

COOPERATIVE AGREEMENT BETWEEN
THE UNITED STATES DEPARTMENT OF TRANSPORTATION
AND THE [BANK]

1. Recital of Purpose

The principal purpose of this Agreement is to carry out the United States Department of Transportation (DOT)'s Short Term Lending Program (STLP), a loan guarantee program to enhance the lending opportunities for disadvantaged business enterprises (DBEs) and other certified small and disadvantaged businesses (SDBs) in order to increase the number of DBEs and SDBs that engage in transportation-related contracts and to strengthen the competitive and productive capabilities of the DBEs and SDBs that currently do business with DOT, its grantees, recipients, their contractors and subcontractors. This Agreement is not intended to and does not create any rights in third parties to receive loans or any other funds from the [BANK] or DOT. All rights and obligations under the Agreement run only to the parties.

This Agreement is intended by the parties to be construed as a Cooperative Agreement, under 31 United States Code (U.S.C.), Section 6305, and shall be in no way construed as a procurement contract.

2. Authority

DOT is authorized under 49 U.S.C. 332, to develop support mechanisms, including financial assistance programs that will enable DBEs and SDBs to take advantage of transportation-related business opportunities. The [BANK] is authorized under its charter and by-laws to enter into this Cooperative Agreement.

3. Definitions

- 3.1 For the purpose of this Agreement, the term "Disadvantaged Business Enterprise" ("DBE"), includes a for profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women and, is set forth at 49 Code of Federal Regulations (CFR) (23 and 26); [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users \(SAFETEA-LU\)](#); and corresponding sections of the Aviation Investment and Reform Act for the 21st Century, as amended by any regulations and interpretations issued there-under. For the purpose of the Agreement, the term Small and Disadvantaged Business ("SDB") includes; small disadvantaged business (SDB), Section 8 (a) program; HUBZONE Empowerment Contracting Program, and Service Disabled Veteran owned business, under the U.S.

Small Business Administration.

- 3.2 For the purpose of this Agreement, the term "transportation-related contract" is defined as a contract for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation with any public or commercial provider of transportation through any Federal, State or local transportation agency. The transportation contract can be a prime contract or subcontract at any tier, awarded by DOT or by a State or local recipient of DOT funds.
- 3.3 For the purpose of this Agreement, the term "Participating Lender" (PL) is defined as banking or lending institution, or other approved organization which has agreed to and has been formally accepted as a Participating Lender in the DOT Short-Term Lending Program.

4. Terms

- 4.1 The [BANK] shall make loans to qualifying DBEs and SDBs that request financial assistance to perform transportation-related contracts. The maximum loan face amount for any individual loan or line of credit will be \$[INSERT MAXIMUM ALLOWABLE LOAN AMOUNT NOT TO EXCEED \$750,000] unless the written consent of the Director, OSDBU, is received. Loans will be secured at a minimum by assignment of the proceeds of the transportation-related contracts supporting the loan request and by a recorded first lien security position in such proceeds. Other collateral may be required based upon assessments of risk and collateral availability performed by the [BANK] and DOT.
- 4.2 The [BANK] agrees to review and give due consideration to all loan applications submitted directly by the applicant or forwarded by DOT. Generally DOT will refer the application to the Participating Lender located closest to the applicant; however, DOT may at its sole discretion forward applications to any Participating Lender.
- 4.3 DOT will guarantee up to seventy-five (75) percent of the outstanding and unpaid principal amount of the loan, interest on the principal amount of the loan, and interest on any due and unpaid amounts owing by the Borrower to the Bank, provided however that the maximum liability of DOT shall not at any time exceed the guaranteed amount. In the event a DBE or SDB defaults on a loan made under this Agreement, the loss will be borne on the same pro rata basis of distribution.
- 4.4 The [BANK] agrees that in any and all matters concerning the DOT Short Term Lending Program it will conform to the policy and procedures as described in the DOT STLP

Loan Policies and Procedures Manual and subsequent regulations implementing this manual. The [BANK] and DOT will be responsible for decisions as to which DBE or SDB applicants will or will not receive loans. All decisions will require the final approval of the OSDBU Director, or the Director's designee, after the loan application has been recommended for approval by the [BANK]'s loan committee or by its designated senior official.

