

STATE OF COLORADO
Colorado Department of Transportation
Division of Transit and Rail
FTA Section 5339 Grant Agreement
with
CITY OF PUEBLO

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1. PARTIES

This Grant (“Grant”) is entered into by and between CITY OF PUEBLO (“Grantee”), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Transit and Rail (“State” or “CDOT”). Grantee and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (“Effective Date”). Except as provided in Section 7(B)(v), the State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

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3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c) as amended, and funds have been budgeted, appropriated and otherwise made available pursuant to MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149 and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

In accordance with 49 USC §5339, the purpose of this Grant is to provide capital funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities. The work to be completed under this Grant by the Grantee is more specifically described in **Exhibit A**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and **Exhibits A, B, C and D**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work and Budget), **Exhibit B** (Additional FTA Requirements), **Exhibit C** (Non-Discrimination Notice), **Exhibit D** (Certifications and Assurances), **Exhibit E** (Verification of Payment), and **Exhibit F** (Supplemental Federal Provisions).

D. Federal Funds

“Federal Funds” means the funds provided by the Federal Transit Administration (“FTA”) to fund performance of the work.

E. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein.

G. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

H. Grantee

“Grantee” for the purposes of this Grant means the Grantee named in Section 1.

I. Local Funds

“Local Funds” means funds provided by any city, county, or entity (public or private) for performance of the Work and includes in-kind contribution.

J. Master Agreement

“Master Agreement” means the FTA document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.

K. Other than Urbanized (Non-urbanized) Area

“Other than Urbanized (Nonurbanized) Area” means any area outside of an urbanized area. The term “nonurbanized area” includes Rural Areas and urban areas under 50,000 in population not included in an Urbanized Area.

L. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

M. Project

“Project” means Work identified in **Exhibit A**.

N. Public Transportation

“Public Transportation” for purposes of the federal transit program, has the same meaning as “transit,” and “mass transportation,” and:

- (1) Includes transportation by a conveyance that provides regular and continuing:
 - a. General transportation to the public, or
 - b. Special transportation to the public, but
- (2) Does not include:
 - a. School bus transportation,
 - b. Charter transportation
 - c. Sightseeing transportation,
 - d. Intercity bus transportation, or
 - e. Intercity passenger rail transportation provided by Amtrak or a successor to the entity described in 49 USC chapter 243 (Amtrak).

O. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6, §19** and **Exhibit A**.

P. Rural Area

“Rural Area” means an area with low population and density outside the boundaries of an urban area. However, the term “rural” is commonly used to refer to all areas other than urbanized areas and is so used in this Grant.

Q. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

R. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

S. Third Party Participant

“Third Party Participant” means, unless FTA determines otherwise in writing, all participants in the Grantee’s Project that are not CDOT or FTA, such as:

1. Subgrantees,
2. Lessees,
3. Third party contractors,
4. Third party subcontractors, and
5. Other participants in the Grantee’s Project.

T. Urban Area

“Urban Area” means an area that includes a municipality or other built-up place that the Secretary of Commerce, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in a locality.

U. Urbanized Area

“Urbanized Area” means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the Secretary of

Commerce. “Small urbanized areas” as used in the context of FTA formula grant programs are urbanized areas with a population of at least 50,000 but less than 200,000.

V. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**, including the performance of the Services and delivery of the Goods.

W. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

The Parties’ respective performances under this Grant shall commence on **the Effective Date**. This Grant shall terminate on **December 31, 2018** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK / CONTRACT OBJECTIVE PLAN

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before **December 31, 2018**. Except as provided in §7(B)(v), the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantee(s) shall be considered Grantee’s or Subgrantee’s employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

D. Federal Laws, Rules and Regulations

If the Grant Funds involves federal funding, Grantee understands and agrees that federal laws, rules and regulations will control the Work and its implementation. Unless a written waiver is granted, Grantee agrees to comply with all required federal laws, rules and regulations applicable to the Work, in addition to all State requirements.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this **§7**, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$308,000.00, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful

completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**.

B. Payment

i. Invoicing

Any advance payment allowed under this Grant shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 30 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 31st day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

v. Retroactive Payments

The State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State. As authorized by the FTA, such Grantee share (local funds) may include costs or expenses incurred or performance by the Grantee prior to the Effective Date.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget.

D. Local Funds

Grantee shall provide Local Funds as provided in **Exhibit A**. Payments to Grantee of Grant Funds will be made for Project expenditures reported by Grantee and submitted to and accepted by the State for payment based on the ratio of required Federal Funds and Local Funds for which Grantee has submitted to the State.

