

**SUBRECIPIENT AGREEMENT BY AND BETWEEN
THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS AND THE
REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA**

This Subrecipient Agreement (“the Agreement”), made and entered into this _____ day of _____, 2019 by and between the Association of Central Oklahoma Governments (“ACOG”) and the Regional Transportation Authority of Central Oklahoma (“RTA”).

RECITALS

WHEREAS, in 2009, ACOG formed the Regional Transportation Dialogue committee comprised of local communities, elected officials, chambers, and business leaders to engage in a discussion of regional transportation alternatives; and

WHEREAS, six local communities (Del City, Edmond, Midwest City, Moore, Norman and Oklahoma City) contributed \$250,000 in local funds for a Commuter Corridors Study (CCS), which local funds were used to match \$1,000,000 of ACOG’s FHWA Planning (PL) funds; and

WHEREAS, after the CCS was completed, the same six communities pledged approximately \$2 million in local funding and formed an RTA Task Force to guide the establishment of the RTA; and

WHEREAS, in February 2019 the local communities signed a Trust Indenture to formally create the Regional Transportation Authority of Central Oklahoma; and

WHEREAS, in the FY 2020 Unified Planning Work Program, ACOG identified certain funds to update the Commuter Corridors Study and develop a system integration plan for the RTA service area; and

WHEREAS, there are funds remaining on deposit with ACOG in the amount of \$_____ (RTA Funds) (consisting of \$_____ in FTA Grant funds, and \$_____ in FHWA funds) which have been planned and programmed for the benefit of RTA (hereinafter referred to jointly as “RTA Funds”); and

WHEREAS, RTA intends to procure services to update the RTA Commuter Corridors Study and develop a system integration plan which work, upon execution of this Agreement, will be eligible for reimbursement from the RTA Funds under the Grants; and

WHEREAS, this Subrecipient Agreement is the most efficient means for RTA to complete the work and obtain reimbursement under the Grants.

NOW, THEREFORE, the parties do mutually agree as follows:

PART I
PROJECT

1.01. RTA intends to procure services to update the RTA Commuter Corridors Study and develop a system integration (“Project”) in an amount to be funded by the RTA Funds.

Part II
FUNDING

2.01. There are RTA Funds available in the total amount of \$_____ (consisting of \$_____ in FTA Grant funds, and \$_____ in FHWA funds).

2.02. For RTA to obtain from ACOG the RTA Funds for the Project, RTA shall submit requests for reimbursement to the ACOG designated project manager. The requests shall include contractor invoices and an RTA certification that the work is complete and eligible for payment pursuant to this Agreement. ACOG shall process properly submitted requests for reimbursement within thirty (30) days of receipt by ACOG. Payments shall be made to Treasurer, Regional Transportation Authority of Central Oklahoma and sent to:

Regional Transportation Authority of Central
Oklahoma
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: James Boggs

2.03. In no event shall reimbursement for Project costs from the RTA Funds exceed the amount on deposit for the RTA Funds. If the FTA or FHWA determines that any federal grant funds were not properly expended by RTA, then RTA agrees to reimburse the FTA, FHWA or ACOG for any sums deemed ineligible for payment with grant funds or improperly expended.

PART III
GRANT REQUIREMENTS

3.01. The terms of FTA's Grant Award for Grant No. _____ and FHWA's Grant Award for Grant No. _____ respectively, and the FTA Certifications and Assurances FFY 2019, and the FTA Master Agreement, FTA MA (25), dated October 1, 2018, including all documents incorporated therein, and all applicable laws, regulations, and circulars, are incorporated herein by reference as if fully set forth herein. RTA shall be a subrecipient under the Grants. For the purposes of this Agreement unless the context clearly indicates otherwise, each reference in the forgoing documents to "Recipient" or "Applicant" shall mean RTA and, where appropriate to make RTA obligations under such documents due and owing to ACOG, "Government" or "FTA" shall mean ACOG. RTA shall perform the Project work in strict accordance with the provisions of the Grants.

3.02. In addition, RTA shall comply with the following:

3.02a Federal Changes: RTA shall at all times comply with all applicable Federal statutes, executive orders, FTA circulars, 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 subrecipient agreement. RTA's failure to comply shall constitute a material breach of this Agreement.

3.02b. RTA shall make all applicable Certifications and Assurances which the FTA may require of grant recipients, and any revised, updated or reissued versions of the Certification and Assurances.

3.02c. The parties agree that RTA's Certifications and Assurances are material representations of fact upon which ACOG has relied in deciding whether to enter into this Agreement and award the subgrant from the Grant proceeds. The submission of the Certification and Assurances is a prerequisite for the award of the subgrant from the Grant proceeds under various federal laws including 31 U.S.C. 1352. Failure to make the required certifications or the making of false certifications is punishable under federal law and can include civil penalties in excess of \$10,000 for each unmade or incorrect certification.

3.02d. Procurement: In accordance with FTA Circular 4220.1E, RTA shall adhere to the applicable federal procurement regulations, including, but not limited to, the following:

General: RTA may enter into third-party contracts for procurement of services required to update the RTA Commuter Corridors Study and develop a system integration plan. RTA must ensure that these services are obtained in free and open competition, prices are fair and reasonable, and are in compliance with the provisions of applicable Federal, State, and local laws.

This includes affording procurement opportunities to small and disadvantaged business enterprises.

Conformance with State and Local Law: RTA shall use its own procurement procedures that reflect State and local laws and regulations as applicable, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this Agreement.

