

FY2016 FEDERAL TRANSIT ADMINISTRATION
SECTION 5310 GRANT FUNDING
SUBRECIPIENT AGREEMENT

This Subrecipient Agreement (the “Agreement”) is made and entered into as of _____, 2016, by and between **the City of Laredo (the “CITY”)** , a municipal corporation chartered under the laws of the State of Texas and **Webb County Community Action Agency - El Aguila Rural Transportation (the “COMPANY”)**. The City and COMPANY may sometimes refer to in this Agreement individually as a “Party” or jointly as “Parties”.

In consideration of the mutual promises, covenants, and agreements herein contained, the sufficiency in which is hereby agreed to by the Parties, the Parties hereto agree as follows:

ARTICLE 1
SCOPE OF AGREEMENT AND DEFINITIONS

1.1 **Intent.** This Agreement expresses the terms and conditions pursuant to which the CITY and the Laredo Transit Management Inc. (“EL METRO”) administers federal funds received pursuant to the Enhanced Mobility of Seniors and Individuals with Disabilities Program set forth under 49 U.S. Section 5310 (“Section 5310”) to eligible subrecipients within the Laredo Urbanized Area. This Agreement includes certain mandatory requirements under federal law by which the COMPANY must comply to be eligible, and terms by which the COMPANY must comply to maintain its eligibility, for receipt of any federal funds under Section 5310. Any subrecipient should be prepared to abide by all applicable federal requirements as specified in Section 5310. FTA Circulars C 9070.1G (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/enhanced-mobility-seniors-and-individuals-disabilities> and 4702.1B (http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf), and the most current FTA Master Agreement (<http://www.fta.dot.gov/documents/20-Master.pdf>), and the most current Certifications and Assurances for FTA Assistance Programs (<https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/fiscal-year-2016-annual-list-certifications>)

1.2 **Definitions.** As used in this Agreement, the following terms and expressions shall have the indicated meanings:

“**Agreement**” means this document and any and all exhibits attached hereto.

“**COMPANY**” means **Webb County Community Action Agency - El Aguila Rural Transportation** acting by and through its employees, officers, affiliates, authorized subcontractors and authorized agents.

“Party” or “Parties” mean **Webb County Community Action Agency - El Aguila Rural Transportation** and **The City of Laredo**, in their respective capacities as parties to this Agreement.

“EL METRO” means **Laredo Transit Management Incorporated**, acting by and through its employees, officers and authorized agents; the City of Laredo Public Transportation Provider.

“Section 5310” means the Enhances Mobility of Seniors and Individuals with Disabilities Program which is a U.S. Department of Transportation and Federal Transit Administration program intended to enhance the mobility for seniors and persons with disabilities by providing funds for programs to serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (‘ADA’) complementary paratransit services. Section 5310 is codified at 49 U.S.C. Section 5310.

“Subrecipient” means any state or local government authorities, private non-profit organizations, or operators of public transportation that receive a grant indirectly through an authorized recipient like The City.

“Vehicle” means any machine with at least one axle operated by any source of fuel that has been purchased, obtained, or leased with the use of any amount of federal funds for the purpose(s) set forth in Section 5310.

ARTICLE 2

RESPONSIBILITIES OF COMPANY

2.1 Subrecipient. For COMPANY, as a Subrecipient, to receive any federal funds through the CITY pursuant to Section 5310, must maintain full and complete compliance with any and all applicable federal laws, ordinances, statutes, rulings, codes, any amendments thereto, or any similar guideline promulgated by the U.S. Department of Transportation, the Federal Transit Administration (“FTA”) any other federal entity with similar authority over the distribution of funds pursuant to Section 5310 as set forth herein and any and all such laws, ordinances, statutes, rulings, codes, and any amendments thereto which the CITY and EL METRO must comply in its role as administrator under Section 5310. Subrecipient must certify to the CITY and EL METRO that it is in compliance with the relevant federal requirements as set forth herein prior to or at the time of execution of this Agreement, and subsequent certifications are required annually once the FTA publishes any annual list of certifications and assurances.

