

INTERGOVERNMENTAL AGREEMENT TIGER VI GRANT CHAMPAIGN-URBANA MULTIMODAL CORRIDOR ENHANCEMENT

THIS AGREEMENT ("Agreement") is made between the City of Champaign, an Illinois Municipal Corporation ("CHAMPAIGN"), the Champaign-Urbana Mass Transit District, an Illinois Municipal Corporation ("CUMTD"), the City of Urbana, an Illinois Municipal Corporation ("URBANA"), and The Board of Trustees of the University of Illinois, a body corporate and politic of the State of Illinois ("UNIVERSITY") (each a "Party", and, collectively, the "Parties").

RECITALS

WHEREAS, Section 10 of Article VII of the Constitution of the State of Illinois, 1970, provides authority for governments to contract or otherwise associate among themselves to obtain and share services and to exercise, combine or transfer any power of function in any manner not prohibited by law; and

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220 et.seq.) provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking; and

WHEREAS, the following Exhibits are attached hereto and incorporated herein by reference:

Exhibit A – Application, Multimodal Corridor Enhancement

Exhibit B – Project Award Announcement and Map

Exhibit C – Grant Agreement with Federal Government (Draft), subject to Section 27

Exhibit D – Project Funding Responsibilities

WHEREAS, all the Parties joined in applying for a TIGER (Transportation Investing Generating Economic Recovery) Discretionary Grant Program ("Grant") from the United States Department of Transportation ("USDOT") to make Multimodal Corridor Enhancements, detailed in the Grant Proposal, attached hereto as **Exhibit A**; and

WHEREAS, the Parties intend to implement certain improvements partially funded by a TIGER Grant in the Champaign-Urbana community which includes improvements hereinafter referred to as the "Program"; and

WHEREAS, the Program is divided into the following five (5) Projects (hereinafter "Projects"), more specifically described in Exhibit A, the submittal/Grant Proposal to USDOT and the Projects include generally:

- Project 1 –Green Street (Wright Street to Busey Avenue)
- Project 2 –Green Street (Neil Street to Fourth Street)
- Project 3 –White Street (Second Street to Wright Street) including Wright Street (White Street to Springfield Avenue)
- Project 4 –Armory Avenue (Fourth Street to Wright Street), and Wright Street (Springfield Avenue to Armory Avenue)
- Project 5 –Green Street (Busey Avenue to Race Street)

WHEREAS, the Parties are member agencies of the Champaign Urbana Urbanized Area Transportation System (“CUUATS”) and CUUATS is responsible for the promotion of transportation systems, which embrace a variety of modes in a manner that efficiently maximized the mobility of people and goods with minimal energy consumption, pollution, and social impacts; and

WHEREAS, the Projects funded by the TIGER Grant have the effect of reducing urban traffic, improving mobility, reducing parking and reducing atmospheric pollution; and

WHEREAS, a grant in the amount of \$15,705,327 was awarded by USDOT as provided for on the USDOT website and as described and depicted in attached **Exhibit B**, to be administered through the Federal Highway Administration (“FHWA”) and through the Illinois Department of Transportation (“IDOT”); and

WHEREAS, the Grant provides for cost sharing between USDOT and the Parties, and requires an estimated local match of \$19,178,138; and

WHEREAS, Champaign as Lead Agency for the Parties and USDOT will enter into an Agreement for all Projects funded through the Grant; and

WHEREAS, Champaign, as Lead Agency for the Parties, will enter into a Federal Assisted Project Agreement with IDOT; and

WHEREAS, the Parties have in this Agreement agreed to meet all obligations under the Agreements with USDOT and IDOT as described herein; and

WHEREAS, this Agreement is in the best interest of the Parties.

NOW THEREFORE, in consideration of the recitals and of the mutual covenants and agreements of the Parties as hereinafter set forth, the Parties mutually agree as follows:

AGREEMENT

Section 1. Effective Date/Term of Agreement.

- a) This Agreement shall be effective on the date approved by all of the Parties to the Agreement on the date approved by the last of the Parties to approve it.
- b) This Agreement shall become operative upon the date that the Grant Agreement between Champaign and USDOT for federal funds under the Grant becomes effective. Project costs incurred before the release of Grant funds and approval by the USDOT to proceed are not eligible for reimbursement, unless otherwise permitted by USDOT. This Agreement shall remain in effect until terminated as provided in Section 28 , “Termination”.

Section 1A. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings ascribed herein:

“Agreement” means this intergovernmental agreement.

“Champaign” means the City of Champaign.

