



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 12, 2011

DATE: January 28, 2011

SUBJECT: Approval of Two Project Agreements and One Master Agreement Amendment between the County Board and the Virginia Department of Rail and Public Transportation ("DRPT"); and one Agreement for Utilization of Congestion Mitigation and Air Quality Improvement ("CMAQ") Funds Between the County Board and the Virginia Department of Transportation ("VDOT"), for Commuter Services Operations.

C. M. RECOMMENDATIONS:

1. Approve the attached Project Agreement between the County Board and Commonwealth of Virginia, Department of Rail and Public Transportation, for use of Federal Highway Administration Congestion Mitigation and Air Quality Funds FY 11 CM-5401(943) in the amount of \$3,700,000; authorize the County Manager to execute the Agreement and all related documents on behalf of the County Board and to accept any funds awarded to the County, subject to approval of such Agreement and documents as to form by the County Attorney.
2. Approve the attached Project Agreement between the County Board and Commonwealth of Virginia, Department of Rail and Public Transportation, for use of Commonwealth Transportation Funds FY 2011 in the amount of \$1,040,000; authorize the County Manager to execute the Agreement and other related documents on behalf of the County Board and to accept any funds awarded to the County, subject to approval of such Agreement and documents as to form by the County Attorney.
3. Approve the attached Amendment No. 2 dated July 1, 2010 to the Master Agreement, dated July 1, 2009, for use of Commonwealth Transportation Funds between the Department of Rail and Public Transportation ("DRPT") and the County Board, in the form attached hereto, and authorize the County Manager to execute the Amendment, subject to approval of the Agreement and documents as to form by the County Attorney.
4. Approve the attached Agreement between the County Board and the Commonwealth of Virginia, Department of Transportation ("VDOT") for use of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds in the amount of \$77,780; authorize the County Manager to execute the Agreement and other related documents on behalf of the

County Manager:

County Attorney:

22.

Staff: Chris Hamilton, Dept. of Environmental Services – Transportation Division
Chenda Chea, Dept. of Environmental Services – Director's Office

County Board and to accept any funds awarded to the County, subject to approval of such Agreement and documents as to form by the County Attorney.

5. Appropriate \$1,797,320 in grant revenues (101.346004.41150) to the Department of Environmental Services (101.456000.41150).

ISSUES: This is an annual request for approval of grant funds that must be approved by the County Board. No issues have been identified.

BACKGROUND: The Arlington County Commuter Services (“ACCS”) program is funded primarily using State and Federal transportation funds.

The FY 2011 Congestion Mitigation and Air Quality (“CMAQ”) grant application was considered by the County Board at its September 26, 2009 meeting. The application was filed and the grant was approved. However, grant funds were not available until the beginning of the Federal fiscal year starting October 1, 2010. Thus, it is necessary for the County Board to approve the Project Agreement (Item #1).

On an annual basis, DRPT grant applications for the ACCS program are considered by the County Board in February or March, at which time resolutions are adopted authorizing application to the State for grant funding. The fiscal year (“FY”) 2011 grant applications, previously authorized by the Board, were filed with DRPT and approved for Commonwealth Transportation funding in the amount of \$1,040,000 effective on July 1, 2010. To obtain the funding, it is necessary for the County Board to approve the Project Agreement (Item #2).

In order to receive these funds, DRPT requires that localities, including the County, enter into a Master Agreement for Use of Commonwealth Transportation Funds (“Master Agreement”). On June 12, 2010; the County Board approved the current Master Agreement dated July 1, 2009. Since that time, DRPT advised County staff that an Amendment #2 (Item #3) to the Master Agreement needs to be executed to reflect the new rules and regulations for receiving Federal and State transportation funds.

The “Agreement for the Utilization of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds” for \$77,780 is received through VDOT for Arlington’s annual share of regionally provided funds to Washington, D.C. area localities to encourage private sector employers with more than 100 employees to voluntarily implement alternative commute (trip reduction) programs. To obtain the funding, it is necessary for the County Board to approve the Project Agreement (Item #4).

Item #5 appropriates the grant revenues which will be received from the grants which are the subjects of the above Agreements.

DISCUSSION: The first Agreement (Item #1) for approval is the “Agreement for the Use of Federal Highway Administration Congestion Mitigation Air Quality – Fiscal Year 2011” for \$3,700,000. This Federal grant funds the majority of the on-going operational and marketing expenses of ACCS and is matched by the State. No local match is required.

