

GRANT FUNDED AGREEMENT

BY AND BETWEEN

CITY OF MINNEAPOLIS

AND

NICE RIDE MINNESOTA, INC.

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THIS AGREEMENT is made and entered into as of the ____ day of _____ 2010 by and between the CITY OF MINNEAPOLIS, a Minnesota municipal corporation (the “City”) and NICE RIDE MINNESOTA, INC., a Minnesota nonprofit corporation (“NRMN”).

RECITALS

- A. The City, through the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), was selected by the U.S. Secretary of Transportation, Federal Highway Administration (FHWA) to be eligible for participation in a "Non-Motorized Transportation" (NTP) pilot program.
- B. Among the goals of SAFETEA-LU is the enhancement of transportation by providing facilities for pedestrians and bicycles (see 23 U.S.C. Section 101(a)).
- C. The City has also established a contractual relationship with “Transit for Livable Communities” (TLC), a Minnesota nonprofit corporation.
- D. TLC administers SAFETEA-LU funds designed to promote non-motorized transportation programs.
- E. By action approved by the City Council at its December 12, 2008 meeting, the City Department of Public Works was authorized to submit “A Letter of Intent for Capital Projects as Demonstration Innovations” to TLC to fund a “Bike Share Program” as described herein, in the amount of \$1,750,000.
- F. The City Council determined that the “Letter of Intent for Capital Projects as Demonstration Innovations” to be submitted to TLC was to be subject to various terms and conditions.
- G. Among the terms and conditions contained in the December 12, 2008 City Council action was authorization for City staff to prepare a proposed written agreement with the proposed bicycle share program provider subject to receipt of non-motorized transit program grant funds from TLC.
- H. The City Council authorized the City’s Department of Public Works to submit a bicycle sharing grant proposal that will satisfy the NTP Pilot Program requirements to TLC by action taken on February 6, 2009.
- I. City staff identified, and the City Council approved in its January 15, 2010 action, entering into a written agreement with Nice Ride Minnesota, Inc., whereby NRMN will administer the preferred bicycle sharing program and the City will serve as the fiscal agent for disbursement of the NTP grant proceeds.

J. The City Council, by action taken on January 15, 2010, authorized acceptance of an NTP grant, the proceeds of which are to be used to finance, in part, the bicycle sharing program.

NOW, THEREFORE, the City and NRMN agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01 Definitions. The following terms used in this Agreement shall have the meanings as indicated herein:

“Agreement” means this grant agreement between the City and NRMN.

“City” means the City of Minneapolis, a Minnesota municipal corporation and the subgrantee and fiscal agent for disbursement of the NTP Grant.

“Facilities” means the bicycles, security devices, bicycle racks/storage/docking stations, rental and information kiosks and other equipment associated with the Program.

“FHWA” means the Federal Highway Administration, a division of the U.S. Department of Transportation and the grantor for the NTP Grant.

“NRMN” means Nice Ride Minnesota, Inc., a Minnesota nonprofit corporation and the subrecipient of the NTP Grant.

“MNDOT” means the State of Minnesota Department of Transportation, the state agency delegated the responsibility for distribution and disbursement of federal transportation grant monies.

“NTP Grant” means the Non-motorized Transportation Pilot Program Grant.

“NTP Grant Agreement” means the agreement between the FHWA, as grantor, the MNDOT as sub-grantor, and the City.

“Program” means the Bike Share Program as described in greater detail in Article II of this Agreement.

“Program Construction Plans” means the site plan including any landscaping and restoration work required by the City or property owner as a condition for the issuance of a permit or license by the City or property owner and the construction and installation of a Facility upon City or private property.

“State” means the State of Minnesota, Department of Transportation, the grantee of the NTP Grant.

“TLC” means Transit for Livable Communities, a Minnesota nonprofit corporation and the entity designated in the federal SAFETEA-LU legislation to administer the NTP Pilot Program in and for the State.

ARTICLE II THE PROGRAM

Section 2.01 General Program Description. The Program to be undertaken by NRMN will involve the purchase of bicycles, purchase of Facilities and their installation and obtaining authorization to construct and install the Facilities upon both public and private property to enable members of the public to rent bicycles for use and return to the Facilities.