“FHWA” means the Federal Highway Administration.

“Grant” means the TIGER VI Grant when referencing “Grant Agreement”, such reference refers to **Exhibit C** to this Agreement..

“IDOT” means the Illinois Department of Transportation.

“Lead Agency” means Champaign or such other Party designated by the Parties.

“Match Funds” means the non-federal share of the estimated cost of the Program.

“Parties” means Champaign, Urbana, the University and CUMTD.

“Party” means an individual entity identified above.

“Program” means collectively all projects identified in the preamble.

“Projects” means one of the five construction undertakings agreed to be built by the Parties pursuant to the Grant.

“TIGER” means Transportation Investment Generating Economic Recovery.

“University” means the University of Illinois.

“Urbana” means the City of Urbana.

“USDOT” means the United States Department of Transportation or any of its constituent agencies .

“Utilities” means all cables, fibers, conduit, pipe, ducts, tunnels, cameras, antennae, and other structures for the provision, transmission or conveyance or services including, but not limited to: electricity, street lighting, video, communication, and internet signals, traffic signals, water, steam, compressed air, steam condensate, chilled water, chilled water return, gas, storm water and sanitary sewerage, and all structures appurtenant thereto including manholes, handholes, nodes, vents, surface inlets, valves, valve boxes, lift stations, transformers and other structures and devices directly related to the provision, transmission or conveyance of the aforementioned services.

Section 2. Program and Project Funding.

- a) Estimated Cost. The total estimated cost of the Program funded by the Grant is \$34,888,465. USDOT shall fund a maximum of 45% of the costs related to the Grant, totaling \$15,705,327. The Parties shall provide the 55% non-federal share in the Grant (“Match Funds”), totaling an estimated minimum amount of \$19,178,138 through contributions in the estimated amounts set forth in page 7 of the Grant Proposal as set forth in **Exhibit A** and as further detailed in **Exhibit D**.
- b) Schedule. The Parties recognize and agree that the Grant Application provides for the construction of the Projects in the Program in phases beginning in 2015 and ending in 2021.

The following outlines a tentative schedule for the TIGER Projects:

- Project 1 –Green Street (Wright Street to Busey Avenue)
 - Project 2 –Green Street (Neil Street to Fourth Street)
 - Project 3 –White Street (Second Street to Wright Street) including Wright Street (White Street to Springfield Avenue)
 - Project 4 –Armory Avenue (Fourth Street to Wright Street), and Wright Street (Springfield Avenue to Armory Avenue)
 - Project 5 –Green Street (Busey Avenue to Race Street)
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- a. TIGER GA and IGA Council Approval.....December 16, 2014
 - b. Projects 1-3 City-Consultant Engineering Agreement.....January 20, 2015
 - c. Projects 1-3 Preliminary and Final Design.....Jan. 2015 to Mar. 2016
 - d. Projects 1-3 City-State Fed Construction Agreement,
Projects 1-3 City-Consultant Agreement for Construction Engineering
Projects 4-5 City-Consultant Engineering Agreement.....March 2016
 - e. Projects 4-5 Preliminary and Final Design.....March 2016 to Dec.
2017
 - f. Projects 1-3 IDOT Letting.....July 26, 2016
 - g. Projects 1-3 Construction.....Aug. 2016 to Nov. 2017
 - h. Projects 4-5 City-State Construction Agreement.....September 2017
 - i. Projects 4-5 IDOT Letting.....January 2018
 - j. Projects 4-5 Construction.....Jan. 2018 to Dec. 2019

c) Grant Obligation.

1. The Parties further recognize that the Grant Agreement and the federal legislation supporting TIGER Grants requires the \$15,705,327 to be obligated by the USDOT prior to June 30, 2016, unless the Grant Agreement provides for another deadline.
 2. The Parties recognize that in order for the USDOT to obligate the Grant funds, USDOT and IDOT will have to have approved Plans, Specifications and Estimates (PSE) for those Projects which are initially ready for such approval so that Grant funds will be available for the construction costs associated with those Projects.
- d) Utilization of Grant Funds. It is the intention of the Parties to utilize the obligated Grant funds for construction of Projects 1, 2 and 3 and utilize local funding for the completion of Projects 4 and 5 or portion thereof to ensure that, prior to the end of the Grant term in 2021, all Projects are funded and fully constructed.
- e) Project List, Estimates and Cost Shares. Attached hereto as **Exhibit D** is a list of the Projects and estimates, and cost shares in each fiscal year. **Exhibit D** constitutes a substantial basis for the entry into this Agreement by the Parties. The cost estimates represent the year 2014 dollars. Actual costs will vary depending on the final design and inflationary increases due to the timing of the construction.
- f) Payments. The Lead Agency shall invoice the other Parties in accordance with cost shares and payment limits described in this Agreement and **Exhibit D**. The Lead Agency shall invoice the other responsible Parties for costs after receipt of invoice for payment, which is due and payable. Upon request, the Lead Agency shall provide reasonable documentation to the other responsible