Attached for County Board is an Agreement (Item #2) to help fund the ACCS program. The Agreement is the "Project Agreement for Use of Commonwealth Transportation Funds Fiscal Year 2011" for \$1,040,000 and funds on-going ACCS program expenses. This Agreement has two funding elements: "Transportation Efficiency Improvement Fund ("TEIF") Rideshare Assistance" and "TEIF Other." The "TEIF Rideshare Assistance" is an annual funding source for on-going operational and marketing expenses of ACCS. The FY 2011 award is \$800,000 and requires a 20 percent local match of \$200,000. The "TEIF Other" grant funds Distance Learning & On-Site Training for Businesses & TDM Professionals. A total of \$240,000 was awarded and requires a 20 percent local match of \$60,000. The County has budgeted previously the required local match of \$260,000 for both TEIF funds above.

The attached Master Agreement Amendment #2, dated July 1, 2010, (Item #3) amends the current Master Agreement for Use of Commonwealth Transportation Funds between the Commonwealth of Virginia and Arlington County dated July 1, 2009 by removing the annual management representation letter requirement placed on grant recipients. There are no other amendments to the Master Agreement. This amendment is retroactive to July 1, 2009.

The third Agreement (Item #4) for approval is the "Agreement for the Utilization of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds" for \$77,780. This grant is a Transportation Control Measure (TCM-47c) that was adopted in the FY95-00 Transportation Improvement Program (TIP) by the Transportation Planning Board (TPB) of the National Capital Region and has provided localities funding to encourage private sector employers with more than 100 employees to voluntarily implement alternative commute (trip reduction) programs annually since then. The program is now classified as a Transportation Emission Reduction Measure (TERM). Localities in Northern Virginia receive these funds through VDOT. There is no local match required.

As with the previous form of the Agreement approved by the County Board last year, the proposed Agreement continues to contain a provision (Article X) concerning settlement of disputes which gives the VDOT Commissioner the final decision on factual disputes concerning the Agreement. As to legal disputes, the Commissioner's decision also is final, unless adjudicated in court. This provision ordinarily is unacceptable, but VDOT is unwilling to revise the provision. If the County does not agree to this provision, the County would forgo the grant funding. We understand that other Northern Virginia jurisdictions have signed CMAQ Agreements containing this provision.

Item #5 appropriates the grant revenues which will be received from the grants which are the subjects of the above Agreements which are in excess of the amounts already appropriated in the FY 2011 budget.

FISCAL IMPACT: The Amendment #2 to the Master Agreement needs to be approved by the Board to enable Arlington County to receive State and Federal funds from DRPT for FY 2011 and to apply and receive funds for future fiscal years.

The total grant funds awarded to Arlington County Commuter Services (ACCS) for the grants discussed in this Board Report totals \$4,817,780 (see table). Of such total amount, \$3,020,460 had previously been included by the County Board in the FY 2011 Adopted Budget.

FY	Grant	County Board Approved ACCS Spending	Grants Amount Awarded	Difference to be Appropriated by County Board
2011	CMAQ	\$2,355,460	\$3,700,000	\$1,344,540
2011	Rideshare	\$600,000	\$800,000	\$200,000
2011	TEIF	\$0	\$240,000	\$240,000
2011	TCM	\$65,000	\$77,780	\$12,780
		\$3,020,460	\$4,817,780	\$1,797,320

For FY 2011, it is recommended that the County Board appropriate an additional \$1,797,320 in Federal and State transportation grant monies to fund TEIF Rideshare Assistance, TEIF (Distance Learning) projects, TCM (Employer Services) and CMAQ funding of on-going ACCS operations. As previously explained in the Discussion Section of this Board Report, there are sufficient County funds to meet the match requirements. The grant amounts awarded in FY 2011 are nearly identical to the amounts received in FY 2010. The adopted budget each year represents a conservative estimate of the amount of grant funding to be received. Each year, once the grant awards have been received, the budget is revised to reflect the actual amount through a supplemental appropriation. The \$1.8 million recommended is similar in amount to the FY 2010 supplemental appropriation of \$1.6 million.

Attachments:

1. Agreement for the use of Federal Highway Administration Congestion Mitigation Air Quality Fiscal Year 2011 funds
2. Project Agreement for Use of Commonwealth Transportation Funds Fiscal Year 2011
3. Amendment #2, July 1, 2010 Revisions to the July 1, 2009 Master Agreement for Use of Commonwealth Transportation Funds
4. An Agreement for the Utilization of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds

SPECIMEN:

Agreement with Board Approved
amount coming from DRPT

AGREEMENT
FOR THE USE OF
FEDERAL HIGHWAY ADMINISTRATION
CONGESTION MITIGATION AIR QUALITY -
FISCAL YEAR 2011
CM-5401(943)
Project 47009-01
UPC T100
County of Arlington