- 4.5 The DBE or SDB borrower shall be able to make draws against the line of credit during the term of the loan and shall be required to repay all remaining principal and interest no later than the date of receipt of the final payment under its transportation-related contract(s). In the event that the contract is terminated for any reason, maturity of the loan will be accelerated and no further advances will be made.
- 4.6 The use of the two-party check system will be required in which [BANK] and the DBE or SDB will be the payees of any relevant check paid to the DBE or SDB for work performed under a secured transportation-related contract(s). Provided the bank can demonstrate that it has a process in place that will restrict the Borrower's access to all relevant payments made to the DBE or SDB for work performed under a secured transportation related contract(s) until repayment of principal currently due is made to the Bank's satisfaction, an alternative secure controlled payment system may be used in lieu of the two-party check system.
- 4.7 Application forms required for DOT guaranteed loans can be obtained from the Participating Lender, and are also available on the OSDBU webpage: <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>. Applications should be submitted directly to the [BANK]. The [BANK] will perform the loan application review and process the loan for completeness. [BANK] will utilize their own loan forms for the program. The [BANK] must initially approve or decline the loan based upon its independent review. Loans approved by the [BANK] will then be forwarded to DOT and will require the final approval of the OSDBU Director, or the Director's designee for a DOT guarantee. Questions regarding program eligibility and policy will be referred to OSDBU for resolution. Any DBEs or SDBs rejected for a loan will be sent a letter of explanation, with a copy to OSDBU.
- 4.8 Determination that the final loan documents conform to the terms of the loan approval; that loan documentation is complete and has been properly executed; and that loan disbursement is completed is the sole right and responsibility of the [BANK]. The [BANK] will promptly close the loans in accordance with conditions specified by DOT in the transmittal of its approval and any other conditions upon which the DOT and the [BANK] may have agreed in writing. The [BANK] shall report the circumstances behind any loans not closed within 15 business days after receipt of final approval by OSDBU.

The [BANK] must execute applications which have been finally approved by DOT and the [BANK] and must ensure the necessary completion and perfection of documents under standard banking practice and procedure. These documents will include as applicable; the note, assignment of payments, notice of assignment of payments, personal guaranties, necessary UCC filings, and any other collateral or security documents completed during the execution of the loan. Additionally, each borrower for which the DOT guarantee exceeds \$150,000 must execute a Certification Regarding Lobbying concurrent with execution of the closing documents. This certification is incorporated into this Cooperative Agreement as Attachment B.

- 4.9 The [BANK] will forward copies of all executed closing documents and filings to DOT no later than 15 business days after execution of closing documents and filings.
- 4.10 The [BANK] may only release loan funds to a certified applicant (DBE or SDB, as defined in Section 3.1) upon the award of a transportation-related contract as determined by DOT.
- 4.11 The [BANK] shall be in a first position on any contract proceeds and receivables that the STLP line has financed. STLP funds shall not be placed in a subordinate position to any other debt, except if so required by a DOT authorized surety bonding company and approved by the OSDBU Director, or his/her designee. It shall be the responsibility of the [BANK] to ensure that the security interests in the proceeds of any contract funded under this Agreement are properly recorded as minimum security for the loan. The [BANK] is also responsible for maintaining regular and sufficient contact with the borrower in order to monitor and ensure the progress of the project being financed and compliance with the terms of the financing, and to detect any material adverse change in the condition of the borrower, and shall be reported in the monthly report to OSDBU.
- 4.12 The [BANK] may collect an application fee of \$150.00 from the applicant for each loan application or renewal.
- 4.13 For each loan successfully executed, DOT will pay the [BANK] an underwriting fee of one (1) percent of the face amount of the approved loan with a minimum fee of not less than \$1,000.00 per approved loan. The [BANK] can charge the applicant a Wall Street Journal (WSJ) variable interest rate plus two (2) percent for the interest rate on the loan. For total loan amounts of \$150,000 or less, the PL may charge an additional half (1/2) percent administration fee to DOT for the monitoring and technical assistance required. Payment of the underwriting fees will be made upon a written request for payment by the [BANK] and receipt by OSDBU of a copy of a signed loan activation form and a copy of the executed note. At its discretion, DOT may implement, modify, or rescind a temporary interest rate floor. DOT will provide Bank fifteen (15) day written notice of

implementation, modification, or rescission of a temporary interest rate floor.

- 4.14 The [BANK] must fully fund each loan. If a second bank has participated in the loan, the distribution of the underwriting fee shall be negotiated by the banks.
- 4.15 DOT's guarantee shall be established by a Guarantee Agreement executed by the [BANK] and DOT for each new loan, loan modification, or loan renewal.
- 4.16 The [BANK] and DOT shall be jointly responsible for establishing collection procedures and shall exercise due diligence with respect to collection of delinquent debt. The [BANK] will be responsible for initiating actions to recover such debt. DOT must approve in writing any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. In an appropriate situation, DOT may authorize the [BANK] to undertake any legal action to collect unpaid loans and the DOT will reimburse the [BANK] on a pro rata basis in proportion to the loan guarantee for the associated fees and costs with prior written authorization from the OSDBU Director. Should litigation become necessary, the Department of Justice shall be responsible for its conduct, and the [BANK] and DOT shall cooperate in providing evidence and other support to its efforts. Net recoveries applicable to principal and accrued interest shall be applied on a pro rata basis in proportion to the loan guarantee commitments.
- 4.17 The [BANK] shall administer all loans approved under STLP in a manner that is consistent with the terms of this Agreement and the procedures established there under and with a standard of care equal to or better than the industry standard for administration of commercial loans.