Parties regarding the actual cost of the work. Reimbursement payments shall be made to the Lead Agency within twenty-eight (28) days of the date the Party receives an invoice for its share of the cost and expenses

- g) Budgeting and Appropriation. The financial shares of the Parties shall be as set forth in **Exhibit D**. The Parties agree to budget or appropriate amounts sufficient to meet their commitments for paying their respective share of the balance of the local costs as set forth herein.
- h)
 - 1) Cost Overruns.
 - i) The Parties acknowledge that each Project may involve costs in excess of the amounts set forth in **Exhibit D**.
 - ii) For Projects 1 and 5, within the City of Urbana, Urbana shall be responsible to pay for any cost overruns for those Projects whether attributable to engineering costs, construction costs or any other costs attributable to the Project.
 - iii) For Projects 2, 3 and 4, within the City of Champaign, Champaign shall be responsible to pay for any cost overruns for those Projects whether attributable to engineering costs, construction costs or any other costs attributable to the Project, except for the portion of Project 4 (Armory Ave.) that falls within the jurisdiction of the University, for which the University shall be responsible to pay for any such cost overruns.
 - iv) For costs attributable to bus shelters or transit improvements of any type, CUMTD shall be responsible to pay for cost overruns whether attributable to engineering costs, construction costs or any other costs attributable to the Project.
 - 2) Payment. The responsible Party shall pay for costs in excess of local shares set forth in **Exhibit D** to the Lead Agency within twenty-eight (28) days after receipt of a statement therefore.
 - 3) Cost Savings. If the cost of any individual Project is less than the amount allocated in **Exhibit D** for the Project, the Party shall not be required to contribute the full amount of the local share to the particular Project.
 - 4) Situations not Covered. For circumstances not provided for in this Section, the Parties shall meet and confer in order to reach a settlement. If no settlement is reached within twenty-eight (28) days after any party makes a request to meet, the Parties shall submit the matter in unity to binding arbitration by an attorney selected by the chief legal officers for the Parties.

Section 3. Project Implementation.

In order to accomplish the completion of the Program as set forth in the application, the Parties agree as follows:

- a) Lead Agency. Champaign shall be Lead Agency for the Program. As Lead Agency, Champaign will:

- 1) Enter into Grant and IDOT Agreements. Execute the Grant Agreement with USDOT and execute a "Local Agency Agreement for Federal Participation" with IDOT.
- 2) Hire Consultants. Select, enter into contracts with consulting engineers and other professionals necessary or desirable to complete the Program and pay expenses related to the undertaking including, but not limited to:

Direct expenses for consulting services, including but not limited to legal, title, real estate appraisal, review appraisal, right-of-way and easement acquisition, soils and material testing services and other professional services expenses associated with administering the Program, managing, applying for grants, engineering or acquiring right-of-way for the Program shall be eligible for reimbursement under the cost share provisions in this Agreement.

Prior to entering into any contract for necessary professional services, the Lead Agency shall provide a good faith estimate of the cost and a description of such services to the other Parties. The Lead Agency will not approve a cost which exceeds such estimates without the written approval of the other effected Parties.

- 3) Consulting Engineers. With respect to Consulting Engineers, a Qualifications Based Selection process will be used to select the Consulting Engineer,. The Parties intend to negotiate a contract with the same Engineer to prepare Plans, Specifications and Estimates (PS&E) and construction engineering for all Projects. The Engineer selected for PS&E and construction engineering shall not be an employee of any of the Parties. The Lead Agency will contract with the Engineer for all Projects. Prior to entering into such contracts, the Lead Agency shall obtain prior written approval from the other Parties for the scope of work to be performed by the Engineer and the terms of the contract.

b) Other Project Responsibility.