Section Number and Description

Introduction

- 1 Purpose and Source of Funds
- 2 Local Share
- 3 Project Budget
- 4 Requisitions and Payments
- 5 Termination
- 6 Contracts of the PUBLIC BODY
- 7 Liability Waiver
- 8 Restrictions, Prohibitions, Controls, and Labor Provisions
- 9 Compliance with Title VI of the Civil Rights Act of 1964
- 10 Statement of Financial Assistance
- 11 Environmental Protection
- 12 Special Provision

Appendix A Project Description and Budget

Appendix B Restrictions, Prohibitions, Controls and Labor Provisions

Appendix C Title VI

Appendix D Audit Guidelines

THIS AGREEMENT made this ___ day of _____, 200 ., between the Commonwealth of Virginia (hereinafter referred to as the COMMONWEALTH) acting by and through the Virginia Department of Rail and Public Transportation (hereinafter referred to as the DEPARTMENT) and County of Arlington (hereinafter referred to as the PUBLIC BODY),

WHEREAS, under provisions set forth under Title 23 of the United States Code Section 149, the Congestion Mitigation Air Quality (CMAQ) program was established to fund transportation projects or programs that will contribute to attainment of national ambient air quality standards; and

WHEREAS, the PUBLIC BODY desires to secure and utilize grant funds for these purposes;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the DEPARTMENT and the PUBLIC BODY agree as follows:

SECTION 1: Purpose and Source of Funds

Under the provisions of the Title 23 of the United States Code, CMAQ funds are available to the COMMONWEALTH for use in CMAQ projects. The sum of \$_____ in federal funds shall be provided from CMAQ funds and made available to the PUBLIC BODY. This amount is provided to carry out the work activities described in the approved project scope of work incorporated in Appendix A and contained in the approved Transportation Improvement Plans of both the urbanized area of which the PUBLIC BODY is a part and of the COMMONWEALTH.

SECTION 2: Local Share

The PUBLIC BODY agrees that it will provide funds from sources other than Federal funds (except as may otherwise be authorized by Federal statute), in an amount sufficient, together with the

Grant, to assure payment of the total project cost. The PUBLIC BODY further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund to the DEPARTMENT of a proportional amount of the Grant funds being refunded or reduced. The PUBLIC BODY's obligation to provide the Local Share is calculated on the Project as a whole.

The Project Budget is found as part of Appendix A. of this AGREEMENT.

SECTION 3: Project Budget

The PUBLIC BODY shall maintain a project budget, which shall be the latest budget approved by the DEPARTMENT pursuant to request by the PUBLIC BODY, as an element of Appendix A. The PUBLIC BODY shall incur obligations against and make disbursements of the Project funds only in conformity with the latest approved budget for the Project. Indirect costs are an allowable expense if they are based on a cost allocation plan that has been approved by the DEPARTMENT.

In no event shall the DEPARTMENT be liable to the PUBLIC BODY for any portion of the project cost except to pass through the federal share to the PUBLIC BODY. The DEPARTMENT's responsibility for the project cost shall be limited to the cost of coordination and processing of the PUBLIC BODY's reimbursement requests to the Federal Highway Administration.

SECTION 4: Requisitions and Payments

- (a) Requests for Payment by the Recipient. The PUBLIC BODY will make requests to the DEPARTMENT for payment of allowable costs as defined in the Code of Federal

Regulations: Highways, Title 49, CFR 18.22, the entirety of which is included herein by reference. The request for payment will be for the federal share of the total project cost at the appropriate rate of federal participation as shown in the Project Budget, which is included in this AGREEMENT in Appendix A. The DEPARTMENT will honor such request in the manner set forth in this section. In order to receive payments, the PUBLIC BODY must submit all of the following:

- (1) An invoice to the DEPARTMENT in the appropriate billing format for CMAQ projects;
 - (2) A certification that it has supplied nonfederal funds adequate, when combined with the federal payments, to cover all costs to be incurred to the end of the requisition period; and
 - (3) All financial and progress reports required to date under this AGREEMENT or as may subsequently be required by the DEPARTMENT;
- (b) The DEPARTMENT will use all reasonable means to forward payment for the federal share of allowable costs to the PUBLIC BODY within 30 days.

SECTION 5: Termination

- (a) For convenience. The DEPARTMENT may terminate this AGREEMENT at any time without cause, provided that it gives written notice to the PUBLIC BODY of such termination, which shall be effective on the date of the receipt of such notice by the PUBLIC BODY. In the event of such termination, the PUBLIC BODY shall be compensated for

allowable costs through the date of receipt by the PUBLIC BODY of written notice to terminate from the DEPARTMENT .