E. Payment Compliance

All Grant reimbursements shall comply with 49 CFR Part 18 of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Additionally, Grantee shall only be reimbursed for costs allowable under 2 CFR Part 125, Appendix A.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in the Manual and/or Exhibits B and F.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and State laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures,

examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101 *et seq.*

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. To the extent permitted by law, the Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee’s Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee’s authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee’s liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subgrantees that are not "public entities".

B. Grantee and Subgrantees

Grantee shall require each Grant with Subgrantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Grantee and Subgrantee employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability Insurance policy (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Subgrantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Subgrantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Subgrantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to 49 CFR §18.43 and all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), provided however, that the State may terminate this Grant pursuant to §15(B) without a breach. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Brodie Ayers
Division of Transit and Rail
4201 E. Arkansas Ave.
Denver, CO 80222
303-757-9767
brodie.ayers@state.co.us

B. Grantee:

Brenda Broyles
CITY OF PUEBLO
350 Alan Hamel Ave.
PUEBLO, CO, 81003
719-553-2706
bbroyles@pueblo.us

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Grantee agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Government and State purposes. All Work Product shall be delivered to the State by Grantee upon completion or termination hereof.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee’s performance shall be part of the normal Grant administration process and

Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 USC 2671 *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties:

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment to this Grant, properly executed and approved in

accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Exhibit F** (Supplemental Federal Provisions),
- ii. Exhibit B** (Additional FTA Requirements),
- iii.** Colorado Special Provisions,
- iv.** The Provision of the main body of this Grant,
- v. Exhibit A** (Scope of Work and Budget),
- vi. Additional Exhibits** in the order in which they appear.

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

21. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1)

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5)

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits will be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4

[Not applicable to intergovernmental agreements]

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]

Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 *et seq.*, the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 *et seq.*, and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

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22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center">GRANTEE CITY OF PUEBLO</p> <p>By: <u>Stephen G. Nawrocki</u> Print Name of Authorized Individual</p> <p>Title: <u>President of City Council</u> Print Title of Authorized Individual</p> <p>_____</p> <p>*Signature</p> <p align="right">Date: _____</p>	<p align="center">STATE OF COLORADO</p> <p align="center">John W. Hickenlooper, Governor Colorado Department of Transportation Shailen P. Bhatt – Executive Director</p> <p>_____</p> <p>By:</p> <p>Signatory avers to the State Controller or delegate that, except as specified herein, Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p align="right">Date: _____</p>
<p align="center">2nd Grantee Signature if Needed</p> <p>By: Gina Dutcher</p> <p>Title: City Clerk</p> <p>_____</p> <p>*Signature</p> <p align="right">Date: _____</p>	

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Colorado Department of Transportation</p> <p align="right">Date: _____</p>

23. EXHIBIT A - SCOPE OF WORK AND BUDGET

Pueblo, City of

Title of Project	2015 5339 Award	ALI # 1	11.12.02
Project Description	2015 FTA 5339 Vehicle Replacement (1 Bus)		
Recipient	Pueblo, City of	DUNS	010620284
Contact Name	Brenda Broyles	Vendor Number	2000036
Address	350 Alan Hamel Ave. Pueblo, CO 81003	Phone	(719) 553-2706
Email	bbroyles@pueblo.us	Fax	
Project Budget		CO-34-0007.PUEB	
Federal Share (at 80% or less)		\$308,000	
Local Share (at 20% or more)		\$77,000	
Total Project Budget		\$385,000	

**The grants and line item WBS numbers may be replaced without changing the amount of the grant at CDOT’s discretion.*

A. Agency Overview

The City of Pueblo operates fixed-route and demand responsive service. The City serves a population of 107,772 in an area encompassing 35 square miles. The City’s transit services are provided by Pueblo Transit, which is a non-profit corporation owned by the City of Pueblo. The day-to-day operations of Pueblo Transit are managed by the Director of Transit, who is employed by the City of Pueblo. The City has permanently assigned several of its employees to the transit operation to carry out planning, financial and human resource functions.

Pueblo Transit’s fixed-route service operates Monday through Friday between the hours of 6:00 a.m. and 6:30 p.m. and Saturdays between the hours of 8:00 am and 6:30 pm. Service is not provided on Sundays and legal holidays. The base fare is \$1.10 for adults. Seniors, persons with disabilities, and Medicare cardholders pay 55¢; students pay 85¢; and children six years or younger ride free. All kids ages 18 and younger ride free all summer (June 1 through August 31st.) Pueblo Transit operates a fixed-route fleet of 20 vehicles, and all of these vehicles are accessible.

