

AGREEMENT
FOR THE USE OF
FEDERAL HIGHWAY ADMINISTRATION
REGIONAL SURFACE TRANSPORTATION PROGRAM AND CONGESTION
MITIGATION AIR QUALITY FUNDS
FISCAL YEAR 2018
PROJECT 47018-01
5A01 (873)
UPC T100
COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

<u>Section No.</u>	<u>Description</u>
	Introduction
1	Purpose and Source of Funds
2	Project Budget
3	Requisitions and Payments
4	Termination
5	Contracts of the Grantee
6	Restrictions, Prohibitions, Controls, and Labor Provisions
7	Liability Waiver and Insurance Requirements
8	Compliance with Title VI of the Civil Rights Act of 1964
9	Incorporation of Provisions
10	Special Provisions
Appendix A	Project Description and Budget
Appendix B	Restrictions, Prohibitions, Controls, and Labor Provisions
Appendix C	Title VI
Appendix D	Audit Guidelines

This Project Agreement (“Agreement”), effective August 6, 2017, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and the County Board of Arlington County, Virginia (“Grantee”) (collectively, the “Parties”), is for the provision of funding the operation of the Arlington County Commuter Services program (“Project”).

WHEREAS, under provisions set forth under 23 U.S.C. § 133, states may obligate funds apportioned to them under the Surface Transportation Program (“STP/Regional”) for certain transportation projects or programs, including funding transportation alternatives and the development and establishment of management systems; and

WHEREAS, under provisions set forth under 23 U.S.C. § 149, the Congestion Mitigation and Air Quality Improvement (“CMAQ”) program was established to fund transportation projects or programs that are likely to contribute to attainment of national ambient air quality standards or maintain national ambient air quality standards in maintenance areas; and

WHEREAS, the Parties wish to secure and utilize these 23 U.S.C. § 133 and 23 U.S.C. § 149 grant funds to reduce traffic congestion, maximize the use of existing public transportation and to help improve air quality and mobility by providing commuter assistance; and

WHEREAS, on August 6, 2017, the Federal Highway Administration (“FHWA”) approved funding for the Project.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

SECTION 1. Purpose and Source of Funds

Provided the requirements of this Agreement are met, the Department agrees to make available to the Grantee the sum of \$942,466 in 23 U.S.C. § 133 STP/Regional Federal funds and \$3,057,535 in 23 U.S.C. § 149 CMAQ Federal funds for the Project. The Project is contained in the approved Transportation Improvement Plans of both the urbanized area of which the Grantee is a part and the Commonwealth of Virginia (“Commonwealth”). It is understood that in this Agreement, the Department is merely serving as the entity to distribute Federal government funding, and the funds provided in this Agreement are not Commonwealth of Virginia (“Commonwealth”) funds.

SECTION 2. Project Budget

The Project Budget is the latest requested by the Grantee and approved by the Department. The Project Budget is contained in the attached Appendix A and is made a part of this Agreement. The Grantee shall carry out the Project and shall incur obligations against and make disbursements of the Project funds only in conformity with the latest approved budget for the Project. Indirect costs are an allowable expense if they are based on a cost allocation plan that has been approved by the Department.

Federal funds provided in this Agreement are contingent upon FHWA funding. In no event shall the Department be liable to the Grantee for any portion of the Federal share of the

Project cost. The Department's responsibility for the Project cost shall be limited to the cost of coordination and processing of the Grantee's reimbursement requests to the FHWA.

SECTION 3. Requisitions and Payments

- a. Requests for Payment by the Grantee. The Grantee will make requests for payment of eligible project costs as defined in 23 U.S.C. § 601. The request for payment will be for the Federal share of the total Project cost at the rate of Federal participation shown in the Project Budget. In order to receive payments, the Grantee must:
 1. Submit a reimbursement request in the OLGA Grants Management System to the Department; and
 2. Identify the source or sources of the non-Federal share of financial assistance under this Project from which the payment is to be derived.
- b. Upon receipt of satisfactory documentation, the Department will use all reasonable means to electronically transfer funds for the Federal share of allowable costs to the Grantee within 30 days.

SECTION 4. Termination

For convenience. The Department may terminate this Agreement at any time without cause by providing written notice to the Grantee of such termination. Termination shall be effective on the date of the receipt of notice by the Grantee. In the event of such termination, the Grantee shall be compensated for eligible project costs as defined in 23 U.S.C. § 601, through the date of receipt of the written termination notice from the Department.

SECTION 5. Contracts of the Grantee

Without prior written authorization by the Department, the Grantee shall not: (1) assign any portion of the work to be performed under this Agreement; (2) execute any contract, amendment, or change order concerning this Agreement; or (3) obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement. Further, the Grantee may not issue a Request for Proposal (“RFP”) that uses 23 U.S.C. § 133 STP/Regional or 23 U.S.C. § 149 CMAQ funds without prior review and approval of the RFP by the Department.