- (b) With Cause. The DEPARTMENT may terminate the Project and cancel this AGREEMENT by written notice to the PUBLIC BODY no later than five (5) days before the effective date of such termination for any of the following reasons:
 - (1) The PUBLIC BODY discontinues the use of such vehicles, equipment, or facilities during their useful lives for the purpose of providing the services defined in Appendix A of this AGREEMENT.
 - (2) The PUBLIC BODY takes any action pertaining to this AGREEMENT without the approval of the DEPARTMENT and which under this AGREEMENT would have required the approval of the DEPARTMENT.
 - (3) The commencement, prosecution or timely completion of the Project by the PUBLIC BODY is, for any reason, rendered improbable, impossible or illegal.
 - (4) The PUBLIC BODY shall be in default under any provision of this AGREEMENT.
 - (5) Termination or reduction of federal funds for this program.
- (c) Action Upon Termination. Upon termination of the Project and cancellation of this AGREEMENT under the provisions of paragraph (a) or (b) of this Article, the PUBLIC BODY agrees to cease all actions which may result in further charges or encumbrances under this AGREEMENT, and to dispose of the Project equipment in accordance with FHWA and DEPARTMENT procedures.

SECTION 6: Contracts of the PUBLIC BODY

Unless authorized in writing by the DEPARTMENT, the PUBLIC BODY shall not assign any portion of the work to be performed under this AGREEMENT, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT without the prior written consent of the DEPARTMENT. The DEPARTMENT will review and approve Request for Proposals which use CMAQ funds prior to their issuance. All requests or invitations for bids, proposals, qualifications, or interest, or other official procurement processes, however referred to by the PUBLIC BODY, must receive written consent by the DEPARTMENT prior to advertisement or issue.

SECTION 7: Liability Waiver

The PUBLIC BODY shall not seek redress for damages or injury caused in whole or in part by the COMMONWEALTH, the DEPARTMENT or their officers, agents or employees acting within the scope of their duties. The PUBLIC BODY is covered by and will keep in force an insurance policy from the Department of Risk Management, or its equivalent, which protects the COMMONWEALTH, the DEPARTMENT and their officers, agents and employees against damage or injury caused by the negligence of the PUBLIC BODY, its officers, agents or employees which arise from their use of funds provided under this AGREEMENT.

SECTION 8: Restrictions, Prohibitions, Controls, and Labor Provisions

The PUBLIC BODY shall comply with all of the restrictions, prohibitions, controls, and labor provisions as set forth in Appendix B, and made a part of this AGREEMENT by reference.

SECTION 9: Compliance with Title VI of the Civil Rights Act of 1964

The PUBLIC BODY shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as set forth in Appendix C, and made a part of this AGREEMENT by reference.

SECTION 10: Statement of Financial Assistance

The PUBLIC BODY shall include in all contracts entered into pursuant to this AGREEMENT all of the above-required clauses. In addition, the following required provision shall be included in any advertisement or invitation to bid for procurement under this AGREEMENT:

Statement of Financial Assistance: This contract is subject to a financial assistance agreement between the Commonwealth of Virginia and the U.S. Department of Transportation.

SECTION 11: Environmental Protection

The PUBLIC BODY shall ensure in the purchase and use of equipment or the construction and use of facilities that compliance is maintained with all applicable standards, orders, or requirements issued under Section 306 of the Clear Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Federal Highway Administration and to the U.S.E.P.A. Assistant Administrator for Enforcement.

SECTION 12: Special Provisions

- (a) Special Condition Pertaining to Financing CMAQ Projects. Sufficient funds must be available from the United States Department of Transportation and an adequate liquidating cash appropriation must have been enacted into law before payments may be made to the PUBLIC BODY under this AGREEMENT.

- (b) All funds made available by this AGREEMENT are subject to audit by the DEPARTMENT or its designee, and by the Federal Highway Administration or its designee. Current audit guidelines for the DEPARTMENT are set forth in Appendix D, and made a part of this agreement by reference.