2.2 Eligibility. In addition to the eligibility requirements otherwise referenced herein, the following are the minimum requirements that the COMPANY must meet in order to become eligible and to maintain its eligibility under Section 5310:

- 2.2.1 The COMPANY must incorporate and include any and all guidance set forth in the Federal Transit Administration Circular 9070.1G into its internal policies and procedures.
- 2.2.2 The COMPANY must maintain financial management records consisting of , at a minimum:
 - (a) Accounting records.
 - (b) Internal control records.
 - (c) Budget control records.
 - (d) Copies of all annual financial reports.
 - (e) Copies of A-133 audit report and finding set forth therein which includes copies of any and all findings resolutions.
 - (f) The COMPANY must follow all the established asset management policies, regarding useful life, transfers of equipment, determining fair market value, maintenance, ad disposition of assets.
- 2.2.3 The COMPANY must permit the CITY, upon five (5) business days advanced written notice, to review, inspect, copy, and/or further investigate the contents of any report, record, claim, complaint, resolution, or any other document produced or retained related to the COMPANY's compliance under this Agreement.
- 2.2.4 The COMPANY must be registered with and have a D-U-N-S Number acquired through Dun & Bradstreet prior to execution of this Agreement.
- 2.2.5 In accordance with FTA Circular C 9070.1G, the COMPANY is not required by FTA to have drug and alcohol testing programs. The Drug-Free Workplace requirement does not apply to the COMPANY. However, FTA Section 5310 program subrecipients must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses (49 CFR Part 382). In addition, FTA Section 5310 program subrecipients are welcome to participate in training offered for drug and alcohol awareness which is designed to help recognize a potentially impaired employee.
- 2.2.6 If the COMPANY receives Two Hundred Fifty Thousand Dollars (\$250,000.00) or more of FTA grant money, and uses portions of that funding for planning, capital, and/or operating activities, the COMPANY must comply with the Disadvantaged Business Enterprise (DBE) Program.
- 2.2.7 If the COMPANY meets the following threshold requirements, it must have Equal Employment Opportunity (EEO) Program and Policy in place:

- (a) The COMPANY has 50 or more transit-related employees; and
 - (b) The COMPANY receives capital or operating assistance in excess of One Million Dollars (\$1,000,000.00); or
 - (c) The COMPANY receives planning assistance in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00).
 - (d) Any updates and/or amendments to this policy must be promptly provided to EL METRO.
- 2.2.8 The COMPANY must develop a Title VI program and adhere to the program's policies and regulations.
- (a) Detailed instructions on compliance with Title VI requirements are available in FTA C 4702.1B ([http://www.fta.dot.gov/documents/FTA Title VI FINAL.pdf](http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf)).
 - (b) The COMPANY must provide EL METRO with an electronic copy of this Title VI program within forty-five (45) days of being granted an award under Section 5310.
 - (c) Any Title VI program is to be reviewed, evaluated, and updated at least every three (3) years.
 - (d) Any updates and/or amendments to any Title VI program must be promptly provided to EL METRO.
 - (e) A Title VI Poster should be posted on the Vehicle. Verification of this posting is required to be submitted quarterly to EL METRO.
 - (f) The COMPANY should have a procedure and policy in place for receipt of, handling, management, and responding to any Title VI complaint. Quarterly reports must be submitted to EL METRO including any changes to any such policy and reports of any Title VI complaints and resolutions.
 - (g) Limited English Proficiency (LEP) Standards Procedures should be in place (if applicable). A copy of any such procedure and/or change in any such procedure must be submitted to EL METRO on a quarterly basis.
 - (h) The COMPANY is responsible for ensuring any of its third-party contracts are complying with Title VI and with the COMPANY's title VI Program.
- 2.2.9 Any Vehicle obtained must be procured by, from, or through the Texas Department of Transportation's State Contract.

2.2.10 Vehicle Use and Utilization guidelines must be followed at all times:

- (a) Monitor and enforce “under utilization” requirements including reposition and redistribution of the assets. Evaluations must be conducted at least every six (6) months.
- (b) Lease agreements for assets.
- (c) Liens on assets.
- (d) Assets inventory and condition assessment are requires to be conducted annually.
- (e) A copy of the COMPANY’s Maintenance Plan is to be provided to and on file with EL METRO.
- (f) Any updates and/or amendments to any maintenance plan are to be promptly submitted to EL METRO. All vehicles are to be promptly inspected within ten (10) days of execution of this Agreement by **EL METRO at 401 Scott**, and shall continue to be inspected by EL METRO on a quarterly basis. EL METRO shall provide at prior notice of at least thirty (30) days prior to any scheduled quarterly inspection. At least ten (10) days prior to any disposition of any Vehicle or other property, EL METRO must inspect said Vehicle and/or property.
- (g) Copies of any and all maintenance records for any applicable vehicles are to be made available to EL METRO and copies of all maintenance are to be provided to EL METRO at the time of each inspection. Any copies provided by the COMPANY shall be retained by EL METRO until the vehicle is no longer operational; no longer being used by the COMPANY in any matter; no longer owned by the COMPANY; where the COMPANY is no longer complaint with the terms of this Contract; and/or, where the COMPANY is no longer a participant in this program.
- (h) Proofs of insurance for any and all applicable vehicles are to be provided to EL METRO on an annual basis. This proof of insurance must be updated with EL METRO upon renewal of purchase of a new policy and shall continue to be updated for the useful life of a Vehicle.
- (i) The COMPANY must have a written policy and procedure in place for the inspection and maintenance of any ADA-accessible vehicle. A copy of this written policy and procedure shall be