Section 2.02 NRMN Program Specifics. NRMN shall be responsible for undertaking and completing the three general elements of the Program: (a) fundraising and financing; (b) purchase, ownership, installation and operation; and (c) marketing and outreach.

- (a) Fundraising and Financing – NRMN will undertake and secure all matching funds required as part of the Program financing. The City has submitted the application for the NTP Grant, received notice of the award of the NTP Grant, and will provide the NTP Grant Funds to NRMN pursuant to this Agreement. However, NRMN shall be responsible for identifying and obtaining all matching funds from private sources and all operating costs as required and further defined herein.
- (b) Purchase, Ownership, Installation and Operation – NRMN will purchase and own the equipment required to construct the Facilities. NRMN will obtain all necessary leases, licenses, permits or other authorizations for the real property upon which NRMN will install, equip, own, maintain and operate the Facilities.
- (c) Marketing and Outreach – NRMN will prepare all marketing materials and market the Program. NRMN will also plan and implement a comprehensive community outreach program to build community support and membership.

Section 2.03 Program Details. NRMN will generally follow the business plan developed and designed for the Program. The Program details to be undertaken and completed by NRMN include:

- (a) The purchase of an estimated 800 bicycles. The make, model and equipment specifications for the bicycles shall be indicated by NRMN at the time of disbursement of NTP Grant proceeds.
- (b) The purchase of equipment required for construction and the installation of approximately 70 Facilities consisting of information and rental kiosks and bicycle racks/storage/docking stations.

- (c) Determination of the geographic area for the Program.
- (d) Receipt of legal authority in the form of permit or license to install Program Facilities in public right of way or private property.
- (e) Determination of final capital cost for the Program.
- (f) Determination of annual operating and maintenance cost for the Program.
- (g) Application and receipt of necessary capital funds for the Program in addition to the NTP Grant.
- (h) Assumption of risk and procurement of adequate commercial general liability and property insurance coverage as determined to be necessary by the City to operate the Program.
- (i) Fulfillment by NRMN of the Program use, repossession and dissolution requirements indicated in Article VII of this Agreement upon termination of the Program.

ARTICLE III CITY SUPPORT FOR THE PROGRAM

Section 3.01 Previous City Actions in Support of Program Development. The City has supported the Program concept directly and NRMN both directly and indirectly. City support has been manifested through the authorization and the submission of letters of support and grant applications for the development of a pilot of the Program and the appropriation of funds and authorization of grant agreements to support the design of the Program and to facilitate the establishment of the entity to own, install and operate the Facilities. A summary of City actions and authorizations follows.

- (a) City – City of Lakes Nordic Ski Foundation Contract dated July 1, 2008 for the purpose of having the City of Lakes Nordic Ski Foundation develop a business plan for a bicycle sharing program - \$35,000.
- (b) Non-motorized Transportation Pilot Program Round 3 Solicitation Report to the Transportation and Public Works Committee, dated December 2, 2008 and approved by the City Council on December 12, 2008, which authorized the City’s submission of a Letter of Intent for Capital Projects as Demonstration Innovations to Transit for Livable Communities (TLC) in response to the TLC notice of funding availability, subject to the conditions contained in the December 12, 2008 City Council authorization that amended recommendation (b) of the December 2, 2008 Transportation & Public Works Committee Report.

- (c) City submission of Letter of Intent to TLC, dated December 15, 2008 indicating City's intent to be a Project Sponsor.
- (d) Bike Sharing Proposal to the Transportation and Public Works Committee dated January 27, 2009 and approved by the City Council on February 2, 2009, which authorized the City staff to prepare and submit a proposal for a Non-motorized Transportation Pilot Project Bicycle Sharing to TLC and to reconfirm the City's role as fiscal agent for a federally-funded program.
- (e) City – Alta Planning & Design, Inc. Contract dated March 1, 2009 for the purpose of providing planning and design services for NRMN for the Program, \$25,000.
- (f) City – Bill Dossett Contract dated April 1, 2009 for the purpose of establishing the nonprofit entity to operate the Project, obtain private funding sponsorships and to assist the nonprofit entity to identify equipment and perform other tasks required to implement the Program, \$45,000.