IN WITNESS WHEREOF, the DEPARTMENT, acting by and for the COMMONWEALTH, and the PUBLIC BODY have caused this AGREEMENT to be executed by their respective officials, thereunto duly authorized.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

By: _____
Director Date

WITNESS: _____
(NAME AND TITLE) Date

PUBLIC BODY

By: _____
Director Date

WITNESS: _____
(NAME AND TITLE) Date

The above agreement is approved as to form: _____
County Attorney

Appendix A

CMAQ Budget

Commuter Assistance Program

Project Number: 47009-01

Federal Award Number: CM 5401(943)

UPC: T100

Grant Recipient: County of Arlington

Project Start Date:

Project Expiration Date:

Maximum Federal Share of Eligible Expenses:

EIN: 546001123-00

Capital Project Agreement Budget Detail

Expense Detail	Item Amount
Commuter Assistance Program	
Total Expenses	

Expense Summary

- 401 Federal share of project cost**
- 0472 State share of project cost

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

(a) **The PUBLIC BODY**, its agents, employees, assigns, or successors, and any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with this Agreement, shall not discriminate against any employee or applicant for employment because of age, race, religion, handicap, color, sex, or national origin. The PUBLIC BODY shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their age, race, religion, handicap, color, sex, or national origin. Such actions shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) **Disadvantaged Business Enterprises** It is the policy of the U.S. Department of Transportation (DOT) that DBEs as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR 26 apply to this agreement.

The recipient or its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient will utilize the Virginia Department of Transportation's DBE program, as required by 49 CFR part 26 and as approved by DOT, which

is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Pursuant to the requirements of 49 CFR 26 the following clause must be inserted in each third party contract:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 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 contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate

(c) Interest of Member of, or Delegates to, Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this AGREEMENT or to any benefit arising therefrom.

(d) Conflict of Interest. The PUBLIC BODY and its officers and employees shall comply with the provisions of the State and Local Governments Conflicts of Interest Act (2.1-639.1 of the Code of Virginia (1950), as amended, et seq.), the terms of which are incorporated herein by reference.

(e) The **PUBLIC BODY**, its agents, employees, assigns, or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Virginia Fair Employment Contracting Act (2.1-374 et seq. of the Code of Virginia (1950), as amended), the terms of which are incorporated herein by reference.

Appendix C: Title VI

During the performance of this Contract, the PUBLIC BODY, for itself, its assignees, and successors in interest (hereinafter referred to as the "PUBLIC BODY") agrees as follows:

- (1) **Compliance with Regulations**: The PUBLIC BODY shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- (2) **Nondiscrimination**: The PUBLIC BODY, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding or negotiation made by the PUBLIC BODY for work to be performed under a subcontract, including procurements of materials or leases or equipment, each potential subcontractor or supplier shall be notified by the PUBLIC BODY of the PUBLIC BODY's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
- (4) **Information-Reports**: The PUBLIC BODY shall provide all information and reports developed as a result of or required by the Regulations or directives issued Pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its

facilities as may be determined by the DEPARTMENT or Federal Highways Administration (FHWA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a PUBLIC BODY is in the exclusive possession of another who fails or refuses to furnish this information, the PUBLIC BODY shall so certify to the DEPARTMENT or the Federal Highways Administration, as appropriate, and shall set forth the efforts it has made to obtain this information.

(5) **Sanctions for Noncompliance:** In the event of the PUBLIC BODY's noncompliance with the nondiscrimination provisions of this Contract, the DEPARTMENT shall impose such contract sanctions as it or Federal Highways Administration may determine to be appropriate, including, but limited to:

(a) Withholding of payments to the PUBLIC BODY under the Contract until the PUBLIC BODY complies; and/or

(b) Cancellation, termination, or suspension of the Contract in whole or in part.

(6) **Incorporation of Provisions:** The PUBLIC BODY shall include the provisions or paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The PUBLIC BODY shall take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highways Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a PUBLIC BODY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the PUBLIC BODY may request the DEPARTMENT to enter into such litigation to protect the interest of the United States.

Appendix D: Audit Guidelines

OMB Circular A-133, Audits of State and Local Governments and Non-profit Organizations, was issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. A-133 is applicable to recipients of funds under this AGREEMENT. USDOT and FHWA regulations implementing A-133 are contained in 49 CFR Part 90 and 23 CFR Part 12, respectively. In addition, other regulations/publications which are applicable and should be referred to as necessary are:

- 1) OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"
- 2) 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also referred to as "The Common Rule.").
- 3) Government Auditing Standards - "Yellow Book" - 1988 Revision.
- 4) "Compliance Supplement for Single Audits of State and Local Governments."

In preparing the audit reports, Subpart B, "Audits," of OMB Circular A-133, should be referenced and complied with.

Additional guidance is as follows:

- 1) Eligibility of costs is stressed for expenditures made within the grants. OMB Circular A-87 should be referenced and applied. Generally, some of the problems encountered are:
 - a) Unacceptable or no cost allocation plan, usually for "indirect costs."
 - b) Arbitrary allocation of costs.
 - c) Failure to maintain time and attendance records.
 - d) Failure to keep accurate track of employee time spent on each of several grants.
 - e) Improper documentation.
- 2) The report should have sufficient schedules, either main or supplementary, that identify beginning balances, revenues, expenditures by line item and individual grants, and fund balances. Virginia DRPT (DEPARTMENT) grants should be separated. A schedule of ineligible costs should also be included if such costs are found.