submitted to EL METRO at the time of execution of this Contract. Any revisions, amendments, additions to, or any other change to this policy shall be promptly submitted to EL METRO at the time of inspection for any such vehicle.

- (j) The COMPANY must have a written policy and procedure in place for proper handling of any instance where any piece of ADA accessible equipment has failed to operate as it should in a routine, normal matter. A copy of this written policy and procedure shall be submitted to EL METRO at the time of execution of this Contract. Any reviews, amendments, additions to, or any other change to this policy shall be submitted to EL METRO at the time of inspection for any such vehicle.
- (k) The COMPANY must have a written policy and procedure in place for submission, handling, follow-up, and notification of any claim under any warranty applicable to a federally-funded vehicle. A copy of this written policy and procedure shall be submitted to EL METRO at the time of execution of this Contract. Any revisions, amendments, addition to, or any other change to this policy shall be submitted to EL METRO at the time of inspection for any such vehicle.
- (l) Any and all capital assets purchased or obtained with Section 5310 funds must be inspected by EL METRO funds must be physically inspected by EL METRO initially within ten (10) days of execution of this Contract and on a quarterly basis thereafter. EL METRO shall provide at prior notice of at least thirty (30) days prior to any scheduled quarterly inspection. Any such inspection(s) shall be performed using the "FTA Useful Life of Transit Buses and Vans" as set forth in Report No. FTA VA-26-7229-07.1, any additions, updated, amendments, or ruling thereto, and any other information or guidelines promulgated, endorsed, or released by the FTA relating to the useful life of a Vehicle.

2.2.11 Disposition of Assets Upon Request

- (a) The FTA requires a Disposition Policy detailing when dispositions are permitted, what exceptions to the rule will be approved, and under what circumstances.

- (b) Any updates and/or amendments to this policy must be promptly provided to EL METRO.
- 2.2.12 All vehicles funded through Section 5310 must be licensed as an ambulette consistent with state and federal requirements if they are being used for medical transportation. THE CITY must be included as a lien holder on any such asset.
- 2.2.13 The COMPANY must keep and maintain all documents and files necessary to document its compliance with FTA certifications and assurances.
- 2.2.14 The COMPANY must permit EL METRO with five (5) business days prior written notice, to inspect any records retained as evidence of compliance with Section 5310.
- 2.2.15 Where a Vehicle, equipment, or facility is acquired, built and/or improved by the COMPANY using FTA funds, provisions must be made with regard to said Vehicle, equipment, and/or facility to Vehicle, equipment, and/or facility.
- 2.2.16 Procurement:
 - (a) When procuring property, supplies, equipment, and/or services with funds from an FTA grant, the COMPANY must comply with the FTA procurement requirements set forth at 49 CFR part 18 and guidance contained in the most recent FTA Circular 4220.1.
 - (b) The COMPANY shall certify to EL METRO and the FTA, pursuant to 49 CFR 18.36, that its procurements and procurement system will comply with all the applicable third-party procurement provisions of federal laws, regulations, and directives, except to the extent the FTA has expressly approved otherwise in writing.
- 2.2.17 The COMPANY must at all times comply with the National Environmental Policy Act (NEPA) when utilizing funds provided by the FTA or any other applicable federal agency.
- 2.2.18 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations require the U.S. Department of Transportation and FTA to make environmental justice a part of their mission. To do so, the US DOT and FTA require the COMPANY to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on the US DOT or FTA programs, policies and activities on minority populations or low-income populations.