5. Deliverables and Delivery Schedule

- 5.1 Within fifteen (15) business days of the activation of a guaranteed loan, the [BANK] will submit a completed and signed Loan Activation Form to OSDBU. (Attachment A)
- 5.2 Within five (5) business days of the close-out or renewal of a guaranteed loan, the [BANK] will submit a completed and signed Loan Close-out Form to OSDBU. (Attachment B)
- 5.3 Monthly Reports. The [BANK] shall provide a report by the 10th of each month covering the previous month's activity, according to the attached templates (Attachments C1 and C2). The report will include: (a) a status of the review of all pending applications; (b) a summary of loans executed and outstanding, including the borrowers' name, loan amount,

maturity date, balance outstanding, and accrued interest; (c) a statement for each loan as to whether the loan is current and performing satisfactorily; (d) for each loan determined delinquent and not performing properly, a summary of action taken; and, (e) the date(s) of any loans that have closed out; and, (f) any relevant information that DOT may request.

- 5.4 Call Reports or Thrift Financial Reports. The [BANK] shall provide two copies of its quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council - FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision - OTS Form 1313) within 60 days after the close of each calendar quarter.
- 5.5 Regulatory Enforcement Actions. The [BANK] shall promptly notify the OSDBU Director, of any regulatory enforcement actions involving the Bank.
- 5.6 Community Reinvestment Act (CRA). The [BANK] shall provide the OSDBU Director a copy of its current CRA rating and shall promptly advise of any negative changes thereto. Delivery of all items or other notices or correspondence relevant to this Agreement shall be addressed as follows:

Director, Office of Small and
Disadvantaged Business Utilization
U.S. Department of Transportation
1200 New Jersey Avenue, SE, S-40
Washington, D.C. 20590

- 5.7 The PL shall notify OSDBU within 10 (ten) business days of any personnel changes regarding signatory officials of the PL, as well as any significant occurrences within the PL's organization which may affect this agreement, such as mergers, buyouts, or expansions.

6. Audit, Investigation and Review

DOT's Inspector General and the Comptroller General of the United States and/or Director, OSDBU, or Director's designee may at all reasonable times investigate, audit and review in the offices of the [BANK]. The [BANK] shall provide to such parties access to all documents, papers, books, and records relevant to such audit or review.

7. Record Retention

The [BANK] shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of this Agreement for a period of not less than three years from the

date of termination of this Agreement or payment in full from the borrower; except, if any litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

8. Duration of Agreement

This Agreement shall be in effect for a period of two (2) years from the date of the execution of this Agreement.

9. Expiration of Agreement

After expiration of this Agreement, no further applications will be furnished by DOT for approval. Unless instructed otherwise by DOT, after expiration of the Agreement, the [BANK] shall complete the documentation of any loans which have been recommended to DOT for approval and in which DOT has given final approval prior to expiration of the Agreement. Following expiration of the Agreement, the [BANK] may, subject to the written concurrence of DOT, sell its loans to another bank or to another Participating Lender which shall assume the original the [BANK]'s rights and responsibilities to fund, service and collect the loan or loans.

10. Suspension of Agreement

DOT may suspend this Agreement by giving a Notice of Suspension in writing to the [BANK] and by instructing the [BANK] in writing not to disburse funds (including the granting of additional loans and the making of loan commitments), pending the [BANK]'s action to correct violations of the terms and conditions of this Cooperative Agreement. Failure by the [BANK] to take corrective actions specified in the Notice of Suspension within thirty (30) days of the date of receipt of said notice may result in termination of the Agreement.

11. Termination

11.1 DOT Termination for Cause. DOT may terminate this Cooperative Agreement, in whole or in part, at any time before the expiration of the two year term of the Agreement, and without affording a thirty (30) day cure period under the Suspension provision, if it determines that the [BANK] failed to comply with terms and conditions of the Agreement and such failure cannot be reasonably addressed. DOT shall promptly notify the [BANK] in writing of the determination and the reasons for the termination, together with the

effective date of termination.