- 3) The report should present a schedule of indirect costs, and be presented in a manner that indicates the method of developing the costs (including fringe benefits). Indirect costs should be analyzed for eligibility of costs included (interest, taxes, etc.).
- 4) Costs should be classified to identify expenditures by the grantee in contract to disbursements actually passed through to subrecipients. The scope of the audit should include expenditures made by the subrecipients and be identified in the audit report. This includes consultants, subconsultants, and any other recipient of pass through funds.
- 5) Generally speaking, it is left up to the auditor's professional judgment to determine materiality in selection of parameters for sample testing and recognition of errors. However, it is suggested that the size of each individual grant in the entity be considered when selecting parameters rather than total overall operation of the entity
- 6) The following groups should be sent copies of the audit reports:
 - a) Two copies of the audit reports and two copies of the OIG Review of the Report are to be sent to:

Virginia Department of Rail and Public Transportation
Attention: Donald Karabaich, Senior External Auditor
1313 East Main Street, Suite 300
Richmond, VA 23219
 - b) Grantees expending more than \$500,000 a year in Federal assistance must forward a copy of the audit to a central clearinghouse designated by OMB.

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th St.
Jefferson, IN 47132
 - c) If your independent annual single audit contains FTA program findings, a copy of the entire audit report must be submitted to your FTA Regional Office. If your agency receives funds from more than one U.S. DOT agency and FTA is your point-of-contact for all DBE program issues, then you must submit the entire audit report if it contains any findings related to any DOT program.
 - d) If your independent annual single audit report contains no FTA program findings or other US DOT program findings, a copy of only the Federal Clearinghouse transmittal sheet must be submitted to your FTA Regional Office.

**Project Agreement for Use Of
Commonwealth Transportation Funds
Fiscal Year 2011**

The Commonwealth of Virginia, Department of Rail and Public Transportation, hereafter referred to as the DEPARTMENT, and the County Board of Arlington County, Virginia, hereafter referred to as the GRANTEE; enter into this Project Agreement. The parties hereby agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated July 1, 2009, and all amendments thereto, as if set out in full herein. The Department agrees to provide grant funding as detailed in Appendices 1-2, which also enumerates project summaries and budgets, and which is hereby incorporated and made a part of this Agreement. In no event shall this grant exceed \$1,040,000.

IN WITNESS whereof, the Department and the Grantee execute this Project Agreement for the Use of Commonwealth Transportation Funds, on the latest date noted below.

DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

WITNESS:

By: _____
Director

Date: _____

COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

WITNESS:

By: _____

Date: _____

Title: _____

Appendix 1

**TEIF Rideshare Assistance
(Transportation Demand Management)**

Grant Recipient: County Board of Arlington County, VA

Payment Schedule

**Project Start Date: July 1, 2010
Project Expiration Date: June 30, 2011**

**EIN: 546001123-00
Project No: 71011-06**

Maximum State Share of Eligible Expenses: \$800,000.00

Maximum State Percentage of Non-federal expenses is 80%.

Payment No.	Payment Processing Date	Rideshare Payment Amount
1	October 15, 2010	\$253,333
2	January 15, 2011	\$253,333
3	April 15, 2011	\$253,333
4	FINAL	\$40,001
TOTAL		\$800,000
472	State share of project cost (80%)	\$800,000
1400	Local share of project cost (20%)	\$200,000

The processing for each payment will be initiated on the payment processing date. The final payment will be processed when a signed copy of the Certification of Ridesharing Expenses is received by the Department of Rail and Public Transportation. The Certification shall be submitted no later than September 30, 2011.

Appendix 2

Project Agreement Summary (TEIF Other)

Grant Recipient: County Board of Arlington County, VA

Project Number: 71411-02

Project Start Date: July 1, 2010

Project Expiration Date: June 30, 2012

Maximum State Share of Eligible Expenses: \$240,000

EIN: 546001123 00

Project Agreement Budget Detail

Expense Detail	Item Amount
Distance Learning & On-Site Training for Businesses & TDM Pr	\$300,000
Total Expenses	\$300,000

Expense Summary

472 State share of project cost (80%)	\$240,000
1400 Local share of project cost (20%)	\$60,000

**Project Agreement For Use Of
Commonwealth Transportation Funds
Fiscal Year 2011**

The above Agreement is approved as to form: _____
County Attorney

Amendment #2, July 1, 2010
Revisions to the July 1, 2009 Master Agreement for Use of
Commonwealth Transportation Funds

The above Agreement is approved as to form: _____
County Attorney

**AN AGREEMENT FOR
THE UTILIZATION OF CONGESTION MITIGATION AND AIR QUALITY
IMPROVEMENT (CMAQ) FUNDS
IN ARLINGTON COUNTY**

THIS AGREEMENT, made this 12th day of February in the year two thousand and eleven by and between the Commonwealth of Virginia, Department of Transportation, hereinafter called the DEPARTMENT, and Arlington County hereinafter called the LOCALITY.