- 1) Resident Engineer and Construction Inspection. The Lead Agency will provide a Resident Engineer for the construction phase of Champaign and University Projects and Urbana shall provide a Resident Engineer for the construction phase of Projects in Urbana.
- 2) Invoicing. The Party in whose jurisdiction the Project is being constructed shall have primary responsibility for reviewing all billing statements for engineering, construction and other services related to the Project within their jurisdiction. CUMTD shall review all engineering fees and constructions costs related to any transit facility.
- c) Project Management Representation. The Parties shall assign an experienced Project Manager from their staff to each Project to assist with the management and administration of all aspects of the Project, including but not limited to the following: selection of engineering consultants and other professional services; IDOT coordination; serve as liaison to impacted Departments of the Parties and any other stakeholders; attend and provide guidance in project design coordination meetings with Project consultants; review Project plans and specifications; conduct stakeholder meetings and provide regular communication

to stakeholders; assist with Utility coordination; assist with Project bidding; organize and attend pre-construction conferences; attend construction progress meetings; and work cooperatively to address errors, omissions, or conflicts that may arise during or after Project construction. The Parties shall designate the Project Manager in writing to the Lead Agency's project manager, the Champaign City Engineer.

d) Engineering, Award, Utilities and Construction.

1) Preliminary Engineering. The Parties agree to allow the Lead Agency and the Project consultants unrestricted access to the right-of-way and adjacent property of the Parties for each Project for any and all activities necessary to complete engineering design of the proposed street improvements, including but not limited to right-of-way and topographic land surveys; measuring and recording existing sewer infrastructure and utilities; pavement coring; subgrade testing; street light and traffic signal equipment and controller inspections. The following documents shall be used as guidelines in the preparation of the Projects construction plans and specifications: IDOT Bureau of Local Roads (BLR) policies and procedures for Federally funded projects, IDOT Standard Specifications for Road and Bridge Construction, the State of Illinois Manual on Uniform Traffic Control Devices (MUTCD), Standard Specification for Traffic Control Items, Standard Specifications for Water and Sewer Main Construction in Illinois, statutes and ordinances of general applicability to such work in effect within the City, UIUC Facilities Standards, as amended from time to time.

2) Submission of Plans and Specifications. Prior to construction bid advertisement of the Projects, the Lead Agency shall submit preliminary and final plans and technical specifications to the Parties for timely review and approval. Such plans shall include a traffic control plan if pedestrian, bicycle and vehicular traffic will be impacted temporarily, and shall comply with generally accepted engineering practice. A construction cost estimate and estimate of construction duration will be submitted with the plans and specifications. Once the Lead Agency has incorporated all of the Party's comments to the preliminary and final plans the Lead Agency shall submit the plans to IDOT for review and approval.

3) Approval of Plans. The final design and construction plans of each Project shall be reviewed and approved by the City Engineer of the Lead Agency and the Project Manager for the respective Party prior to IDOT's review and approval to construction bid. The approval of such plans shall not be reasonably denied. The review may be based on reasonable requirement with respect to budget, scheduling, traffic control, or construction means, methods, or materials as the Parties may require in accordance with usual construction practices and standards.

Both the Lead Agency and the Parties agree that minor elements of the Projects may require adjustment or refinement following approval and will be mutually agreed upon. The Parties acknowledge that any changes may need to be reviewed and approved by IDOT.

4) Bid Letting and Award. IDOT will advertise the Projects for contractor bids in the IDOT Contractor's Construction Bulletin. The Project consultant will prepare a tabulation of all bids received and will make the tabulation available to the Parties, Lead Agency and the public.

5) Utilities and Utility Relocations. The Parties agree that all Party owned Utilities located within the limits of each Projects right-of-way shall continue to be owned and maintained by the respective Party. Each Party shall advise and consult with the Lead Agency and the Projects Consultants prior to adjusting, relocating, repairing, removing, modifying, maintaining, or installing any Utility within the right-of-way limits of the Projects. The respective Party agrees to assist with locating, identifying and determining the location of all existing Utilities within the limits of the Projects, if necessary, including subsurface exploration and pot-holing of Party Utilities, at Party expense. Each Party agrees to provide to the Projects Consultants Utility maps or electronic files of existing Utilities located within the limits of the Projects right-of-way. The Lead Agency and the Consultant shall notify the Party of any apparent and potential conflict between the Projects proposed design and any Party Utility. If the Grant is unable to fund Utility relocation costs, then the Party agrees to relocate at its expense any Party Utility that is in conflict with the proposed Project improvements. The Parties agree to exercise their franchise rights to cause the relocation of privately owned Utilities that are in conflict with proposed Project improvements. Any and all costs associated with relocating private Utilities that are in conflict with proposed Project improvements shall be the responsibility of the respective Party. The Parties agree to minimize Utility conflicts to the greatest extent possible.