Section 3.02 City Financial Support for the Program. The City will provide two additional sources of financial support for the Program. The first City source of funds is a \$100,000 grant. The second source of funds is a potential grant of up to \$250,000. Both additional sources of Program funds are described in this Section 3.02 of the Agreement.

- (a) City \$100,000 Grant – This grant will be disbursed through an additional agreement by the City's Department of Community Planning and Economic Development (CPED). The only restriction associated with this \$100,000 grant is that it be spent by the Grantee on any Program costs as defined in Articles I and II of this Agreement.
- (b) City Grant of up to \$250,000 – This grant will be disbursed through an additional agreement by the City's Convention Center (MCC). The grant is subject to several restrictions, the most notable of which are that it requires reauthorization by the City Council in 2010 and it may only be used to pay for Facilities located on MCC property and at the following intersections to serve lodging facilities located in the vicinity of the MCC property: (i) Hyatt and Millennium Hotels (Grant Street & Nicollet Mall); (ii) Doubletree Hotel (12th Street & Nicollet Mall); (iii) Hilton Hotel, Holiday Express, Oakwood Inn (11th Street & Marquette Avenue); (iv) Marriot City Center, Radisson Hotel, Residence Inn (8th Street & Nicollet Mall); (v) Crown Plaza Northstar, Marquette Hotel, Westin Hotel (6th Street & Nicollet Mall); and (vi) The Minneapolis (5th Street & South 3rd Avenue), and the marketing of the Program for users and attendees of the MCC and its events.

**ARTICLE IV
RESPONSIBILITIES AND OBLIGATIONS OF NRMN**

Section 4.01 Conditions Precedent to Entering into Agreement. NRMN has completed and provided to the City or will complete and provide to the City the following elements of the Program.

- (a) Business Plan consisting of capital and operating plans for the Program. The Business Plan shall, at a minimum, consist of an evaluation of sources and uses of capital revenue and costs to construct and install the Program; identification sources of capital in addition to the Grant; the evaluation of sources and uses of operating costs and revenues required to operate, maintain and repair and replace equipment during the term of the Program; and development of a pro forma that presents capital and operating costs and revenues over the Program term.
- (b) Preparation and presentation of the results of survey of users of the Program.
- (c) Identification and mapping of the location of Program Facilities.
- (d) Identification of the process for obtaining property interests on both public and private property for installing Program Facilities.
- (e) Preparation of a marketing and outreach plan for the Program.
- (f) Demonstration of NRMN's capacity to provide property and commercial liability insurance coverage to satisfy City risk management requirements.
- (g) Demonstration that NRMN will comply with all applicable federal statutes and regulations, including, but not limited to 23 U.S.C. Sections 109, 217, 315, 402 and 1807, 49 CFR Part 18 and Part 652, 2 CFR Part 225 (OMB Circular A-87), 2 CFR Part 230 (OMB Circular A-122), 23 CFR Sections 1.33 and 635.105.
- (h) Comply with all duties of the City contained in MNDOT Agreement No. 96013.

Section 4.02 Conditions Subsequent to Entering Agreement. NRMN will complete and provide evidence that it has satisfied the following requirements after entering into the Agreement and prior to the disbursement of NTP Grant proceeds by the City.

- (a) Identification of the private sources of funds required to satisfy capital and operating costs of the Program and any "matching fund" requirements of the NTP Grant. NRMN shall also provide evidence of disbursement of the private funds by sponsors to NRMN by providing to the City copies of checks and their deposit in the Program account maintained by NRMN.

- (b) Provide to the City written evidence that the “matching funds” described in Section 4.02 (a) comply with the “match structure” established by TLC.

Section 4.03 General Representations and Warranties.

- (a) NRMN is organized and in good standing under the laws of the State and is not in violation of any provisions of its articles of organization, bylaws, or the laws of the State.
- (b) NRMN has the authority to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its directors.
- (c) NRMN will install, operate and maintain the Program and Facilities in accordance with the terms of this Agreement, and to the best of its ability and knowledge, will comply with all local, state and federal laws and regulations, including but not limited to those promulgated by the U.S. Department of Transportation and MNDOT, including those federal laws and regulations indicated in Section 4.08(g) of this Agreement.
- (d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, conflicts with, or results in the breach of the terms, conditions or provisions of any articles of incorporation, bylaws or any other agreement or instrument of whatever nature to which NRMN is now a party, or by which it is bound, or which constitutes a default under any of the foregoing.
- (e) NRMN will cooperate and assist the City in the event any suit, claim or litigation is brought against the City regarding the Program or the Facilities.