WHEREAS, the LOCALITY has submitted a Scope of Work for undertaking certain activities related to the promotion of Travel Demand Management (TDM) programs in the Northern Virginia District; and

WHEREAS, the DEPARTMENT has concurred with this Scope;

NOW, THEREFORE, the DEPARTMENT and the LOCALITY do hereby agree as follows:

ARTICLE I - PURPOSE OF FUNDS

CMAQ funds made available under this AGREEMENT are to be used in cooperation with the DEPARTMENT for TDM activities. The purpose shall be to provide educational, promotional and / or other related TDM assistance within the Northern Virginia District. A scope of work is attached in accordance with ARTICLE III which promotes the reduction of single-occupant auto usage in order to achieve at least one of the following objectives:

- Reduction of traffic congestion
- Promotion of alternative transportation modes
- Improvement of air quality

ARTICLE II - SOURCE OF FUNDS

Under the provisions of the Title 23 of the United States Code, CMAQ funds are available to the COMMONWEALTH for use in CMAQ-eligible projects. The sum of \$77,780, composed of \$62,224 in federal CMAQ funds and \$15,556 in state matching funds, shall be provided and made available to the LOCALITY for expenditure in FY___. This amount is provided to carry out the work activities described in the approved project scope of work incorporated in Attachment A.

The total amount of CMAQ funds allocated to LOCALITY and reimbursable under this agreement is \$77,780 Federal funds cannot be used to match in-kind service.

ARTICLE III - SCOPE OF WORK

The transportation planning activities to be financed with CMAQ funds are described in a Scope of Work developed by the LOCALITY and attached to this AGREEMENT as Attachment A. Any change in the character or extent of the work to be performed with CMAQ funds shall require an amendment to the Scope of Work and approval by the DEPARTMENT. Such requests must be received and approved prior to the expenditure of CMAQ funds for these activities.

Unless authorized in writing by the DEPARTMENT, the LOCALITY shall not assign any portion of the work to be performed under this AGREEMENT, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT without the prior written consent of the DEPARTMENT. The DEPARTMENT will review and approve Request for Proposals which use CMAQ funds prior to their issuance. All requests or invitations for bids, proposals, qualifications, or interest, or other official procurement processes, however referred to by the LOCALITY, must receive written consent by the DEPARTMENT prior to advertisement or issue.

Those activities and description of work documented in the approved Scope of Work and any subsequent amendments thereto as approved by the DEPARTMENT are hereby approved for CMAQ funding subject to the conditions of this AGREEMENT.

ARTICLE IV - BASIS OF PAYMENT

For services performed in accordance with the provisions of this AGREEMENT, the DEPARTMENT shall pay to the LOCALITY actual costs as defined herein.

Payments shall be made under the terms set forth in the Scope of Work.

All costs are subject to audit by the DEPARTMENT and/or the U.S. Department of Transportation. Any such audit shall be made in accordance with generally accepted auditing standards and procedures and be governed by 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; OMB Circular A-87, Cost Principles for State and Local Governments. Additional auditing requirements are set forth in Attachment B.

Any expenditure made or work or grant proposal performed by the LOCALITY on activities contained in the attached scope of work prior to the execution of this agreement by the DEPARTMENT will not be eligible for reimbursement.

ARTICLE V - PROGRESS SCHEDULES AND REPORTS

The LOCALITY shall document expenditures and progress in executing the Scope of Work through the invoicing and reporting requirements established in Tasks 5 and 7 of the Scope.

ARTICLE VI - PERFORMANCE PERIOD

Work to be performed under this AGREEMENT shall be initiated no sooner than July 1, 2010, and completed within the period established in the Scope of Work.

ARTICLE VII - TERMINATION OF AGREEMENT

This AGREEMENT shall be terminated upon the occurrence of any of the following:

1. Withdrawal by the DEPARTMENT from this Planning Process in LOCALITY.
2. Withdrawal of the LOCALITY from this Planning Process.
3. By mutual agreement of the parties.

In the event of termination under provision 1 at least 30 days written notice shall be given prior to termination. Work completed within this notice period shall be eligible for compensation.