- 2.2.19 The COMPANY agrees to comply with all applicable civil rights statues and implement any and all necessary regulations to ensure compliance therewith including, but not limited to:
- (a) The COMPANY agrees to comply, and assurances compliance of any third party contractor, with the provisions of 49 U.S.C. 5332 which prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability, and prohibit discrimination in employment and business opportunity.
 - (b) The COMPANY agrees to comply, and assures the compliance of any third-party contractor, with all applicable laws and regulations pertaining to nondiscrimination on the basis of disability.
- 2.2.20 All drivers or operators of any Vehicle designed to transport sixteen (16) or more passengers, including the driver, or all drivers or operators of any Vehicle which has a gross combination weight rating of Twenty Six Thousand One (26,001) pounds or more must have a valid Commercial Driver's License (CDL) in the state in which the Vehicle is operated. Mechanics that drive and/or operate such Vehicles must also have a valid CDL in the state in which the Vehicle is operated.
- 2.2.21 The COMPANY shall provide EL METRO with a list of all drivers or operators of any Vehicle employed by the COMPANY as well as all necessary documents to ensure all drivers and/or operators are in compliance with applicable local, state, and federal requirements.
- 2.2.22 Reporting requirements for the COMPANY:
- (a) The following reports must be submitted to EL METRO on at least a quarterly basis:
 - 1. Financial Reporting including accrual basis, cost incurred and available balances.
 - 2. Milestone Progress Report including explanations for changes to estimate milestone progress dates.
 - 3. Federal Financial Reports including cash transaction, expenditures, unliquidated obligations, and remaining share for both FTA and the COMPANY.
 - 4. All the programs measures including gaps in service, ridership, service improvements, and physical improvements.
 - (b) Performance Measures. The COMPANY must document any evidence, statistics, receipts,

invoices, or any other documentary proof that the coordinated plan and Section 5310 programs are resulting in more people receiving access to jobs and medical care because of the programs if applicable.

- (c) EEO, DBE, Title VI, LEP programs. The COMPANY must monitor and report to EL METRO any involvement in all claims and complaints whether made to the COMPANY directly, FTA, State of Texas, or Department of Justice. It is the COMPANY's responsibility to insure that all employees, agents, and/or subcontractors are following all FTA and State guidelines including posting contract information for these agencies to allow for the filing of any complaint.

2.2.23 To promote environmental justice, the COMPANY must evaluate significant populations and create plans for said populations upon being granted any award under Section 5310.

2.2.24 The COMPANY must permit EL METRO to conduct any and all oversight necessary with prior written notice to the COMPANY in order to ensure compliance with the FTA and any other federal requirement including quarterly oversight reviews and evaluations. Any area noted as "insufficient" during a quarterly oversight review must be brought into compliance prior to the next scheduled oversight review. Any noncompliance, willful or otherwise, must be reported to the applicable federal agency and may cause the COMPANY to become ineligible to receive any further federal funds.

2.3 Training. The COMPANY shall regularly offer training to educate its personnel as to the procedures and protocol necessary to ensure compliance with Section 5310.

2.4 Compliance with Law. In performing the obligation under this Agreement, the COMPANY shall comply with all the applicable federal, state, and local laws, regulations, ordinances and rulings, including, but not limited to, those pertaining to the health, safety, employment and environmental matters.

2.5 The COMPANY's General Requirements and Warranties.

The COMPANY's represents and warrants to EL METRO that, while this Agreement remains in force:

- (a) it has, and it will have, full authority:
 - (i) to execute this Agreement; and
 - (ii) to ensure compliance with the requirements of Section 5310 at the execution of this Agreement and thereafter;
- (b) The COMPANY is a corporation duly organized and in good standing under the laws of its jurisdiction of organization and any jurisdiction where it regularly conducts business;
- (c) the execution of this Agreement is not in contravention or conflict with any term or provision of its articles of incorporation or bylaw, or any agreement or instrument to which it is a party;
- (d) this agreement is legally valid, binding and enforceable against The COMPANY;
- (e) The COMPANY will, and will cause its personnel to, comply with all applicable laws, rules and regulations governing the performance of each of its obligations under the Agreement and shall maintain, and cause to be maintained, in good standing, any requisite license(s), regulation(s), approval(s), and exemption(s), required for it or its personnel to perform its respective obligations under this Agreement;
- (f) any products, material, or equipment provided or obtained by the COMPANY will comply with the terms of this Agreement and Section 5310;
- (g) The COMPANY will perform, comply with, and ensure that all its personnel comply with, its obligations under this Agreement and Section 5310 in a timely fashion consistent with standard practices in the industry (time is of the essence for all of the COMPANY's obligations hereunder);
- (h) The COMPANY will ensure that the services are performed with due diligence, reasonable skill and care and in accordance with best industry practice at all time;
- (i) The COMPANY and all COMPANY personnel will comply with, and ensure that the products and services it provides comply with, all applicable laws and other governmental, statutory, and/or regulatory requirements and guidance which may from time to time be applicable to the Vehicles including, without limitation, all applicable regulations regarding Texas or federal department of transportation or

local rules and regulations regarding fuel and safety requirements, all Occupational Safety and Health Administration regulations and related site safety guidelines, and site work permitting requirements and all environmental regulations;