**ARTICLE V
RESPONSIBILITIES AND OBLIGATIONS OF THE CITY**

Section 5.01 Conditions Precedent to Entering into the Agreement. The City shall provide evidence to NRMN that the City has undertaken and completed the following obligations:

- (a) Prepared and submitted to TLC the NTP Grant application.
- (b) Entered into the necessary grant agreements with the US DOT or its designated agencies such as FHWA and MNDOT and that a condition of any such grant agreement is that the City shall only serve as fiscal agent for disbursement of NTP Grant proceeds to NRMN.

Section 5.02 Conditions Subsequent to Entering into the Agreement. The City shall identify the source of any local government contribution as described in Section 3.02 of this Agreement and the terms for disbursement of said local government contribution as described in Article VI of this Agreement.

Section 5.03 General Representations and Warranties.

- (a) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder and has duly authorized the execution, delivery and performance of this Agreement by action of the City Council.
- (b) The City will cooperate with NRMN with respect to any litigation commenced with respect to the Program and this Agreement.

**ARTICLE VI
THE NTP GRANT**

Section 6.01 NTP Grant Amount. The City has received from the US DOT, FHWA, a demonstration grant in the amount of one million seven hundred fifty thousand and no/100 dollars (\$1,750,000.00). The City shall, pursuant to this Agreement, serve as the fiscal agent for the disbursement of the NTP Grant proceeds and the recapture of assets from NRMN if NRMN is unable to continue the Program through the term as indicated in the business plan pro forma.

Section 6.02 NTP Grant Requirements. NRMN shall comply with all US DOT and FHWA rules and regulations, a condition precedent to receipt of NTP Grant Funds from the City. Among the federal regulations that NRMN will comply with include, but are not limited to, the following:

- (a) Statutes and regulations promulgated by the US DOT, FHWA, especially those applicable to the SAFETEA-LU Act; and
- (b) Statutes and regulations promulgated by the State MNDOT.

Section 6.03 Disbursement of NTP Grant Proceeds.

- (a) Conditions Precedent to Initial Disbursement – The City’s obligation to make the initial disbursement of the NTP Grant shall be subject to the conditions precedent that NRMN shall be in compliance with all conditions set forth in Sections 4.01, 4.02 and 4.03 and the following conditions:
 - (1) NRMN shall have delivered, without expense to the City, duly executed copies of all Program construction documents and invoices.

- (2) NRMN shall provide written evidence to the satisfaction of the City that NRMN has received other Program funds in sufficient amounts, together with the NTP Grant, to finance and pay for capital costs of the Program.
 - (3) All permit fees and license fees required to gain access to public and private property for construction and installation of Program Facilities shall have been paid.
 - (4) All required insurance policies in appropriate amounts, name all insureds, and be in full force and effect as evidenced by the certificates of insurance.
 - (5) NRMN shall provide to City payment and performance bonds pursuant to Minnesota Statutes, Section 574.26 for the contractor retained by NRMN to construct and install Program Facilities.
- (b) Conditions Precedent to Final Disbursement – The City’s obligation to make the final disbursement of the NTP Grant shall be subject to the following conditions:
- (1) The City shall have determined that the undisbursed amount of the NTP Grant and the other financing committed to the Program is less than the amount required to pay all capital costs and the first year of operating costs and expenses which reasonably may be anticipated in connection with completion of the Project.
 - (2) If required by the City or by the FHWA (or any subgrantor such as MNDOT), City shall be furnished with a statement of NRMN in form and substance required by the City, the names, addresses and amounts due or to become due as well as the amounts previously paid to every contractor, subcontractor, person, firm or corporation furnishing materials or performing labor entering into the construction or installation of any part of the Program Facilities with contractor, subcontractor and supplier invoices attached to said statement.
 - (3) NRMN shall provide to the City evidence with all of the provisions of this Agreement as the City may reasonably request.
 - (4) No permit or license necessary for the construction and installation of the Program Facilities has been revoked.
 - (5) The Program Facilities including all landscaping and site restoration requirements have been completed in accordance with the Program Construction Plans.
 - (6) The City has received or shall simultaneously receive a lien waiver from each contractor, subcontractor or materials supplier for all work finished

and for all materials furnished by it for the Program and Facilities, or such liens have been bonded to the satisfaction of the City.