Pueblo Transit’s demand responsive service is provided by a third party contractor, MV Public Transportation Inc. This service, known as Citi-Lift, operates from 6:00 a.m. to 6:30 p.m., Monday through Saturday. The Citi-Lift fare is \$2.20 per trip. Service is provided using 10 City owned active vehicles, in addition to three spare vehicles provided by MV Public Transportation. All of these vehicles are accessible.

B. Project Description

Pueblo, City of shall use 2015 FTA-5339 and local matching funds to purchase a 35’ replacement bus, as more fully described below. The total amount for this project is \$385,000. The total project funding is comprised of the following components: \$308,000 2015 FTA-5339 funds, with a 20% match of \$77,000in local funds.

Pueblo, City of shall use FTA capital funds to purchase the following vehicles:

- ALI 1 #: 11.12.02

- ALI 1 Qty: 1
- ALI 1 Fuel Type: DL
- ALI 1 Description: Replacement 35' bus
- ALI 1 Amount: \$308,000

Options may include but are not limited to, the following:

- 35'- 40' transit bus ADA Accessible
- Bike Rack
- Security System
- Electronic Farebox
- GPS/AVL System

The vehicles being purchased are to replace existing vehicles in the fleet, as listed below:

VIN#	COTRAMS Cap Inv #	Year	Model	Make
1C9B5BFS02W535127	505	2002	Chance	Opus

Pueblo, City of shall perform all project activities as described in the grant application(s) submitted to the State on **November 17, 2014**. The application and application update are incorporated herein by reference to the extent consistent with this Grant.

C. Performance Standards

1. Project Milestones

To the extent possible and practicable, provide details and information, data, explanations, descriptions, copies, and sample documents of milestone activities.

Milestone Name	Milestone Description	Original Est. Complete Date
MILE-015702	Grant Agreement with CDOT is Executed	November 2015
MILE-015703	Submit Procurement Process and Bid Package to CDOT Project Manager for Approval	December 2015
MILE-015704	Bid Package is Released	December 2015
MILE-015705	Bids are Due	January 2016
MILE-015706	Process Documentation Submitted to CDOT Project Manager for Concurrence	February 2016
MILE-015707	Submit Procurement Authorization to CDOT Project Manager for Approval	February 2016
MILE-015708	Issue Purchase Order to Vendor for Vehicle	February 2016
MILE-015709	Take Delivery of Vehicle	July 2016
MILE-015710	Accept Vehicle	July 2016

MILE-015711	Take Delivery of and Accept All Vehicles	August 2016
MILE-015712	Submit Reimbursement Request to DTR	September 2016
MILE-015713	Close out Project with DTR	October 2016
IMPORTANT NOTE: All milestones in this scope of work must be completed no later than the contract expiration date of December 31, 2018 .		

2. Pueblo, City of will utilize the Project Property purchased through this project in its transit operations to achieve the performance goals established by CDOT. Pueblo, City of will comply with established CDOT requirements for maintenance of effort and effective utilization of equipment that maintains a State or Federal Interest.
3. Performance will be reviewed annually. If the State's review determines the Pueblo, City of performance does not meet the standards of performance set forth in this section, the following steps will be taken:
 - a. The State will notify Pueblo, City of in writing that performance does not meet the requirements of this Grant.
 - b. Thirty (30) calendar days after date of such notification, the Pueblo, City of will submit to the State a written explanation of the cause(s) of the substandard performance, which shall include a written plan for improving performance.
 - c. The State will review the plan for improvement and notify Pueblo, City of of its approval within 21 days.
 - d. If the plan is approved by the Department, the Pueblo, City of will implement the plan immediately upon receipt of the State's notification. If the plan is not approved by the Department remedial measures will be determined on a case by case basis. Such remedial measures may include termination of this Grant and return of the grant funds or capital equipment purchased with such funds, in accordance with the terms of this Grant.

D. Project Budget

1. The Total Project Budget is estimated to be and shall be shared as follows:

*WBS	CO-34-0007.PUEB
Federal Share (at 80% or less)	\$308,000
Local Share (at 20% or more)	\$77,000
TOTAL PROJECT BUDGET	\$385,000

2. The Total Project Budget shall not exceed the maximum allowable cost of \$385,000. State will pay no more than 80% of the eligible, actual capital costs up to the maximum federal amount of \$308,000. In the event the final, actual Project cost is less than the maximum allowable cost, the State is not obligated to provide any more than 80% of the eligible, actual capital costs. The State will retain any remaining balance of the federal share. Pueblo, City of shall be solely responsible

for all costs incurred in the Project in excess of the amount paid by the State from federal funds for the federal share of eligible, actual costs.