(j) there is no material threatened or pending legal proceeding or government action to which the COMPANY is a party, or to which any of its property is subject, which could materially and adversely affect its ability to enter into this Agreement and/or perform all of its obligations hereunder;

(k) The COMPANY will ensure that its personnel will, at all times, behave in a courteous, professional and appropriate manner toward any individual encountered while undertaking any obligation of this Agreement, and the COMPANY will further ensure that none of its personnel will act or make any statement, post anything in the internet, or otherwise behave on any matter that is reasonably likely to result in any prejudice to EL METRO (including to its reputation);

(l) The COMPANY will ensure that its personnel have appropriate experience, qualifications and expertise to perform obligations herein;

(m) The COMPANY will ensure that all its authorized subcontractors, authorized material-men, and other authorized personnel providing work or material for the project are timely paid, and that no such party places or attempts to place any lien on the project property or any funds used in connection therewith;

(n) The COMPANY will ensure that no activity performed by it under this Agreement shall void any manufacturer warranties on any equipment, materials and/or products furnished hereunder.

The COMPANY shall fully and effectively indemnify and keep indemnified EL METRO from and against, and agrees to pay on demand, any and all losses, liabilities, damages and expenses (including legal fees on a full indemnity basis) incurred by or awarded against the COMPANY as a result of any action or inaction and/or act or omission by the COMPANY, its employees, agents, or other personnel under the guise of compliance or actual compliance with any federal regulations as set forth in the Agreement.

In addition to, and without prejudice to, all other rights under this Agreement, EL METRO may suspend this Agreement for any period and/or terminate this Agreement on written notice if it learns information giving it a factual basis to conclude that the COMPANY has breached the warranties, representations and undertaking given in this Agreement, provided that prior to any suspension or termination in accordance with the

foregoing, EL METRO agrees to give the COMPANY a minimum of fifteen (15) days written notice and an opportunity to cure (and where it is not commercially reasonable for the COMPANY to fully effect a cure within the fifteen (15) day period, it shall be sufficient for the COMPANY to commence implementation of the cure within such fifteen (15) day period and thereafter proceed diligently to cure the breach).

The representations and warranties of the COMPANY set forth in this Agreement shall survive the termination hereof.

ARTICLE 3 EL METRO'S RESPONSIBILITIES

3.1 Administration of Section 5310. At all times during the course of this Agreement, EL METRO will ensure that the COMPANY is in full compliance with all federal requirements set forth herein as may be amended from time to time. To do so, EL METRO shall continuously and diligently review the activities, actions, omissions, or inaction of the COMPANY as well as communicate with the authorized representative of the COMPANY below via telephone, facsimile, email, ordinary US Mail, and/or via any other commercially reasonable means. Any on-site review of the COMPANY shall be conducted at a mutually agreed-upon date and time so as not to unreasonably interfere with the daily operations of the COMPANY.

3.2 Award of Grant Funds. The COMPANY has been awarded \$72,000.00 (Federal Share) Capital project. The COMPANY match for this project is \$18,000.00. Total Capital Project amount is \$90,000.00.

3.3 Distribution of Grant Funds. THE CITY shall disburse grant funds to COMPANY within 30 days of COMPANY's submittal of an invoice requesting funds for reimbursement. In addition to the invoice, COMPANY shall provide to EL METRO all necessary supporting documentation requested by EL METRO or THE CITY, or required under any federal or state law or regulation, for reimbursement. No funds shall be disbursed to the COMPANY unless all requested and required documentation is provided to EL METRO and THE CITY.

3.4 Compliance with Law. In performing its obligations under this Agreement, EL METRO shall comply with all applicable federal, state, and local laws, regulations, ordinances and ruling, including, but not limited to, those pertaining to health, safety, employment and environmental matters.

ARTICLE 4 TERM AND TERMINATION

4.1 Term. The initial term of this Agreement shall commence on the date of this Agreement (the "Effective Date") and shall continue indefinitely for as long as the COMPANY is in receipt of federal funds pursuant to Section 5310 (the "Commencement Date") and EL METRO is the administrator of any such funds received. The COMPANY

shall notify EL METRO in writing within five (5) days from the moment is it no longer receiving any federal funds under Section 5310. Upon receipt of such notice, EL METRO shall be entitled to a final review and evaluation of any and all documents necessary to ensure final compliance with Section 5310. EL METRO shall be entitled to a final inspection of any Vehicle purchased, obtained, and/or maintained with federal funds under Section 5310. The time referred to herein as the "Term."