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01 Events of Default. Any of the following events shall constitute an “Event of Default” under this Agreement.

- (a) NRMN shall default in the performance or observance of any agreements or conditions to be performed or observed by NRMN under the terms of this Agreement.
- (b) Any representation or warranty made by NRMN in this Agreement shall prove untrue in any material respect or shall be materially misleading as of the time such representation or warranty was made.
- (c) NRMN shall be in default under the terms of this Agreement or the FHWA NTP Grant Agreement and such default shall not be cured by NRMN within the grace or cure period, if any, applicable to such default under the terms of such agreements.
- (d) Construction and installation of Facilities or the Program shall be abandoned or discontinued for a period of thirty (30) consecutive days or more after construction has commenced. Temporary seasonal removal and reinstallation of Facilities shall not be considered an Event of Default.
- (e) NRMN shall become unable to pay its debts as the same become due, or shall make an assignment for the benefit of creditors or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets under court supervision; or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of the property or assets of NRMN or a trustee, receiver or custodian shall have been appointed for any property or assets of NRMN who shall not have been discharged within sixty (60) days after the date of such appointment, or shall have made application to a court of competent jurisdiction to become dissolved.
- (f) Execution shall have been levied against the Program Facilities or underlying real property or any lien creditor’s suit to enforce a judgment against the Program Facilities or underlying real property shall have been brought and (in either case) shall continue unstayed and in effect for a period of more than sixty (60) days, unless NRMN has bonded the amount of the lien to City’s satisfaction.

Section 7.02 Notice of Default. Upon the occurrence of one of the Events of Default as defined in Section 7.01 hereof, City shall give written notice to NRMN specifying: (i) the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date not less than thirty (30) days from the date the notice is mailed to NRMN by which such Event of Default must be cured; and (iv) that failure to cure such Event of Default on or before the date specified in the notice may result in termination of the Agreement.

Section 7.03 Remedies. Upon the occurrence of any Event of Default as defined in Section 7.01 hereof, and notice and failure to cure as provided in Section 7.02, City, at its option, in addition to any other remedies to which it might by law be entitled to, shall have the right to do one or more of the following:

- (a) To enter into possession of the Program and perform any and all work and labor necessary to complete all or any part of the Program, at the cost and expense of NRMN, to operate and manage the Program, and to do all things necessary or incidental thereto; provided, however, that City shall not be obligated in any way to complete the Program or to pay for costs of construction thereof.
- (b) To perform such other acts or deeds that may be necessary to cure any default existing under this Agreement or the FHWA NTP Grant Agreement.
- (c) To cancel this Agreement.
- (d) To bring appropriate action to enforce such performance and the correction of such failure or default.
- (e) To declare the NTP Grant or any portion thereof, together with all other sums payable hereunder, immediately due and payable without presentment, demand, protest, notice of dishonor or any other notice pursuant to the use and repossession requirements described below.
 - (1) NRMN, which will receive the NTP Grant proceeds pursuant to the Agreement, shall:
 - (i) Use the funds to purchase equipment and to construct and install the Facilities;
 - (ii) Operate the Program in the City of Minneapolis using the Facilities for 10 years; and
 - (iii) Not sell or encumber the purchased equipment without the approval of FHWA or MNDOT during those 10 years.
 - (2) In the event that NRMN ceases to operate the Program during that 10-year period, FHWA, MNDOT, and the City will take possession of, use, and/or

liquidate the Facilities including all equipment purchased with the NTP Grant proceeds including any equipment replaced or repaired due to theft or vandalism and any parts replaced in normal maintenance activities.

- (3) In no event will the City assume operation of the Facilities or the Program nor will the City advance additional funds for operation of the Program or for the repayment of the NTP Grant or any portion of the NTP Grant.
- (f) To suspend its performance under this Agreement during the continuance of the Event of Default; or
- (g) To suspend disbursement of the NTP Grant proceeds during the continuance of the Event of Default.