3. No refund or reduction of the amount of Pueblo, City of share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.
4. Pueblo, City of may use federal funds for the local share, but those funds cannot be from other federal Department of Transportation (DOT) programs. Pueblo, City of share, together with the federal share, must be enough to ensure payment of Total Project Budget.
5. The State shall have no obligation to provide State funds for use on this Project. The State will administer federal funds for this Project under the terms of this Grant, provided that the federal share of FTA funds to be administered by the State are made available and remain available. In no event shall the State have any obligation to provide State funds or provide federal FTA funds for Pueblo, City of share of the Project. Pueblo, City of shall initiate and prosecute to completion all actions necessary to enable Pueblo, City of to provide its share of the total project budget at or prior to the time that such funds are needed to meet the total project budget.

E. Contract Expiration

This Grant will expire according to the terms and conditions of the Grant. The expiration date for this Grant is December 31, 2018.

F. Procurement

Procurement of this capital equipment will comply with State procurement procedures outlined in “A Handbook for the Procurement of Goods and Services using FTA/CDOT Funds, November 2009”, (*found at: http://www.coloradodot.info/programs/transitandrail/transit/transit-grant-programs/procurement-policies-and-practices/2009%20Procurement%20Handbook%20and%20Appendices%20FINAL_11_16_09.pdf/*) as well as the FTA’s requirements for Third Party Contracting outlined in Circular 4220.1F 11-01-08 (*found at: http://www.fta.dot.gov/legislation_law/12349_8641.html*). Where available, purchase by the Grantee of the capital equipment may be pursuant to the most current State Price Agreement, (*found at: <http://www.gssa.state.co.us/co/portal.nsf/xpPriceAgreementsByCategory.xsp>*).

In addition to the basic State requirements outlined below, State and FTA (where applicable) procedures for purchase of this Project Property must be followed and will be outlined prior to purchase.

1. Before proceeding with the purchase directly from the vendor, Pueblo, City of shall submit Procurement Authorization along with a purchase order for the Project Property to CDOT for approval.
 - If the Grantee is a non-profit organization, **AND** elects to use the State of Colorado State Price Agreement to purchase goods or services under this contract, the Grantee shall also submit an application to and be qualified by the State Procurement Office prior to proceeding with the purchase.
2. Once the purchase order is verified by CDOT and the Project Property is ordered, the State shall be notified of the agreed upon delivery date between the selected vendor and Pueblo, City of and CDOT may choose to attend the delivery of the Project Property.

3. Upon delivery, the Pueblo, City of shall be responsible for having the Project Property inspected and accepted within **ten (10) working days of delivery** from the vendor; unless Project Property defects discovered during inspection prevents Pueblo, City of from accepting the Project Property in the 10 day time frame, of at which time the vendor will be contacted to rectify the issue(s) of concern.
4. Pueblo, City of shall be responsible for reimbursing the entire amount of the Project Property to the selected vendor within **three (3) working days after acceptance** of the Project Property.
5. It is Pueblo, City of responsibility to pay the Project Property vendor in full under the terms of this contract, unless financial hardship is proven by the grantee that does not allow a grantee agency to pay the entire amount prior to seeking reimbursement from the State. CDOT must approve this hardship request in advance. In these cases, CDOT will only approve the situation if the vendor is willing to accept payment within a 30 day timeframe and also willing to withhold title and Manufactures Statement of Origin (MSO) paperwork until full payment is received from the grantee. Title paperwork can also be sent to CDOT to withhold if the vendor deems necessary.

The Federal Share provided for this capital purchase is \$308,000.

G. Reimbursement Eligibility

Requests for reimbursement for project costs will be paid to the Pueblo, City of upon presentation of invoice(s) to the State for eligible costs incurred after the date of execution of this Grant through and within the limits of this Grant.

Grantees must bill the State for the state share specified within the provisions set forth in Paragraph F: Procurement or as otherwise specified by the State prior to the receipt of capital equipment. The state share must be paid to the vendor whether or not the Grantee has received the reimbursement from the State. Grantees who fail to ensure quick payment to vendors will be designated as a “High Risk Grantee” and could receive lower scores in future grant applications.

H. Federal Interest-Service Life

Federal Interest in the Project Property will expire as determined by the State. Federal Interest is defined by the service life of the capital equipment, which is determined by the State.

1. No later than three (3) days after the purchase and acceptance of the Project Property, the Pueblo, City of shall provide, in writing, to the State a “Certificate of Procurement and Acceptance” form.
2. Federal Interest of the Project Property is based on and applied to the useful life of the Project Property.
3. The Pueblo, City of shall not sell or otherwise release the Project Property to any party while there is Federal Interest in the Project Property without written approval from the State.