4.2 Termination. Notwithstanding the above, upon a material breach of this Agreement, EL METRO shall have the right to terminate this Agreement, for cause, upon fifteen (15) days written notice and opportunity to cure to the COMPANY, provided, however, that where it is not commercially reasonable to fully effect a cure to the COMPANY within fifteen (15) day period set forth above, the COMPANY in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such fifteen (15) period and thereafter proceeds diligently to cure the breach.

ARTICLE 5 **TAXES**

5.1 The COMPANY shall be solely responsible for any and all tax implications incurred as a result and use of any federal funds under this Agreement.

ARTICLE 6 **INDEMNIFICATION AND LIMITATION OF LIABILITY**

6.1 Neither Party shall have any liability to the other Party for special, consequential, direct, or incidental damages, under this Agreement.

6.2 Dispute Resolution Procedures. In the event a dispute arises between the Parties related to this Agreement, the following process shall be followed:

(a) Each Party will designate a senior executive ("Designated Representative") to represent it in connection with any dispute that may arise between the Parties (a "Party Dispute"). The designations shall be as described elsewhere herein. Subsequent changes in a Party's Designated Representative shall be in writing and communicated in the same manner.

(b) In the event that a Party Dispute should arise, the Designated Representative will meet, with their attorneys, if they so agree, within five (5) business days after written request by any Party to any other Party (the "Dispute Notice") in an effort to resolve the Party Dispute.

(c) If the Designated Representative is unable to resolve the Party Dispute within thirty (30) business days following their first meeting, the Party Dispute will be submitted to non-binding mediation in Laredo, Texas, before mediation.

(d) In the event that the mediation process fails to result in a resolution of the Party Dispute within forty-five (45) days following receipt of the Dispute Notice, the Parties may take any action they may deem necessary to protect their interests subject to the requirements of Section 11.7.

6.3 Force Majeure. In the event that either party is prevented from performing its duties and obligations pursuant to this Agreement by circumstances beyond its control, including, without limitation, fires, floods, labor disputes, equipment failure, the interruption of utility services, the cessation of providing necessary products or services to the COMPANY by any supplier to the COMPANY, war, acts of terrorism, or Act of God (hereafter referred to as "Force Majeure"), then such party shall be excused from performance hereunder during the period of such disability ("Force Majeure Period"). If such party claims Force Majeure, such party shall notify the other party within 24 hours after it learns of the existence of a Force Majeure condition, and will also provide the other party with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. The party claiming the Force Majeure will also notify the other party within 24 hours after the Force Majeure condition has terminated. The party claiming the Force Majeure shall agree to use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event.

ARTICLE 7
NOTICES

7.1 Representatives. Each Party hereby designates the following as its representative (and its "Designated Representative" for dispute resolution purposes) for the administration of this Agreement:

**WEBB COUNTY COMMUNITY ACTION AGENCY - EL AGUILA RURAL
TRANSPORTATION:**

Telephone: _____
Fax: _____

EL METRO:

Claudia San Miguel
1301 Farragut St. / 3rd floor west
Laredo, TX, 78040
Telephone: (956)795-228 ext. 234
Fax: (956)795-2258

7.2 Notices. Notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal delivery, facsimile, or by overnight delivery carrier and shall be deemed to be delivered up receipt. For any provision within this Agreement requiring a notice, written or otherwise, where the CITY or EL METRO fails to provide

notice within the time set forth in the applicable provision, any such failure shall not relieve the COMPANY of any obligation unless the lack of notice, written or otherwise, within the time required has materially and specifically prejudiced the COMPANY in a manner that it is unable to fulfill the terms of the applicable provision. The addresses set forth below shall be the addresses used for notice purposes unless written notice of a change of address is given:

**WEBB COUNTY COMMUNITY ACTION AGENCY - EL AGUILA RURAL
TRANSPORTATION:**

Telephone: _____
Fax: _____

EL METRO:

Laredo Transit Management Inc.
1301 Farragut St. / 3rd floor west
Laredo, TX, 78040
Attn: Claudia San Miguel, Acting General Manager
Fax: (956)795-2258

ARTICLE 8
MISCELLANEOUS

8.1. Assignment. Neither Party shall have the right to assign its right or obligations hereunder and any attempted assignment shall be void; provided that such this provisions shall not apply in the context of an acquisition of either Party by asset sale, merger, change in control or operation of law (in which the Party seeking assignment agrees to give written notice to the other Party). Permitted assigns and successors in interest shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

8.2. Authorized Subcontractors. The COMPANY shall not utilize any subcontractor or any in anyway engage a subcontractor, to perform its obligations hereunder without written request to EL METRO and approval of the state by EL METRO. Such approvals shall not be unreasonably withheld. Should any subcontractor be authorized by EL METRO, the COMPANY represents that all subcontractors will comply with the terms of this Agreement and any amendment hereto.