Section 7.04 Remedies Not Exclusive. No right or remedy by this Agreement or by any document or instrument delivered by NRMN pursuant hereto, conferred upon or reserved to the City shall be or is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy now or hereafter existing at law or in equity or by statute.

Section 7.05 Waiver; Forbearance. Except as City may hereafter otherwise agree in writing, no waiver by City of any breach or default of NRMN of any of its obligations, agreements or covenants under this Agreement shall be deemed to be a waiver of any subsequent breach of the same, or any other obligation, agreement or covenants under this Agreement, nor shall any forbearance by City to seek a remedy for such breach be deemed a waiver of its rights and remedies with respect to such breach, nor shall City be deemed to have waived any of its rights and remedies unless it be in writing and executed with the same formality as this Agreement.

ARTICLE VIII GENERAL CONDITIONS

The general conditions are terms and conditions the City requires all of its subgrantees or recipients to meet as a condition for the City acting as the fiscal agent for the receipt and disbursement of the NTP Grant.

Section 8.01 Civil Rights Requirements.

- (a) Equal Opportunity Statement – NRMN agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363A, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

- (b) Nondiscrimination – NRMN will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- (c) If required by the City, NRMN shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, NRMN shall, in all solicitations or advertisements for employees placed by or on behalf of NRMN, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam eras, 1991 Gulf and current Afghanistan and Iraq wars, and comply in all other aspects with the requirements of the Minneapolis Code of Ordinances, Chapter 139.
- (d) Disability Compliance Requirements – NRMN is required to abide by the regulations of the U.S. Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. NRMN will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires contractors and grantees associated with the City to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. NRMN also agrees to post in a conspicuous place, accessible to employees and applicants, notices of their policy on nondiscrimination. The above requirements also apply to the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

In the event of NRMN’s noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled, terminated, or suspended, in whole or in part, and NRMN may be declared ineligible by the Minneapolis City Council from any further participation in city contracts in addition to other remedies as provided by law.

Section 8.02 Employment Requirements.

- (a) Living Wage Ordinance – NRMN may be required to comply with the “Minneapolis Living Wage and Responsible Public Spending Ordinance,” (<http://www.ci.minneapolis.mn.us/procurement/Ch38LivingWage.pdf>) Chapter 38 of the City’s Code of Ordinances (the “Ordinance”). Unless otherwise exempt from the Ordinance as provided in Section 34.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance’s requirement that NRMN and its subcontractors pay their employees a “living wage” as defined and provided for in the Ordinance.
- (b) Small & Underutilized Business Program (SUBP) Requirements – NRMN must comply with the Small & Underutilized Business Program (SUBP) as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any construction/development project in excess of one hundred thousand dollars (\$100,000) and any contract for the provision of goods and services in excess of fifty thousand dollars (\$50,000). Should NRMN find an opportunity to contract with other business concerns to complete portions of the task solicited, we ask that they would entertain contracts with businesses owned by women or minority persons.

Section 8.03 Other City Ordinances.

- (a) Equal Benefits Ordinance – Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each contractor and subcontractor with 21 or more employees that enters into a “contract” as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a “contract” as defined by the ordinance initially does not exceed \$100,000, but is later modified so the contract does exceed \$100,000, the ordinance will then apply to the contract. A complete text of the ordinance is available at: http://www.ci.minneapolis.mn.us/procurement/docs/euqal_benefits_ordinance.pdf. It is the contractor’s and subcontractor’s responsibility to review and understand the requirements and applicability of this ordinance.

- (b) Billboard Advertising – City Code of Ordinance 109.470 prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.
- (c) Conflict of Interest/Code of Ethics – By signing this Agreement, NRMN agrees that it will not represent any other party or other client which may create a

conflict of interest in its representation with the City. If NRMN is unclear if a conflict of interest exists, NRMN will immediately contact the City representative identified as the Contract Manager in this Agreement and ask for an interpretation.