6) Construction Engineering and Inspection. Construction engineering will be performed by the Consultant selected for the Project. A representative from such Party in whose jurisdiction the Project is being constructed will be assigned to the Project to serve as Resident Engineer and perform the duties thereof. The Lead Agency shall permit the inspection of the Project by the representative of the Party to determine compliance with the law or the provisions of this Agreement. Except in the case of an emergency, any such inspection shall be conducted during normal business hours, with the verbal concurrence by the Resident Engineer. The Resident Engineer shall accompany the Party representative on any such inspection to address questions and comments about the Project.

- 7) On Street Parking. The Project Manager assigned to the Project for the Party is responsible for contacting residents regarding parking and coordinating any and all design and construction impacts to the operation of on-street parking within the limits of each Project. This may include temporarily bagging meters, temporary relocation of on-street parking space permit holders, and temporarily or permanently removing parking spaces and meters impacted by construction activities. Compensation for loss of meter revenue due to the Project improvements either during construction or after Project completion is not an eligible or reimbursable Project expense.
- 8) Construction. The Parties agree to allow the Lead Agency and the Project contractors and subcontractors unrestricted access to the right-of-way and adjacent public property for each Project to complete all work as set forth in the approved construction contract for the Project
- 9) As-Built Drawings. The Lead Agency shall require the Project Consultant to provide to the Parties with as-built drawings of each Project as constructed in accordance with this Agreement. Such drawings shall be provided to the Parties within ninety (90) days after substantial completion of the Project. Provided further that, if requested by the Parties, the Lead Agency shall require the Project Consultant to provide such drawings in an electronic format as specified by the Party.
- 10) Damage to Trees. The Parties acknowledge that trees located within the Project right-of-way or limits may be subject to temporary or permanent damage as a result of the location and construction of a Project. In the event such damage occurs as a direct result of Project construction activities, the Lead Agency's Project Manager, the Party's Project Manager, the Resident Engineer, shall cooperatively assess the affected tree or trees to determine the amount and extent of the damage and to identify any necessary corrective actions. The Parties agree that in the event any such affected tree or trees is determined by the Party's Project Manager to be irrevocably damaged, the Party may pursue legal actions against the Project's construction Contractor to recover such damages. The Party shall not hold the Lead Agency liable for any temporary or permanent damages to trees as a direct result of any construction activities associated with the Projects.
- e) IDOT Responsibilities. The Parties recognize and agree that IDOT shall award all contracts utilizing Federal Funds, make all payments to the construction contractor from Federal funds and invoice the Lead Agency for the local share of the construction costs.
- f) Data Collection. The CUMTD, on behalf of the Lead Agency, shall collect the data necessary to track and report on each of the performance measures identified in the Performance Measurement Table in Attachment D of the draft FY 2014 TIGER

Discretionary Grant Agreement (Champaign Urbana Multimodal Corridor Enhancement) attached as **Exhibit C, and such other reporting as requested by FHWA/USDOT**, and report results of the data for each measure to FHWA periodically, according the reporting schedule identified in Attachment D. Furthermore, the CUMTD shall provide an initial Pre-project Report, interim Project Performance Measurement reports, and a final Project Outcomes Report, as well as quarterly and annual reports to FHWA, in a manner consistent with the requirements of **Exhibit C and such other reporting as requested by FHWA/USDOT**. CUMTD shall make such reporting through the Recovery Act Data System (“RADS”) as needed to comply with Federal requirements. To the extent necessary, all Parties will assist the CUMTD with such reporting obligations.

Section 4. Disputes.

Should a dispute arise with USDOT or IDOT regarding the Lead Agency’s obligations under the Grant or Agreements with USDOT or IDOT, all Parties shall be able to offer input and recommendations. The Lead Agency shall collaborate with the Parties and provide serious consideration with regard to the Parties input and recommendations. The Parties shall be entitled to participate in all meetings with USDOT or IDOT concerning the dispute and receive copies of any correspondence and other documents exchanged between the Lead Agency and USDOT or IDOT. The settlement of such a dispute between USDOT or IDOT and the Lead Agency shall be final and binding on the Parties.

Section 5. Amendments.

- a) All amendments to this Agreement shall be in writing and must be executed by all Parties within the term of this Agreement.
- b) All notices, requests, consents, and other communication required or permitted under this Agreement shall be in writing and shall be addressed to the receiving party’s address as set forth below or to such other address as a party may designate by notice. All notices, requests, consents, and other communication shall be (i) delivered by hand, or (ii) sent by certified mail, return receipt requested.

All notices, requests, consents, and other communication shall be deemed delivered when (i) actually received, but in all events (ii) on the third day following deposit in a United States Postal Service Post Office or receptacle with proper postage affixed, return receipt requested.