8.3. Heading. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

8.4. No Joint Venture. The COMPANY shall perform its duties herein as an independent contractor. Nothing contained herein shall be considered to create the

relationship of employer and employee, partnership, joint venture or other association between the Parties, except as recipient and subrecipient.

8.5. Waiver. No waiver by EL METRO of any one or more defaults by the COMPANY in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

8.6. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

8.7. Governing Law, Forum and Venue. This Agreement shall be subject to and construed in accordance with the laws of the State of Texas with the courts of that State having jurisdiction to resolve all disputes which may arise under or which relate to this Agreement. Any and all claims or action arising out of or relating to this Agreement shall be filed in and heard by the state or federal courts with jurisdiction to hear such suits located in Laredo, or Webb County, Texas, and each Party hereby consents to the jurisdiction of such courts and irrevocably waives any objections thereto, including, without limitation, objections on the basis of improper venue or forum non conveniens.

8.8. Counterparts and Facsimile Execution. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any Party hereto delivering an executed counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of the counterpart executed and delivered by facsimile.

8.9. Additional Documents. The Parties agree to execute and to deliver to each other any and all other additional documents and to take any additional steps reasonably necessary to complete, to document and to carry out the business transaction completed by this Agreement.

8.10. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in all of the Parties. For all the purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

8.11. Representation Regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

8.12. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the Parties and it supersedes any prior written or oral agreements between the Parties concerning the subject matter of this Agreement. There are no representations, agreements or understanding between the Parties relating to the subject matter of this Agreement which are not fully expressed within this agreement and its exhibits.

8.13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns, affiliates and personal representatives of the Parties.

8.14. Modification. This Agreement shall not be modified, amended, or changes except in a writing signed by each of the Parties affected by such modification, amendment or change.

8.15. Further Assurances. All of the parties to this Agreement agree to perform any and all further acts as are reasonably necessary to carry out the provisions of this Agreement.

8.16. Confidentiality. Each party shall keep the terms and conditions of this Agreement confidential. Any subsequent orders, documents, or communications sent, received, negotiated, and/or executed relating to this underlying Agreement shall also remain confidential. If there is a need for either party to provide proprietary information to the other party, the Parties agree to enter into an appropriate, separate non-disclosure agreement. This Section and any related non-disclosure agreement, shall survive the termination of this Agreement.

ARTICLE 9

PROHIBITED INTEREST

THE CITY AND EL METRO's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the COMPANY, and/or any contractors, potential contractors, or parties to sub-agreements. Additionally, the COMPANY acknowledges the obligation to file the certification require by 49 CFR Part 20, "New Restrictions on Lobbying." In addition, the COMPANY shall require each of its subcontractors (and require each such subcontractor to obtain from its subcontractors of any tier) certifications that the organization will not and has not used federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of, THE CITY, EL METRO, any other agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The COMPANY and each of its subcontractors and their subcontractors (of any tier) shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contact, grant or award covered by 31 U.S.C. 1352. All disclosures required by

this section are to be forwarded 'up the chain' to the COMPANY who shall then forward the same to EL METRO.

ARTICLE 10
CLEAN WATER

(1) The COMPANY agrees to comply with all the applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The COMPANY agrees to report each violation to EL METRO and understands and agrees that the EL METRO will endeavor, in turn, to report each violation to FTA and the appropriate EPA Regional Office. Notwithstanding the above however, nothing contained herein will relieve the COMPANY of its obligations regarding notices under any applicable law, regulation or ordinance.

(2) The COMPANY also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 11
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Where Section 2.2.6 applies to the COMPANY, the following Article 11 shall also apply:

EL METRO has received the initial certifications from the COMPANY that they have complied with the requirements of 49 CFR Part 26. The COMPANY agrees for the term of this Agreement to continue to comply with said requirements, including, but not limited to establishing annual overall goals and submit said goals for FTA approval.