I. Training

In an effort to enhance transit safety, Pueblo, City of shall make a good faith effort to ensure that appropriate training of agency and contracted personnel is occurring and that personnel are up to date

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in appropriate certifications. In particular, Pueblo, City of shall ensure that driving personnel are provided professional training in defensive driving and training on the handling of mobility devices and transporting elderly and disabled clients.

J. Safety Data

Pueblo, City of shall maintain and submit, as requested, data related to bus safety. This may include, but not be limited to, the number of vehicle accidents within certain measurement parameters set forth by the State; the number and extent of passenger injuries or claims; and, the number and extent of employee accidents, injuries and incidents.

K. Restrictions on Lobbying

Pueblo, City of shall certify that it complies with P.L. 104-65, Section 10, amended from 49 CFR Part 19, Appendix A, Restrictions on Lobbying, prior to the expenditure of the Federal funds provided in this Grant.

L. Special Conditions

1. Pueblo, City of will ensure contractors comply with the Federal Transit Administration Drug and Alcohol Regulations.
2. Any costs reimbursed to Pueblo, City of from other grant programs funds may not be listed as a cost to be shared by FTA on a reimbursement request (i.e., no double billing).
3. Pueblo, City of shall maintain and report annually through submission of an annual report all information required by the National Transit Database and any other financial, fleet, service data set forth by the State for the purpose of annual reporting required of the State.
4. If Pueblo, City of is unable to perform the activities described under Paragraph B., Project Description, or must significantly change its level of service described herein, the Grantee shall notify the State in writing.
5. Except as provided in §7(B)(v), Pueblo, City of shall not be reimbursed for any purchase, issued purchase order, or leased capital equipment before the contract with the State has been issued.
6. Pueblo, City of must obtain State approval if FTA funds are intended to be used for payment of a lease or for third-party contracts.
7. Pueblo, City of sub-grantees must maintain bus safety records, if applicable. These records must be submitted to the State, if the State requests them. The records may include the number of vehicle accidents within certain time frames as requested by the State, the number and extent of passenger injuries and claims, and the number and extent of employee accidents, injuries, and incidents.
8. Pueblo, City of sub-grantees must demonstrate a good faith effort to provide, and certify as applicable, safety-related training for drivers and other appropriate personnel.
9. Pueblo, City of shall advertise its fixed route and/or rural based service as available to the general public and service will not be explicitly limited by trip purpose or client type.

10. Pueblo, City of will provide comparable transportation services to persons with disabilities according to the Americans with Disabilities Act of 1990.
11. Meal delivery for homebound individuals must not conflict with providing public transportation service or reduce service to public transportation passengers.
12. Pueblo, City of will work cooperatively with CDOT to market and/or publicize this project as requested by CDOT. Such efforts may include ribbon cuttings, news articles, photos, and/or other media to be supplied by Pueblo, City of as appropriate.

24. EXHIBIT B - ADDITIONAL FTA REQUIREMENTS

1. **Special Provisions for the Bus and Bus Facilities Formula Program.** Except as FTA determines otherwise in writing:

- a. Applicability of This Section. The Grantee understands and agrees that this section and section 61 of the Master Agreement applies to projects supported with funding appropriated or made available for 49 U.S.C. § 5339, as amended by section 20029 of MAP-21, which authorizes the Bus and Bus Facilities Formula Program, and
- b. Federal Laws, Regulations, and Guidance. In administering its Project and Project activities under the Bus and Bus Facilities Formula Program supported with funding made available or appropriated for 49 U.S.C. § 5339, as amended by MAP-21:
 - (1) The Grantee agrees to comply with:
 - (a) The applicable requirements of 49 U.S.C. chapter 53, as amended by MAP-21,
 - (b) Other applicable Federal laws and regulations, and
 - (c) Its Underlying Agreement and all other applicable provisions of the Master Agreement, and
 - (2) The Grantee agrees to follow:
 - (a) The applicable edition of FTA Circular, “Bus and Bus Facilities: Guidance and Application Instructions” when issued, and
 - (b) All other applicable Federal guidance.