The address for notices, requests, consents, and other communications shall be as follows:

CUMTD:
Managing Director
Champaign Urbana Mass Transit District
1101 E. University Avenue
Urbana, IL 61802

CHAMPAIGN:
City Manager
City of Champaign
102 N. Neil Street
Champaign, IL 61820

UNIVERSITY:
Executive Director
Facilities and Services
1501 S. Oak Street, MC-800
Champaign, IL 61820

URBANA:
Mayor
City of Urbana
400 S. Vine Street
Urbana, IL 61801

Section 6. Successors and Assigns.

The Parties shall not assign or otherwise transfer their rights and obligations under this Agreement except with prior written consent of all Parties. Any attempted assignment or transfer of this Agreement without the prior written consent of all the Parties shall be deemed void *ab initio*.

Section 7. Utilities.

To the extent necessary to construct any of the Projects, the costs for the adjustment, removal, or relocation of the Parties utility facilities in accordance with applicable City and State laws, regulations, rules, policies, procedures, and/or contractual obligations are to be included in the construction contract bid. Any additional construction costs, including overruns, shall be governed by Section 2, "Program and Project Funding".

Section 8. Environmental Assessment and Mitigation.

All Projects within the Program must comply with the National Environment Policy Act (NEPA) and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. A preliminary NEPA evaluation has been performed with no apparent environmental conditions to address. The Parties agree that a final Environmental Survey Request (ESR) is required to be submitted to IDOT for all projects. The final ESR shall be performed by IDOT, at IDOT's cost, all in accordance with the requirements contained in the Bureau of Local Roads Manual. The Lead Agency and Party in whose jurisdiction the Project lies shall prepare a final Special Waste Screening (SWS) for each project and submit the SWS to IDOT for approval. The cost of any mitigation and remediation of environmental conditions shall be based on the final ESR and SWS. Such final ESR and SWS shall be made available by the Lead Agency to the Parties. Any mitigation and remediation costs not provided for by the Grant or cost share that arise shall be governed by Section 2, "Program and Project Funding".

Section 9. Breach, Cure and Remedies.

In the event any Party (for purposes of this section only, the "Non-Defaulting Party") believes that another Party (for purposes of this section only, the "Defaulting Party") has defaulted on any obligation required of it pursuant to this Agreement, the Non-Defaulting Party shall notify all Parties in writing of the alleged default. Such notice shall describe the nature of the alleged breach and state the section or sections which the Non-Defaulting Party believes has/have been breached. The Defaulting Party shall have twenty-eight (28) days in which to (i) fully cure the default; (ii) respond to the notice of default writing that the Defaulting Party is not in default which shall include specific reasons for such assertion; or (iii) respond in writing that the Defaulting Party is unable to reasonably cure the default within the twenty-eight (28) day period and which includes a detailed timeline for curing the default. Absent a default cure satisfactory to the Non-Defaulting Party, the Non-Defaulting Party and any other Party shall have available to it or them any and all remedies available in law or equity.

Section 10. Legal Construction and Captions.

In case one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions in this Agreement unless such court holding negates the overall intent and purpose of this Agreement.

The headings at the beginning of the Sections in this Agreement shall constitute guides and labels to assist in locating the respective Sections, and therefore, will be given no effect in construing, interpreting or enforcing this Agreement.

Section 11. Responsibilities of the Parties.

The Parties agree that none of the Parties is an agent, servant, or employee of the other Parties. Each Party agrees that it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents. Notwithstanding the foregoing, the Parties acknowledge that the Lead Agency is acting as the agent of the Parties for the purposes stated in this Agreement.

Section 12. Sole Agreement.

This Agreement constitutes the sole and only Agreement between the Parties and supersedes any prior understandings or agreements, written or oral, regarding this Agreement's subject matter.

Section 13. Ownership of Documents.

Each Party shall have access to and the right to copy any and all documents which have been or which are prepared for the Program and the Projects regardless of who created, prepared, creates or prepares such documents. The original of any documents shall remain the property of the Lead Agency. The Lead Agency shall make such documents available to the requesting Party within a reasonable time, at cost following the requesting Party's request for access to, review of, and/or copies of any such documents.

Section 14. Inspection of Books and Records.