Contract Administration System: RTA shall maintain a contract administration system that ensures that third-party contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Statutory and Regulatory Requirements: RTA is responsible to comply with all statutory and regulatory requirements applicable to grantee procurements (such as Disadvantaged Business Enterprise, Clean Air, and Buy America) contained in the FTA Master Agreement. RTA is responsible for evaluating these requirements for relevance and applicability to each procurement. RTA agrees to comply with all applicable statutory and regulatory requirements referenced in the FTA Master Agreement. Further guidance concerning these requirements and suggested wording for contractual clauses may be found in FTA's Third Party Procurement Manual (FTA Circular 4220.1E http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html, and the Best Practices Procurement Manual, http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6_037.html)

3.02e. Access to Records and Reports: In accordance with 49 CFR 633.17, RTA shall require third-party contractors to provide ACOG, RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives access to the Contractor's records related to the contracts for which RTA receives reimbursement, in whole or in part, with funds from the Grant.

RTA shall require the contractor to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

RTA shall require the contractor to maintain all books, records, accounts, and reports for a period of not less than three years after the date of termination or expiration of its contract, except in the event of litigation or settlement of claims, in which case, contractor shall agree to maintain the same until ACOG, RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

RTA will give ACOG, the FTA, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and 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 standards of agency directives. RTA will also require its third-party contractors to do the same.

3.02f. Breaches and Dispute Resolution:

Claims for Damages. Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies. Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between RTA and ACOG arising out of or relating to this subrecipient agreement or its breach may be decided by a mutually agreeable form of alternative dispute resolution, or in a court of competent jurisdiction within the State of Oklahoma.

Rights and Remedies. The duties and obligations imposed by the Agreement documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed by law. No action or failure to act by ACOG or RTA shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

3.02.g. ACOG Oversight: ACOG may inspect the Project to ensure compliance with the Agreement. Inspection by ACOG of the project work does not relieve RTA of its responsibilities and liabilities as the responsible party for carrying out the Grants.

3.02.h Termination of Subrecipient Agreement: In the event that RTA fails to perform services in the manner called for by the Agreement, ACOG may terminate the Agreement for default. Termination shall be effective by serving a notice of termination on RTA setting forth the manner in which RTA is in default. RTA will only be reimbursed for services performed in accordance with the manner of performance set out in the Agreement.

(1) Opportunity to Cure: ACOG in its sole discretion may, in the case of termination for breach or default, allow RTA time to cure the default. In such case, the notice of termination will state the time period in which

cure is permitted and other appropriate conditions. If RTA fails to remedy to ACOG's satisfaction the breach or default or any terms, covenants, or conditions of this Agreement within ten (10) business days after receipt of the written notice from ACOG setting forth the nature of the breach or default, ACOG shall have the right to terminate the Agreement without any further obligation to RTA. Any such termination for default shall not in any way operate to preclude ACOG from also pursuing all available remedies against RTA for said default or breach.

3.03. Contractors and Subcontractors: RTA shall place on its contractors and subcontractors those obligations which the Master FTA Agreement requires recipients to include in third-party contracts and subcontracts. RTA agrees to include in its contracts entered into and for the Project the same certifications, assurances, and agreements which RTA is obligated under Section 3.01.

3.04. No Obligations to Third Parties: RTA acknowledges and agrees that, notwithstanding any concurrence by the Federal Government and/or ACOG in or approval of a third-party contract, absent express written consent by the Federal Government and/or ACOG, neither the Federal Government nor ACOG is a party to the third-party contract and shall not be subject to any obligations or liabilities to the third-party contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract.

RTA agrees to include the above clause in each third-party contract for which RTA will receive reimbursement, in whole or in part, from Grant funds. It is further agreed that the clause shall not be modified, except to identify the third-party contractor who will be subject to its provisions.

3.05. Incorporation of Federal Transit Administration Terms: The proceeding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Agreement. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of conflict with other provisions contained in this Agreement, RTA shall not perform any act, fail to perform any act, or refuse to comply with any ACOG requests which would cause RTA to be in violation of the FTA terms and conditions.

3.06. Recitals: The recitals are incorporated into this Agreement.

PART IV NOTICES

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when either: personally delivered; or received by certified or registered mail, first class, postage paid,

return receipt requested to any party hereunto as follows:

If to ACOG: Association of Central Oklahoma Governments
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: Executive Director

If to RTA: Regional Transportation Authority of Central Oklahoma
4205 N. Lincoln Blvd.
Oklahoma City, OK 73105
Attn: Chair, Board of Directors

PART V
SEVERABILITY

5.1. The parties agree that the provision of federal funds for the Project under this Agreement makes the federal statutes, rules, regulation, circulars and other forms of written guidance controlling over any inconsistent state or local statutes, rules and regulations. To the extent not covered by any federal statute, rule, regulation, circular, or other written guidance, the parties agree that if any provision of this Agreement shall contravene, or be invalid under, the applicable laws of the particular state, or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid in the same particular state or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

PART VI
ACKNOWLEDGMENT AND EXECUTION

This Agreement shall inure to, be to the benefit of, and bind ACOG and RTA and their respective successors and/or assigns as if they had been named therein.

THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001

Executed this ___ day of _____, 2019.

THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS

By: _____
Its

Attest: _____

For REGIONAL TRANSPORTATION AUTHORITY OF CENTRAL OKLAHOMA

By: _____
Its

Attest: _____

DRAFT