Insofar as it relates to its relationship with the City created by this Agreement, NRMN agrees to comply with the City's Code of Ethics as codified at Minneapolis Code of Ordinances, Title 2, Chapter 15. NRMN certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with Title 2, Chapter 15 of that Ordinance as it related to their relationships between the City and NRMN created by this Agreement. Compliance with the Code of Ethics by NRMN will be in its potential role as an "interested person," "lobbyist," and not as a "local official" or "local employee" (except to the extent that a contractor representative or member of its board of directors is already a City official or employee). It is agreed by the parties that any violation of the Code of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

Section 8.04 Accounting Requirement; Inspection & Audit of Records; Records Retention.

- (a) Accounting Standards – NRMN agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Agreement.
- (b) Inspection of Records – All NRMN records with respect to any matters covered by this Agreement shall be made available to the City or its designees upon reasonable notice, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
- (c) Retention of Records – NRMN shall retain all records pertinent to expenditures incurred under this Agreement for a period of six years after the dates of the termination date of this Agreement or the resolution of all audit findings. Records for nonexpendable property acquired with funds under this Agreement shall be retained for six years after final disposition of such property.

Section 8.05 Insurance Requirements. Insurance secured by NRMN shall be issued by insurance companies acceptable to the City. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Agreement and shall remain continuously in force for the duration of the Agreement. NRMN and its subcontractors shall secure and maintain the following insurance:

- (a) Workers Compensation insurance that meets the statutory obligations with Coverage B – Employers Liability limits of at least \$100,000 each accident, \$500,000 disease – policy limit and \$100,000 disease each employee.
- (b) Commercial General Liability (CGL) insurance with limits of at least \$5,000,000 general aggregate, \$2,000,000 products – completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage. The \$5,000,000 general aggregate limit for the CGL coverage may be satisfied with primary and umbrella policies. The policy shall be on an “occurrence” basis, shall include contractual liability coverage, and the City shall be named an additional insured.
- (c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$500,000 per accident.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of NRMN. Any policy deductibles or retention shall be the responsibility of NRMN. NRMN shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect NRMN’s interest or provide adequate coverage. Evidence of coverage is to be provided on an ISOapproved Accord Declaration. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. NRMN shall require any of its subcontractors, if subcontracting is allowable under this Agreement, to comply with these provisions.

Section 8.06 Hold Harmless and Indemnity. NRMN agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including reasonable attorney’s fees, resulting directly or indirectly from any negligent act or omission of NRMN, its employees, its agents, or employees of subcontractors in the performance of the work or services provided by or through this Agreement or by reason of the failure of NRMN to fully perform, in any respect, any of its obligations under this Agreement.

Section 8.07 Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. NRMN shall at all times remain an independent contractor with respect to the work and/or services to be performed under this Agreement. Any and all employees of NRMN or other persons engaged in the performance of any work or services required by NRMN under this Agreement shall be considered employees or subcontractors of NRMN only and not of the City; and any and all claims that might arise, including Worker’s Compensation claims under the Worker’s Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of NRMN.

Section 8.08 Ownership of Materials; Intellectual Property Rights.

- (a) Ownership of Materials – All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Agreement shall become the property of FHWA upon final approval of the final report or upon request by the City at any time before then. FHWA may use, extend, share with other public entities or enlarge any document produced under this Agreement without the consent, permission of, or further compensation to NRMN.

- (b) Intellectual Property – FHWA owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any “Work” created, in progress, produced or completed and paid by this Agreement. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes or other media.

All Work under this Agreement will be the exclusive property of FHWA and will be surrendered to the City for delivery to FHWA immediately upon completion, expiration, or cancellation of this Agreement. NRMN represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

**ARTICLE IX
MISCELLANEOUS**

Section 9.01 Applicable Law. The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of NRMN.

Section 9.02 Data Practices. NRMN agrees to comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and all other applicable state and federal laws relating to data privacy or confidentiality. NRMN must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from NRMN concerning data requests. NRMN agrees to hold the City, its officers, and employees harmless from any claims resulting from NRMN’s unlawful disclosure or use of data protected under state and federal laws.

Section 9.03 General Compliance. NRMN agrees to comply with all applicable federal, state and local laws and regulations governing funds provided under this Agreement.

Section 9.04 Subcontracting. NRMN shall provide written notice to the City and obtain the City's authorization to subcontract any work or services to be provided to the City pursuant to this Agreement. As required by Minnesota Statutes, Section 471.425, NRMN shall pay all certified small subcontractors or subcontractor's undisputed, completed work within ten (10) days after NRMN has received payment from the City.