The Parties to this Agreement shall maintain all books, documents, papers, accounting records and the other documentation relating to Program and Projects contemplated by this Agreement and shall make such materials available to the other Parties, USDOT, IDOT and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspections at its office during the period when this Agreement is in force or until any impending litigation, or claims are resolved. Additionally, any Party and the USDOT, IDOT, and their duly authorized representatives shall have the right to review, copy and use any and all documents which have been prepared or created or which will be prepared and created in connection with the Program and Projects contemplated by this Agreement for the purposes of undertaking one or more audits thereof.

Section 15. Compliance with Laws and Regulations.

The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative agency or lawfully constituted tribunal in any manner affecting their performance of this Agreement. Such Federal requirements may be further articulated in **Exhibit C**, the Grant Agreement.

Section 16. Governing Law; Venue.

This Agreement shall be governed by the laws of the State of Illinois. Venue and jurisdiction of any suit or cause of action arising in connection with this Agreement shall lie and be maintained exclusively in Champaign County, Illinois or the Illinois Court of Claims depending on the requirements of law.

Section 17. Cost Principles.

In order to be reimbursed with federal funds, the Parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project. The Parties are aware such requirements exist and are willing to assist to help the Lead Agency comply with these Cost Principles.

Section 18. Procurement and Property Maintenance Standards.

The Parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.36. The Lead Agency shall assist other Parties in compliance with these procurement and property maintenance management standards.

All Parties shall assist CUMTD, on behalf of the Lead Agency, to collect the data necessary to track and report on any property acquired for the FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically report results of the data for each measure to the CUMTD, for USDOT use, as required.

Section 19. Force Majeure.

- a) Timely performance of the Parties is essential to this Agreement. However, no Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts any Party. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to completed performance under this Agreement. For purposes of this Agreement, Force Majeure shall mean and include fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against any of the Parties, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other facts of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure may entitle the Lead Agency to extra reimbursable expenses or payment.
- b) This relief set forth in a) of this section is not applicable unless the affected Party does the following:
 - 1) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - 2) provides the other Party with prompt written notice of the cause and its anticipated correction.

Section 20. Reserved.

Section 21. Civil Right Compliance.

The Parties shall comply with the regulations of the United State Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled,

“Equal Employment Opportunity”, as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

The Parties shall assist the CUMTD or the Lead Agency to collect the data necessary to track and report on any non-discrimination requirements identified in the FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically report results of the data for each measure to the address provided by the Lead Agency or CUMTD for USDOT use, as required.

Section 22. Disadvantaged Business Enterprise (DBE) Program Requirements.

- a) The Parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26. The Parties shall also meet all requirements deemed necessary by the Lead Agency or IDOT in order to help comply with the Disadvantaged Business Enterprise Program.
- b) The Parties shall assist the CUMTD, the Lead Agency, or IDOT to collect the data necessary to track and report on any Disadvantaged Business Enterprise Program requirements identified in the FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically report results of the data for each measure for USDOT use, as required.
- c) Reserved.
- d) The Lead Agency shall set an appropriate DBE goal consistent with IDOT’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The CUMTD shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting such actions as required by IDOT.
- e) If required, the Parties shall follow other parts of USDOT’s DBE program referenced at web address <http://osdbuweb.dot.gov/DBEProgram/>, including necessary attachments.
- f) The Parties shall not discriminate on the basis of race, color, national origin, or sex in the Award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program of the requirements of 49 CFR Part 26. The Parties shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the Grant. Upon notification to the Lead Agency of its failure to carry out its approved program, USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq*).
- g) Each contract the Lead Agency signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance:

The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

Section 23. Debarment Certifications.

The Parties are prohibited from making any awards or payments to contractors or related to subcontractors when such contractor or subcontractor is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, “Debarment and Suspension”. By executing this agreement, each Party certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Programs under Executive Order 12549 and further certifies that it will not do business with any other person that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The Parties to this Agreement shall require any person obligated under a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification. The Parties shall help the CUMTD or IDOT comply with Executive Order 12549.

The Parties shall assist the CUMTD or IDOT to collect the data necessary to track and report any Debarment Certification requirements identified by FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically report results of the data for each measure for USDOT use, as required.

Section 24. Lobbying Certification.

In executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

- a) No federal appropriated funds have been paid or will be paid by or on behalf of the Parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connections with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with federal contracts, grants, loans, or cooperative agreement, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- c) The Parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d) All Parties shall also meet all requirements deemed necessary by the Lead Agency or IDOT in order to help the Lead Agency or IDOT comply with this Lobbying Certification.

All Parties shall assist the CUMTD on behalf of the Lead Agency or IDOT to collect the data necessary to track and report on any Lobbying Certification requirements identified in the FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically reports results of the data for each measure for USDOT use, as required.