2. **Special Provisions for the Discretionary Bus and Bus Facilities Grants Program Formerly Authorized Before MAP-21 Became Effective.** Except as FTA determines otherwise in writing:

- a. Applicability of This Section. The Grantee understands and agrees that this section and section 62 of the Master Agreement applies to projects supported with funding appropriated or made available for former 49 U.S.C. § 5309 in effect in Fiscal Year 2012 or a previous fiscal year, which authorized the previous Discretionary Bus and Bus Facilities Grants Program,
- b. Former 49 U.S.C. § 5309. The Grantee understands and agrees that MAP-21 did not reauthorize the discretionary Bus and Bus Facilities Grant Program, former 49 U.S.C. § 5309(b)(3), when section 20029 of MAP-21 amended 49 U.S.C. § 5339, establishing the Bus and Bus Facilities Formula Grants Program, and
- c. Federal Laws, Regulations, and Guidance. In administering its Project and Project activities under the discretionary Bus and Bus Facilities Grants Program supported with funding made available or appropriated for former 49 U.S.C. § 5309(b)(3) in effect in Fiscal Year 2012 or a previous fiscal year:
 - (1) The Grantee agrees to comply with:
 - (a) The Program and eligibility requirements that apply to the former 49 U.S.C. § 5309(b)(3), for that fiscal year in which the Federal appropriations were then or will be made available for its discretionary Bus and Bus Facilities Project and Project activities, or
 - (b) Other applicable Federal laws and regulations, and
 - (c) Its Underlying Agreement, and section 49 and all other applicable provisions of the Master Agreement, and
 - (2) The Grantee agrees to follow:
 - (a) The applicable edition of FTA Circular 9300.1, “Capital Investment Program Guidance and Application Instructions,” to the extent consistent with:
 - 1 The program and eligibility requirements applicable to the discretionary Bus and Bus Facilities Grants Program, former 49 U.S.C. § 5309, for that fiscal year in which funding was appropriated or made available for the Project,
 - 2 The MAP-21 cross-cutting requirements listed in section 49 of the Master Agreement, and
 - 3 All applicable Federal laws, regulations, and guidance, and
 - (b) All other applicable Federal guidance.

3. **FTA Master Agreement**

The Grantee understands that this Grant includes requirements specifically prescribed by federal law or regulation and does not encompass all federal laws, regulations, and directives that may apply to the

Grantee or its Project. A comprehensive list of those federal laws, regulations and directives is contained in the Master Agreement at the FTA website <http://www.fta.dot.gov/documents/18-Master.pdf>. The clauses in this **Exhibit B** have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements (see **Exhibit D**).

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with Federal Funds.

4. Compliance with Laws

Some of the clauses contained in this Grant are not governed solely by federal law, but are significantly affected by State law. The laws and regulations cited in this Grant are not all-inclusive of those which may apply to the successful completion of this Grant. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operations under this Grant, and that Grantee is solely responsible for its lawful compliance with them.

5. Federal Changes

Grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Grant. Grantee's failure to so comply shall constitute a material breach of this Grant.

6. Coordination

- a. Public transit systems funded under the 49 USC §5311 Formula Program are required to participate in the local coordinated planning process for public transit-human service transportation in areas applying for funds under 49 USC §§5310, 5316 or 5317.
- b. FTA 49 USC §5311 Formula Program requires maximum feasible coordination of public transportation service with transportation assisted by other federal sources. (49 USC § 5311 (b)(2)(c)(ii)).

7. Buy America Provision

The Grantee agrees that, in its execution of this Grant, it will comply with the requirements of 49 USC §5323(j), with the FTA regulations "Buy America" Requirements at 49 CFR Part 661, and with any implementing guidance that the FTA may issue.

8. Equipment

- a. **General.** The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration Requirement for Grant and Cooperative Agreement to State and Local Government (49 CFR §§18.31 – 18.34).
- b. **Maintenance.** The Grantee agrees that it will maintain its Project property in good operating order, as required by federal laws and regulations, and as provided in federal directives, except as FTA determines otherwise in writing.
- c. **Title to Equipment.** The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.
- d. **Use of Equipment.** The Grantee shall use Project equipment for transportation Services described in Exhibit A, and in compliance with FTA Circular 9040.1F. If any Project equipment is no longer needed for this Grant, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.
- e. **Equipment Records.** The Grantee agrees to keep satisfactory records pertaining to the use of the Project property, and submit to FTA upon request such information as may be required to assure compliance with Section 19 of the Master Agreement.

9. Reports

As required by 49 USC §5311(b)(4) and 49 USC §5335(a), any Grantee that is a public transportation operator which receives federal assistance authorized under 49 USC §5311(b) agrees to conform to, the reporting system and the uniform system of accounts and records required by 49 USC §5335(a) for FTA's national transit database, and will comply with the implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630, and any additional regulations and directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

a. Annual Program Status Report

The State is required to submit to the FTA regional office by October 31 of each year an annual program status report for the program of projects of each active grant, covering the 12-month period ending September 30. States must submit a narrative progress report, update of milestones (milestone status report (MSR) and a Federal Financial Report (FFR)).