Section 9.05 Assignment or Transfer of Interest. NRMN shall not assign any interest in the Agreement and shall not transfer any interest in the same, either by assignment or novation, without the prior written approval of the City.

Section 9.06 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 9.07 Notices and Demands. Notices or demands under this Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, by overnight mail or delivery service, postage prepaid, or delivered personally; and

- (a) In the case of NRMN, notices will be addressed to or delivered personally to: Bill Dosset, Midtown Bike Center, 2834 10th Avenue South, Minneapolis, Minnesota 55407.
- (b) In the case of the City, notices will be addressed to or delivered personally to City of Minneapolis Department of Community Planning and Economic Development, Crown Roller Mill, Suite 450, 105 Fifth Avenue South, Minneapolis, Minnesota 55401-2546, Attention: Director

or, at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 9.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.

Section 9.09 Successors, Assigns. Without modifying any provision requiring consent to assignment, this Agreement shall be binding on the successors and assigns of any party.

Section 9.10 Amendments in Writing. For any amendment or modification to this Agreement to be valid, it shall be in writing and signed by the parties hereto or their successors.

Section 9.11 Severability. If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder thereof and the application of such term, provision and condition to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, provisions and conditions

hereof shall, in all other respects, continue to be effective and to be complied with to the full extent permitted by law.

Section 9.12 Signage Credit, Acknowledgments and Notices. NRMN shall, prior to the start of construction, erect at its own expense, a sign of reasonable size in a prominent position at each Program Facility indicating to the general public the name of the Program, the NRMN, and acknowledging the participation of the City of Minneapolis through its Department of Public Works and the Department of Community Planning and Economic Development (the “City”), and the FHWA. NRMN shall also give ample notice to the City of ground breaking, opening ceremonies and like events so that the City may obtain publicity of and participation in such events. NRMN agrees to assist and cooperate in and with such publicity and participation. NRMN further agrees that the City shall also have the right to issue press releases concerning the Program.

Section 9.13 No Joint Venture. The relationship between Lender and Borrower is solely that of lender and borrower and is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

Section 9.14 Survival of Warranties. All agreements, representations and warranties made in this Agreement shall survive its execution and the execution of the NTP Grant and shall continue for the term of this Agreement unless this Agreement is terminated as herein provided.

ARTICLE X TERM AND TERMINATION

Section 10.01 Term and Duration. This Agreement shall be in effect from the date first indicated hereon until August 1, 2020 unless terminated earlier.

Section 10.02 Termination. The City may cancel this Agreement for any reason without cause upon thirty (30) days’ written notice. Both the City and NRMN may terminate this Agreement if either party fails to fulfill its obligations under the Agreement in a proper and timely manner, or otherwise violates the terms of this Agreement. The nondefaulting party shall have the right to terminate this Agreement if the default has not been cured after ten (10) days’ written notice has been provided. If termination shall be without cause, the City shall pay NRMN all compensation earned to the date of termination. If the termination shall be for breach of this Agreement by NRMN, the City shall pay NRMN all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Agreement is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by NRMN under this Agreement shall, at the option of the City, become the property of the City, and NRMN shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, NRMN shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by NRMN. The City may, in such event, withhold payments due to NRMN for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by NRMN, from asserting any other right or remedy allowed by law, equity, or by statute.

(Signature pages follow.)

IN FURTHERANCE WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NICE RIDE MINNESOTA, INC.

By: _____

Its: Vice President

*(Signature page to Grant Funded Agreement for Goods and Services
By and Between City of Minneapolis and Nice Ride Minnesota, Inc.)*

CITY OF MINNEAPOLIS

By: _____

Finance Officer

City-wide Contract Administrator

City Purchasing Agent

Acknowledgment:

Director of Traffic and Parking
Services, Department of
Public Works

Responsible Department Head
Approval:

Director or Deputy Director,
Department of Community Planning
and Economic Development

Approved as to form:

Assistant City Attorney

*(Signature page to Grant Funded Agreement for Goods and Services
By and Between City of Minneapolis and Nice Ride Minnesota, Inc.)*