that all obligations have been satisfactorily fulfilled. This Agreement may be terminated upon 30 days' written notice by either Party, or immediately upon mutual agreement of the Parties. Termination of this agreement will not relieve the Council of its

obligation to reimburse the BCWMC for its actual costs, up to the amount specified in Section 2.01, until the effective date of the termination.

3.03 Audits. As required by Minnesota Statutes, section 16C.05, the records, books, documents, and accounting procedures and practices of BCWMC relating to work performed pursuant to this agreement shall be subject to audit and examination by the Council and the Legislative Auditor or State Auditor. BCWMC shall permit the Council or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance under this agreement. Audits conducted by the Council under this provision shall be in accordance with generally accepted auditing standards. Financial adjustments resulting from any audit by the Council shall be paid in full within 30 days of the BCWMC's receipt of audit.

3.04 Liability. The Parties will be responsible for their own acts and omissions and the results thereof to the extent authorized by law. The BCWMC and the Council's liability shall be governed by the Minnesota Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. Each party will be solely responsible for its own employees for any worker compensation claims.

3.05 Waiver. The failure by the non-breaching party to insist in any one or more instances upon the performance of any term or condition of the agreement shall not be construed as a waiver or relinquishment of the right to such performance, or to future performance, of such term or condition by the breaching party, and the obligation of both parties for performance of that term or condition shall continue in full force and effect.

3.06 Amendments. The terms of this agreement may be changed by mutual agreement of the Parties. Such changes shall be effective only on the execution of written amendment(s) signed by the Council and the BCWMC.

3.07 Assignment. Neither party shall transfer its rights or obligations under this Agreement without the express written consent of the other Party.

3.08 Data Practices. The Parties will comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data created, collected, received, stored, used, maintained, or disseminated in accordance with this Agreement. The civil remedies of Minnesota Statutes, section 13.08, apply to the release of the data referred to in this section by either Party.

3.09 Notice. Notice for purposes of this Agreement shall be sufficient if personally delivered or sent by certified mail to the other party at the following addresses:

For the Council:

Kathryn O'Brien
Blue Line Extension Project Office
5514 W. Broadway Ave #200
Crystal, MN 55428
Kathryn.obrien@metrotransit.org

For the BCWMC:

Laura Jester
BCWMC Administrator
c/o 16145 Hillcrest Lane
Eden Prairie, MN 55346
laura.jester@keystonewaters.com

3.10 Severability. The provisions of this agreement shall be deemed severable. If any part of this agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this agreement unless the part(s) which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to the parties.

3.11 Federal Clauses. The funding provided by the Council pursuant to this Agreement is composed in part of federal funds. BCWMC shall abide, and shall cause its Contractor or any other entities, employees, agents, or subcontractors performing work under this Agreement to abide by all relevant federal rules and regulations, including but not limited to those regulations identified in Exhibit B, attached hereto and incorporated herein. If there is an inconsistency between Exhibit B and the terms of this Agreement, the terms of Exhibit B will prevail.

3.12 Complete Agreement. This agreement, including exhibits and other documents incorporated in this agreement or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the agreement between the BCWMC and the Council. This agreement supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition of the agreement shall not affect the validity of other terms or conditions.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on the dates specified below.

METROPOLITAN COUNCIL

BASSET CREEK WATERSHED MANAGEMENT COMMISSION

MarySue Abel
Director, Transit Systems Development

Jim de Lambert
Chair

Date: _____

Date: _____

EXHIBIT A: BCWMC COST ESTIMATE

Total Estimated Costs for non-WCA tasks = \$6,000 - \$10,000

1. Consultation/review regarding hydrology and hydraulics:

Estimated costs: \$3,000 - \$5,000. This covers consultation regarding hydrology and hydraulics (including floodplain discussions), attending two meetings with the Blue Line LRT design team regarding H&H issues, and potential H&H model review. Cost does not include performing the modeling.

2. Review of Project Designs:

Estimated costs: \$3,000 - \$5,000. This covers the costs of the BCWMC review per the Requirements document (e.g., water quality, erosion/sediment control).

WCA administration tasks (Robbinsdale, Crystal, Golden Valley, Minneapolis):

Estimated costs: \$8,000 - \$15,000. This covers wetland delineation review, potential incidental wetland determination request, potential MNRAM review, pre-application communication and two meetings, and wetland permitting.

Exhibit B

FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

The provisions of this exhibit are required because this Agreement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in this exhibit are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Agreement. If any requirement of this exhibit is inconsistent with a provision found elsewhere in this Agreement and is irreconcilable with such provision, the requirement in this exhibit shall prevail. The BCWMC acknowledges that federal requirements in this Exhibit are subject to change and agrees that the most recent of these requirements shall govern this agreement at any particular time.

For the purposes of this exhibit, the term "CONTRACTOR" shall refer to the BCWMC and any independent contractors retained by the BCWMC under this Agreement. Also for the purposes of this exhibit, the term "Contract" shall refer to this Agreement and those entered into by the BCWMC for the purpose of this Agreement.

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

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

The CONTRACTOR agrees to include the above language in each subcontract financed in whole or in part with Federal assistance provided by the FTA under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

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

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

4. Civil Rights. The following requirements apply to this Contract:

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

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

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

 - iii. Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,"

29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

- C. **Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this Section 4 in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

5. Executive Order/Special DOL EEO Clauses. The provisions of this section 5 apply only if the value of a subsequent construction contract exceeds ten thousand dollars (\$10,000).

During the performance of this Contract, the CONTRACTOR agrees as follows:

- A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the COUNCIL setting forth the provisions of this nondiscrimination clause.
- B. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the COUNCIL, advising the labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The CONTRACTOR shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The CONTRACTOR shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the COUNCIL and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- F. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The CONTRACTOR shall include the provisions of paragraphs A through G of this section 5 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The CONTRACTOR shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

6. Disadvantaged Business Enterprise ("DBE"). (FTA funding with no DBE Goal)

- A. **Nondiscrimination.** Pursuant to 49 CFR section 26.13, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.
- B. **Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR's receipt of payment of retainage from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this Contract.

7. Incorporation of FTA Terms. Specific provisions in this Contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by USDOT, as set forth in 49 CFR section 18.36 and FTA Circular 4220.1F are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CONTRACTOR shall not perform any act, fail to perform any

act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

8. Integrity Certification/Debarment & Suspension. The provisions of this Section apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$25,000.

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

9. Buy America. The provisions of this Section apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$100,000.

The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. Section 661.7.

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

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

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

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

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

11. Clean Air. The provisions of this Section apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$100,000.

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

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

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

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

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

CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Clause 15 applies to the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works.

15. Davis-Bacon and Copeland Anti-Kickback Act. Reserved.

16. Contract Work Hours and Safety Standards Act.

- A. Overtime Requirements.** No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (A) of this section, the CONTRACTOR and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for Unpaid Wages and Liquidated Damages.** The COUNCIL shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts.** The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- E. Safety Standards.**
 - i. **General Requirement.** The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C., section 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R., Part 1926. Among other things, the CONTRACTOR agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
 - ii. **Subcontracts.** The CONTRACTOR also agrees to include the requirements of this paragraph in each subcontract. The term "subcontract" under this paragraph is

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

17. Seismic Safety Requirements. The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all Work performed under this agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

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

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

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

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

20. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply

with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.