Without limiting the forgoing, the COMPANY and EL METRO agree as follows:

a. The COMPANY is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3%.

b. The COMPANY shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The COMPANY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the COMPANY 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 EL METRO deems appropriate. Each subcontract the COMPANY signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The COMPANY is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the

COMPANY's receipt of payment for that work from EL METRO. In addition, the COMPANY is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

d. The COMPANY must promptly notify EL METRO, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The COMPANY may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of EL METRO.

ARTICLE 12 **CLEAN WATER**

(1) The COMPANY agrees to comply with all applicable standards, other or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The COMPANY agrees to report each violation to El METRO and understands and agrees that EL METRO will endeavor, in turn, to report each violation to FTA and the appropriate EPA Regional Office. Notwithstanding the above however, nothing contained herein will relieve the COMPANY of its obligations regarding notices under any applicable law, regulation or ordinance.

(2) The COMPANY also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 13 **PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

(1) The COMPANY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the work under this Agreement. Upon execution of this Agreement, the COMPANY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the COMPANY further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the COMPANY to the extent the United States Federal Government deems appropriate.

- (2) The COMPANY also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the COMPANY, to the extent the Federal Government deems appropriate.
- (3) The COMPANY agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 14 **CIVIL RIGHTS REQUIREMENTS**

The following requirements apply to the underlying Agreement:

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

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

- (a) Race, Color, Creed, National Origin, Sex, Age – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the COMPANY agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future activities undertake in the course of the work under this Agreement. The COMPANY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed,

national origin, sex or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the COMPANY agrees to comply with any implementing requirements FTA may issue.

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

(c) Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COMPANY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the COMPANY agrees to comply with any implementing requirements FTA may issue.

(2) The COMPANY also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ARTICLE 15

NO OBLIGATION BY FEDERAL GOVERNMENT

(1) EL METRO and the COMPANY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligation or liabilities herein, the COMPANY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

(2) The COMPANY agrees to include the above clause in each subcontract finances in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 16

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. 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 a conflict with other provisions contained in this Agreement. The COMPANY shall not perform any act, fail to perform any act, or refuse to comply with any EL METRO requests which would cause EL METRO to be in violation of the FTA terms and conditions. In addition, the COMPANY shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant or funding documentation between EL METRO and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The COMPANY's failure to so comply shall constitute breach of this Agreement.

ARTICLE 17
ENERGY CONSERVATION

The COMPANY agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Texas Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

ARTICLE 18
FLY AMERICA (WHERE APPLICABLE)

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

ARTICLE 19
REQUIREMENTS FOR PERSONS WITH DISABILITIES

The COMPANY agrees to comply with all applicable requirements of 49 USC § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The COMPANY also agrees to comply with all the applicable requirements of Section 504 of the Rehabilitation Act of 1973 as amended, 29 USC §

794, which prohibits discrimination on the basis of handicaps, 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 persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the COMPANY agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- a. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
- b. U.S. 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 U.S. 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. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
- e. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
- f. U.S. General Services Administration (US GSA) regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
- g. U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act” 29 CFR Part 1630;
- h. U.S. 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. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
- j. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;

- k. Any implementing requirements FTA may issue.

Failure by the COMPANY 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 EL METRO deems appropriate.

ARTICLE 20 **FEDERAL CHANGES**

The COMPANY shall at all-time comply with all the applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant or funding documentation between EL METRO and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The COMPANY's failure to so comply shall constitute a material breach of this Agreement.

ARTICLE 21 **AUDIT AND INSPECTION OF RECORDS**

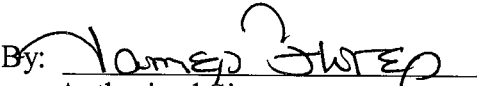
Pursuant to 49 CFR 18.39(i)(11), the COMPANY shall permit the authorized representatives of EL METRO, the FTA Administrator or, U.S. Comptroller General and the State of Texas to inspect and audit all its books, data, accounts, documents, papers, records of the COMPANY relating to this Agreement and its performance hereunder until the expiration of three (3) years after final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the COMPANY agrees to maintain same until EL METRO, the FTA Administrator, the Comptroller General, the State of Texas or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

The COMPANY agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonable needed. The COMPANY further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that EL METRO and the State of Texas or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any pertinent books, documents, papers, and records of such subcontractor involving transactions related to this Agreement or the work performed in connection herewith. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$5,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to this general public.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the date first set forth above.

WEBB COUNTY

CITY OF LAREDO

By: 
Authorized Signature

By: _____
Authorized Signature

JAMES FLORES
Printed Name

JESUS L. OLIVARES
Printed Name

SENIOR GRANT WRITER
Title

CITY MANAGER
Title