Section 25. Federal Funding Accountability and Transparency Act Requirements.

- a) Any recipient or sub-recipient of funds under this Agreement agrees to comply or shall be contractually required to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms:

<https://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

All Parties shall also meet requirements deemed necessary by the CUMTD in order to help the CUMTD, the Lead Agency or IDOT comply with FFATA requirements.

The Parties shall assist the CUMTD to collect the data necessary to track and report on any FFATA requirements identified in the FY 2014 TIGER Discretionary Grant Agreement, attached as **Exhibit C**, and shall periodically report results of the data for each measure for USDOT use, as required.

- b) For sub-awards greater than \$25,000, the Lead Agency, as a recipient of federal funding, shall:
- 1) Obtain and provide to IDOT and the Federal government, a Central Contracting (CCR) number with the Federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR website whose address is: <http://www.bpn.gov/ccr/default.aspx>;
 - 2) Obtain and provide to IDOT and the Federal government, a Data Universal Numbering Systems (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3) Report the total compensation and names of its top five most highly compensated Executives, to IDOT and the Federal government if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually;
 - ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC);
 - iii. Each Party shall report each obligating action described in Paragraph a.1. of Appendix A to Part 170 – Award Term to <http://www.fsr.gov>; and
 - iv. For subaward information, each Party shall report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made November 7, 2010, the obligation must be reported by no later than December 31, 2010).

Section 26. Single Audit Report.

- a) All Parties shall assist the CUMTD and the Lead Agency to comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- b) If threshold expenditures of \$500,000 or more are exceeded during the Lead Agency's fiscal year, the Lead Agency must submit a Single Audit Report and Management Letter (if applicable) to the Agency and address provided by the U.S. Department of Transportation, Federal Highway Administration, Illinois Division.
- c) If expenditures are less than \$500,000 during the Lead Agency's fiscal year, the Lead Agency must submit a statement to the Agency at address provided by the U.S. Department of Transportation, Federal Highway Administration, Illinois Division, which shall state as follows:

"We did not meet the \$500,000 expenditure threshold and therefore are not required to have a single audit performed for FY ____".
- d) For each year the project remains open for federal funding expenditures, the Lead Agency will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

Section 27. Grant Agreement.

Due to timing constraints, the Parties recognize that a draft TIGER Grant Agreement is attached to this Agreement as **Exhibit C**. The Parties agree that upon execution of the TIGER Grant Agreement between USDOT and the Lead Agency, this executed Agreement shall be substituted as **Exhibit C**. The Parties agree to take such actions as are necessary to comply with the terms of this executed Grant Agreement.

Section 28. Termination.

This Agreement may be terminated for any of the following conditions:

- a) By mutual agreement and consent of all of the chief administrative officers of the Parties, but only before execution of any construction contract by IDOT.
- b) By final acceptance of all of the Projects, by the Lead Agency, receipt of the final TIGER reimbursement from the Federal Government and IDOT, and by the payment of the final reimbursement required as between the Parties .

Section 29. Signatory Warranty.

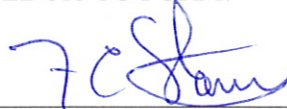
The signatories to this Agreement warrant and represent that each has the authority to enter into this Agreement on behalf of the Party represented.

IN TESTIMONY WHEREOF, the University, CUMTD, Urbana and Champaign have executed duplicate counterparts to effectuate this Agreement.

**CHAMPAIGN-URBANA MASS
TRANSIT DISTRICT**

By: 
Managing Director

APPROVED AS TO FORM:


Corporate Counsel

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS**

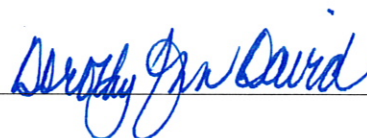
By: 
Comptroller

By: 
Facilities & Services Executive Director

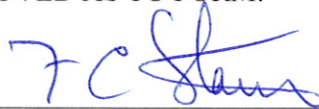
APPROVED AS TO FORM:

By: 
University Counsel

CITY OF CHAMPAIGN

By: 
City Attorney

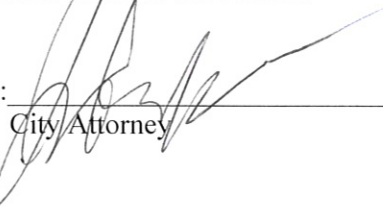
APPROVED AS TO FORM:


City Attorney

CITY OF URBANA

By: 
City Attorney

APPROVED AS TO FORM:

By: 
City Attorney