In the event of termination under provision 2 said termination shall be effective the date of notification. In the event of termination under provision 3 said termination shall be effective when both parties have signed an agreement to terminate. Work completed up to the date of notification or agreement to terminate shall be eligible for compensation.

The sum of any payments made under this Article shall be based on actual work completed through the date of termination, subject to final audit.

Upon termination, all data, tabulations, documents and other material prepared under this AGREEMENT by and for the LOCALITY shall become the property of the DEPARTMENT.

ARTICLE VIII - RETENTION OF COST RECORDS

The LOCALITY and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence supporting the costs incurred. Such information shall be consistent with the provisions of 49 CFR Part 18 and shall be made available at their respective offices at all reasonable times during the contract period, and for a period of three (3) years from the date of final payment from the DEPARTMENT to the LOCALITY, for inspection and audit by any authorized representative of the DEPARTMENT or U.S. Department of Transportation. Copies of such information shall be furnished to the DEPARTMENT upon request.

ARTICLE IX - PUBLICATION PROVISIONS

The LOCALITY shall be free to copyright material developed under this AGREEMENT with the provisions that the DEPARTMENT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

Planning reports developed under this AGREEMENT shall be submitted to the DEPARTMENT for review and approval prior to publication and distribution.

All materials published by the LOCALITY or sub recipient shall:

1. contain an acknowledgment, "Prepared in cooperation with the Northern Virginia District of the Virginia Department of Transportation", and
2. comply with all appropriate state and federal laws.

ARTICLE X - SETTLEMENT OF DISPUTES

Any factual disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and his decision shall be final.

Any legal disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and their decision shall be final unless the legal dispute is adjudicated in court. Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the legal dispute.

ARTICLE XI - COMPLIANCE WITH TITLE VI OF CIVIL RIGHTS ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of Title VI of the Civil Rights Act of 1964 as set out in Attachment C, attached hereto, and made a part of this AGREEMENT by reference.

ARTICLE XII - VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of the Virginia Fair Employment Contracting Act (Sections 2.2-4200 through 2.2-4201 of the Code of Virginia (1950), as amended). Section 2.2-4201 is set out in Attachment D attached hereto and made part of this AGREEMENT.

ARTICLE XIII - DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES

In connection with the performance of this AGREEMENT, the LOCALITY will cooperate with the DEPARTMENT in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs-inclusive of women). The LOCALITY shall follow the Virginia Department of Transportation's Disadvantaged Business Enterprise program, the Virginia Public Procurement Act requirements and use

its best efforts to insure that DBEs shall have equal opportunity to compete for contracts under this AGREEMENT.

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of 49 CFR Part 26, as amended, and set out in Attachment E attached hereto, and made part of this AGREEMENT by reference.

Further, the LOCALITY agrees to provide the DEPARTMENT with quarterly reports on the actual dollar amount of funds expended with each DBE contractor.

ARTICLE XIV - AMENDMENTS

Amendments to this AGREEMENT, as may be mutually agreed to, may be made by written agreement between the DEPARTMENT and the LOCALITY.

ARTICLE XV – CERTIFICATIONS

The LOCALITY and the DEPARTMENT acknowledge that neither the representative for the LOCALITY nor the DEPARTMENT has been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this contract to:

- a) employ or retain, or agree to employ or retain, any firm or person, or
- b) pay, or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any).

Prohibition Against the Use of Federal Funds for Lobbying

The prospective contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The prospective contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

For contracts of \$100,000 or more, the prospective contractor shall submit to the LOCALITY a signed "Certification of Restrictions on Lobbying," and shall require all subcontractors with contracts of \$100,000 or more to submit to the prospective contractor and the LOCALITY such signed certifications.

ARTICLE XVI – LIABILITY WAIVER

The LOCALITY shall not seek redress for damages or injury caused in whole or in part by the COMMONWEALTH, the DEPARTMENT or their officers, agents or employees acting within the scope of their duties. The LOCALITY is covered by and will keep in force an insurance policy from the Department of Risk Management, or its equivalent, which protects the COMMONWEALTH, the DEPARTMENT and their officers, agents and employees against damage or injury caused by the negligence of the LOCALITY, its officers, agents or employees which arise from their use of funds provided under this AGREEMENT.

IN WITNESS WHEREOF, the DEPARTMENT and the LOCALITY have executed this AGREEMENT on the day and year first above written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

BY: _____
Commissioner

Printed Name

DATE: _____

LOCALITY

BY: _____
Signature

Printed Name

Title

DATE: _____

The above Agreement is approved as to form: _____
County Attorney