SECTION 6. Restrictions, Prohibitions, Controls, and Labor Provisions

The Grantee shall comply with all of the restrictions, prohibitions, controls, and labor provisions set forth in Appendix B, attached and made a part of this Agreement.

SECTION 7. Liability Waiver and Insurance Requirements

The Grantee shall not seek redress for damages or injury caused in whole or in part by the Commonwealth or the Department, and their respective officers, agents, and employees acting within the scope of their duties. The Grantee shall reimburse the Commonwealth, the Department, and their respective officers, agents, and employees for any damage or injury arising from or relating to the use by the Grantee, its officers, agents, or employees of funds provided under this Agreement.

The Grantee hereby certifies that it is covered by and will keep in force either: (a) a comprehensive liability self-insurance plan administered by Virginia's Division of Risk Management providing protection against liability and claims pursuant to § 2.2-1839 of the *Code of Virginia* (1950), as amended (the "DRM Plan"); (b) a commercial insurance policy acceptable to the Department ("Commercial Insurance"); or (c) a liability self-insurance program acceptable to the Department providing equal or better coverage than the DRM Plan ("Self-Insurance Program").

(a). The DRM Plan. If the Grantee chooses to satisfy its obligations under this Section by procuring the DRM Plan:

1. The Commonwealth and the Department, and their respective officers, agents, and employees shall be "additional covered parties" under the DRM Plan.
2. The Grantee shall provide the Department a Certificate of Liability Coverage that states, "The Commonwealth and the Department, and their respective officers, agents, and employees shall be indemnified to the extent permitted by law in terms of being added as additional covered parties pursuant to and specific to this Certificate."

(b). Commercial Insurance. If the Grantee chooses to satisfy its obligations under this Section by procuring Commercial Insurance:

1. The Grantee shall obtain an endorsement to the Commercial Insurance naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds under the policy.

2. The Grantee shall provide the Department a Certificate of Insurance providing evidence of the required coverage and naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds.

(c). Self-Insurance Program. If the Grantee chooses to satisfy its obligations under this Section through a Self-Insurance Program:

1. The Grantee shall provide evidence of the authority for such Self-Insurance Program, evidence of the limits of the Self-Insurance Program, and evidence that the Self-Insurance Program is funded to an actuarially sound level.
2. The Grantee shall provide the Department with a certificate or letter from an authorized Grantee official confirming coverage for the duration of the Agreement.

The requirements of this Section shall not be deemed to limit any other obligations or liabilities of the Grantee.

The Grantee shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages.

SECTION 8. Compliance with Title VI of the Civil Rights Act of 1964

The Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964, and the provisions in Appendix C, attached and made a part of this Agreement.

SECTION 9. Incorporation of Provisions

The Grantee shall make all covenants and provisions of this Agreement a part of any contracts and subcontracts relating to the Project which utilize the funds provided in this Agreement. These covenants and provisions shall be made binding on any contractor, subcontractor, and their agents and employees. In addition, the following required provision shall be included in any advertisement for procurement for the Project:

Statement of Financial Assistance: This contract is subject to a financial assistance contract between the Commonwealth of Virginia and the United States Department of Transportation (“U.S. DOT”).

SECTION 10. Special Provisions

a. Special Condition Pertaining to Financing CMAQ and STP/Regional Projects.

Sufficient funds must be available from the U.S. DOT and an adequate liquidating cash appropriation must have been enacted into law before payments may be made to the Grantee under this Agreement.

b. All funds made available by this Agreement are subject to audit by the Department or its designee, and by the FHWA or its designee. Current audit guidelines for the Department are set forth in Appendix D, attached and made a part of this Agreement.

This area intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix A: Project Description and Budget

Grantee: County Board of Arlington County, Virginia

Project: Operation of the Arlington County Commuter Services Program

**FHWA Grant 5A01 (873)
UPC T100**

Project Number: 47018-01

Project Start Date: August 6, 2017

Project Expiration Date: September 30, 2018

Fund Code		Item Amount
401	Federal Grant Amount (share of Project cost - 80%)	\$4,000,001
472	State expense (share of Project cost - 20%)	\$ 999,999
	Total Project Expense	\$5,000,000

In no event shall this grant exceed \$4,000,001.