b. National Transit Database Annual Report

SAFETEA-LU added the requirement that each grantee under 49 USC §5311 shall submit an annual report to the National Transit Database (NTD) which is FTA's primary national database for statistics on the transit industry. Items to be reported include total annual revenue; sources of revenue; total annual operating costs; total annual capital costs; fleet size type, and related facilities; revenue vehicle miles; and ridership.

c. Milestone Activity Reports (VI-9 of Circular)

For activity line items (ALIs) for which milestones were required at the time of grant application (for example, for vehicle procurements, construction projects, and program reserve), the State shall enter revised milestone dates as part of the annual report. If the estimated completion date for the Grant has changed, the revised date should be entered, with an explanation as to why the date was changed.

d. Federal Financial Report (FFR)

The State must submit electronically an annual FFR for each active grant, for the period ending September 30. For the purpose of this report, funds are considered encumbered when this Grant is signed. States should prepare the reports using the accrual method of accounting.

10. Air Pollution

No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the Grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

11. Energy Conservation

The Grantee and its third party contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the "State Energy Program Plan" issued in compliance with the Energy Policy and Conservation Act (42 USC §6321, *et seq.*).

12. Charter Service Operations

The Grantee agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 USC Chapter 53 or under 23 USC §§133 or 142, will engage in charter service operations, except as authorized by 49 USC §5323 (d) and FTA regulations, "Charter Service," 49 CFR Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of this Grant for the Project. The Grantee understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving federal transit assistance in an amount to be determined by FTA or State.

13. School Transportation

The Grantee, or any operator of mass transportation acting on its behalf, shall not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as provided under 49 USC §5323 (f) and applicable regulations, "School Bus Operations," set forth at 49 CFR Part 605, as amended. Any school bus agreement entered into under these regulations is incorporated into this Grant by reference.

14. Substance Abuse

The Grantee shall comply with FTA drug and alcohol rules as established in the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," set forth in 49 CFR Part 40 and Part 655; Drug-Free Workplace Act. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to §15(A) of this Grant.

15. Ineligible Bidders

“Bidders” or “Suppliers” whose names appear on the US Comptroller General’s List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this Grant. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this Grant, if one is awarded, are not on the Comptroller General’s List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of this Grant for cause.

16. Employee Political Activity

The provisions of 5 USC §§1501-1508 and 7324-7326 (the “Hatch Act”), and implementing regulations set forth in 5 CFR Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The Hatch Act restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by federal loans, grants, or cooperative agreements.

17. False or Fraudulent Statements or Claims

The Grantee acknowledges that, should it make a false, fictitious claim, statement, submission, or certification to the State or federal government in connection with this Project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 USC §1001, 31 USC §3801, *et seq.*, and/or 49 USC §5307(n)(1), as may be deemed by FTA to be appropriate.

18. Pre-Award and Post-Delivery Reviews

The Grantee shall comply with any regulations that may be issued to implement 49 USC §5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663, and any revision thereto.

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25. EXHIBIT C - NON-DISCRIMINATION NOTICE

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

1. Nondiscrimination in Federal Public Transportation Programs. The Grantee agrees to comply, and assures the compliance of each Subgrantee, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 USC §5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
2. Nondiscrimination – Title VI of the Civil Rights Act. The Grantee agrees to comply, and assures the compliance of each subsequent Subgrantee, lessee, third party contractor, or other participant at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC §§2000d et seq., and with DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21. Except to the extent FTA determines otherwise in writing, the Grantee agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Grantees,” and any other applicable federal directives that may be issued.
3. Access to Services for Persons with Limited English Proficiency. The Grantee agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 USC §2000d-1 note, and follow applicable provisions of DOT Notice, “DOT Policy Guidance Concerning Grantees’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.
4. Environmental Justice. The Grantee agrees to facilitate compliance with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 USC §4321 note; and DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
5. Equal Employment Opportunity. The Grantee agrees to comply, and assures the compliance of each subsequent Subgrantee, lessee, third party contractor, or other participant at any tier, with all equal employment opportunity (EEO) provisions of 49 USC §5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Grantee also agrees to follow all applicable federal EEO directives that may be issued. The Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Grantee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
6. Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the US Department of Labor (DOL) to qualify as “construction,” the Grantee agrees to comply and assures the compliance of each subsequent Subgrantee, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq.; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 USC §2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.
7. Disadvantaged Business Enterprise. To the extent authorized by federal law, the Grantee agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each

subsequent Subgrantee, lessee, third party contractor, or other participant at any tier will facilitate participation by DBEs in the project to the extent applicable as follows:

- a. The Grantee agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 USC §101 note, and DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.
 - b. The Grantee shall abide by the following clause and ensure that it is included in each DOT-assisted contract: The Grantee, Subgrantee 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 procurement and contracts of products and services 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 Grantee deems appropriate. [Note – This language is to be used verbatim, as is stated in §26.13(b).]
 - c. CDOT’s DBE program, which has been approved by the DOT, is incorporated by reference and made part of this Grant and all projects administered in accordance therewith.
8. Nondiscrimination on the Basis of Sex. The Grantee agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§1681 *et seq.*, and with implementing DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, that prohibit discrimination on the basis of sex.
9. Nondiscrimination on the Basis of Age. The Grantee agrees to comply with all applicable requirements of:
- a. The Age Discrimination Act of 1975, as amended, 42 USC §§6101 *et seq.*, and with implementing US Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving federal financial assistance.
 - b. The Age Discrimination in Employment Act (ADEA) 29 USC §§621 through 634 and with implementing US Equal Employment Opportunity Commission regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, which prohibits discrimination against individuals on the basis of age.
10. Access for Individuals with Disabilities. The Grantee agrees to comply with 49 USC §5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Grantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 USC §§4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Grantee agrees to comply with applicable implementing federal regulations and any later amendments thereto, and agrees to follow applicable federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:
- a. US DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 - b. US DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
 - c. Joint US Architectural and Transportation Barriers Compliance Board (US ATBCB)/US DOT

- regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- d. US DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
 - e. US DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
 - f. US General Services Administration (US GSA) regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
 - g. US EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
 - h. US Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 CFR Part 64, Subpart F;
 - i. US ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; and
 - j. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
11. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Grantee agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC §§1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC §§4541 et seq., and the Public Health Service Act of 1912, as amended, 42 USC §§290dd through 290dd-2, and any amendments thereto.
12. Other Nondiscrimination Laws. The Grantee agrees to comply with applicable provisions of other federal laws and regulations, and follow applicable federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

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26. EXHIBIT D - CERTIFICATIONS AND ASSURANCES

A. Standard Assurances

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

B. Suspension and Debarment

The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations.

C. US OMB Assurance

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

1. Has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-federal share of the project cost) to assure proper planning, management, and completion of the Project described in its application;
2. Will give FTA, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to an the right to examine all records, books, papers, or documents related to the award: and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
4. Will initiate and complete the work within the applicable Project time periods following receipt of FTA approval

D. Lobbying Certification

The Grantee or its subcontractor shall not use federal assistance funds for publicity or propoganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

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27. EXHIBIT E – VERIFICATION OF PAYMENT

This checklist is to assist the Grantee in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change by CDOT. CDOT shall provide notice of any such changes to Grantee. All items may not apply to your particular entity. CDOT's goal is to reimburse Grantees as quickly as possible and a well organized and complete billing packet helps to expedite payment.

Verification of Payment –

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger
 - In-Kind (must be pre-approved by CDOT) and/or cash match
 - Date of the report
 - Accounting period
 - Current period transactions
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable:
 - copies of checks
 - check registers
 - paycheck stub showing payment number
 - showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
- ✓ CDOT needs to ensure that expenditures incurred by the local agencies have been paid by the local agency ***before*** CDOT is invoiced by the local agency.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by CDOT prior to any work taking place.

- ✓ If in-kind or cash match is being used for the local match, the in-kind or cash match portion of the project must be included in the project application and the scope of work attached to the contract or purchase order. FTA does not require pre-approval of in-kind or cash match, but CDOT does.
- ✓ General ledger must also show the in-kind and/or cash match.

Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by CDOT prior to applying it to the reimbursements.

- ✓ If indirect costs are being requested, an approved indirect letter from CDOT or your cognizant agency must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from cognizant agency that verifies fringe benefit or
- ✓ Submit the following fringe benefit rate proposal package to CDOT Audit Division:
 - Copy of Financial Statement
 - Personnel Cost Worksheet
 - State of Employee Benefits
 - Cost Policy Statement

28. EXHIBIT F - SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
As of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached may be funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
 - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C:
 - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;
 - 1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17. **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a

Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub-awards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Sub-recipient Reporting Requirements.** If Contractor is a Sub-recipient, Contractor shall report as set forth below.

7.1. To SAM. A Sub-recipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1.** Sub-recipient DUNS Number;
- 7.1.2.** Sub-recipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3.** Sub-recipient Parent DUNS Number;
- 7.1.4.** Sub-recipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5.** Sub-recipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6.** Sub-recipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1.** Sub-recipient’s DUNS Number as registered in SAM.
- 7.2.2.** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3. Effective October 1, 2010, “Award” currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates “Award” may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4. There are no Transparency Act reporting requirements for Vendors.

9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.