- 11.2 DOT Termination for Convenience. DOT may terminate this Cooperative Agreement for the convenience of the Government and without cause, upon prior written notice of thirty (30) days to the [BANK] of DOT's intention to terminate. Upon termination, DOT shall remain liable for the loan balance on the pro rata share of the loan balances of the principle advances up to the effective date of termination for the loan guarantee(s) made by the [BANK], which have been finally approved by DOT prior to the effective date of termination.
- 11.3 Bank Termination. The [BANK] may terminate the Agreement with written notice of sixty (60) days to DOT of the [BANK]'s intention to terminate. Upon termination, DOT shall remain liable for the loan balance on the pro rata share of the loan balances of the principle advances up to the effective date of termination for the loan guarantee(s) made by the [BANK] prior to the effective date of termination.

12. DOT's Representative

The Director, OSDBU, shall represent DOT under the Agreement and may exercise all rights secured to DOT by the Agreement. Decisions by the Director to exercise DOT's rights under this Agreement shall be final and binding on DOT. The Director may delegate these responsibilities to any other DOT employee on written notice to the [BANK].

_____ shall represent the [BANK] under the Agreement and may exercise all rights secured to the [BANK] by the Agreement. Decisions by this representative to exercise the [BANK]'s rights under this Agreement shall be final and binding on the [BANK]. The [BANK] may delegate these responsibilities to any other the [BANK] employee upon written notice to DOT. The [BANK]'s address for receipt of notices and other correspondence for the purpose of this Agreement will be:

13. Miscellaneous Conditions

- 13.1 As a condition of receipt of any DOT guarantee under the Agreement, the [BANK] assures DOT that they will abide by the provisions of Title VI of the Civil Rights Act of

1964, 42 U.S.C. 2000d et seq., and DOT's implementing regulations, 49 C.F.R. 21; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and DOT's implementing regulations, 49 C.F.R. 27; the Age Discrimination Act of 1975, 42 U.S.C. 6101-7, and any Federal implementing regulations; and Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 803 (re-codified in 49 U.S.C. 332). The [BANK] also assures DOT that they will comply with all other applicable Federal laws and regulations.

- 13.2 In order to enter into this Agreement, the [BANK] shall be designated as a depository and financial agent of the Government under 31 CFR Part 202.
- 13.3 All notices, approvals, reports, or other correspondence contemplated by this Agreement must be in writing and served personally, by facsimile, by e-mail, or by first class mail. If given by personal service, the notice shall be effective on the date of delivery; if given by mail, the notice shall be effective upon receipt. Either party may change its mailing address by giving notice of such change.
- 13.4 The [BANK] shall execute a Drug-Free Workplace Act certification concurrent with execution of this Cooperative Agreement. This certification is incorporated into this Agreement as Attachment D.
- 13.5 The [BANK] shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of DOT loan guarantee, a copy of which must be made available to DOT upon request. No employee, officer or agent of the [BANK] shall participate in the selection, or in the award or administration of a contract supported by DOT funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) The employee, officer or agent,
 - (b) Any member of his or her immediate family,
 - (c) His or her partner, or
 - (d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The [BANK]'s officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from loan applicants or potential applicants, or parties applying for any DOT short term loans. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or

other disciplinary actions for violations of such standards by the [BANK] agents.

13.6 In accordance with Section 319 of Public Law 101-121, the [BANK] shall be prohibited from using Federal appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan and shall disclose lobbying activities. The [BANK] shall execute a Certificate Regarding Lobbying concurrent with execution of this Cooperative Agreement. This Certification is incorporated into this Cooperative Agreement as Attachment E.

13.7 Financial Assistance Policy to Ban Text Messaging While Driving

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

"Driving"-

- (1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- (2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" ---means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, financial assistance recipients and subrecipients of grants and cooperative agreements are encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--
 - (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as-

- (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
- (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Assistance Awards.* All recipients and subrecipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (c), in all assistance awards.

13.8 The Recipient is required to register with the Central Contractor Registration at <http://www.ccr.gov>. To receive payment, the Contractor’s registration must include the banking information required for electronic funds transfer.

14.0 Entire Agreement

This document embodies the entire Agreement between the [BANK] and DOT. This Agreement may be amended, altered, or any of its provisions waived only in writing and signed by both parties.

This Cooperative Agreement is entered into this [] day of [] 20[], by the United States Department of Transportation at Washington, District of Columbia.

By: _____
 Director, Office of Small and
 Disadvantaged Business Utilization
 U.S. Department of Transportation

This Cooperative Agreement is entered into by the [BANK] and in witness whereof, the undersigned has caused the signature of its officer below-named and its corporate seal duly attested to be affixed hereto this ____ day of _____, 20__, intending to be legally bonding hereby.

[BANK],

(Participating Lender) _____

Signature: _____

Title: _____