Appendix B: Restrictions, Prohibitions, Controls, and Labor Provisions

- a. The Grantee, its agents, employees, assigns, or successors, and any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with this Agreement, shall not discriminate against any employee or applicant for employment because of age, race, religion, handicap, color, sex, or national origin. The Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their age, race, religion, handicap, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b. Disadvantaged Business Enterprises (“DBE”). It is the policy of the U.S. DOT that DBEs, as defined in 49 C.F.R. pt. 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. pt. 26 apply to this Agreement.

The recipient or its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. pt. 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. pt. 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The recipient will utilize the Virginia Department of Transportation’s DBE program, as required by 49 C.F.R. pt. 26 and as approved by the U.S. DOT, which is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 *et seq.*).

Pursuant to the requirements of 49 C.F.R. pt. 26, the following clause must be inserted in each third party contract:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. pt. 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited

to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.”

- c. Interest of Member of, or Delegates to, Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
- d. Conflict of Interest. The Grantee and its officers and employees shall comply with the provisions of the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended.
- e. The Grantee, its agents, employees, assigns, or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Fair Employment Contracting Act, §§ 2.2-4200 *et seq.* of the *Code of Virginia* (1950), as amended.

Appendix C: Title VI

During the performance of this Agreement, the Grantee, for itself, its assignees, and successors in interest, agrees as follows:

- a. **Compliance with Regulations**: The Grantee shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (U.S. DOT), 49 C.F.R. pt. 21, as amended (“Regulations”).
- b. **Nondiscrimination**: The Grantee, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding or negotiation, made by the Grantee for work to be performed under a subcontract, including procurements of materials, leases, or equipment, each potential subcontractor or supplier shall be notified by the Grantee of the Grantee's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports**: The Grantee shall provide all information and reports developed as a result of or required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Grantee shall so certify to the Department or the FHWA, as appropriate, and shall set forth the efforts it has made to obtain this information.
- e. **Sanctions for Noncompliance**: In the event of the Grantee's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. Withholding of payments to the Grantee under the Agreement until the Grantee complies; and/or
 2. Cancellation, termination, or suspension of the Agreement in whole or in part.

- f. **Incorporation of Provisions:** The Grantee shall include the requirements of paragraphs a through f in every subcontract (making clear that the requirements on the Grantee are in turn required of all subcontractors), including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Grantee shall take such action with respect to any subcontract or procurement as the Department or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Grantee becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Grantee must immediately notify the Department so that steps can be taken to protect the interests of the Department and the United States.

Appendix D: Audit Guidelines

- a. The Grantee shall comply with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT “Single Audit” requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. pt. 200. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.
- b. Additional guidance is as follows:
 1. Eligibility of costs is stressed for expenditures made within the grants. 2 C.F.R. pt. 200 Subpart E should be referenced and applied. Generally, some of the problems encountered are:
 - A. Unacceptable or no cost allocation plan, usually for “indirect costs.”
 - B. Arbitrary allocation of costs.
 - C. Failure to maintain time and attendance records.
 - D. Failure to keep accurate track of employee time spent on each of several grants.
 - E. Improper documentation.
 2. The report should have sufficient schedules, either main or supplementary, that identify beginning balances, revenues, expenditures by line item and individual grants, and fund balances. Department-issued grants should be separated. A schedule of ineligible costs should also be included if such costs are found.
 3. The report should present a schedule of indirect costs and be presented in a manner that indicates the method of developing the costs (including fringe benefits). Indirect costs should be analyzed for eligibility of costs included (interest, taxes, etc.).
 4. Costs should be classified to identify expenditures by the Grantee in contrast to disbursements actually passed through to subrecipients. The scope of the audit should include expenditures made by the subrecipients and be identified in the audit report. This includes consultants, subconsultants, and any other recipient of pass through funds.
 5. Generally speaking, it is left up to the auditor's professional judgment to determine materiality in selection of parameters for sample testing and recognition of errors. However, it is suggested that the size of each individual grant in the entity be considered when selecting parameters rather than total overall operation of the entity.
 6. The following groups should be sent copies of the audit reports:

- A. Two copies of the audit reports and two copies of the OIG Review of the Report are to be sent to:

Virginia Department of Rail and Public Transportation
Attention: Donald Karabaich, Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

- B. Grantees expending more than \$500,000 a year in Federal assistance must forward a copy of the audit to a central clearinghouse designated by OMB.

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th St.
Jefferson, IN 47132

- C. If your independent annual single audit contains U.S. DOT program findings, a copy of the entire audit report must be submitted to your FHWA Regional Office. If your agency receives funds from more than one U.S. DOT agency and the FHWA is your point of contact for all DBE program issues, then you must submit the entire audit report if it contains any findings related to any U.S. DOT program.
- D. If your independent annual single audit report contains no U.S. DOT program findings, a copy of only the Federal Clearinghouse transmittal sheet must be submitted to your FHWA Regional Office.