

ITB-15-15
Tabor Street Reconstruction
S-02-14
RTD-Project Special Provisions
RTD-Federal FTA Requirements

The following information includes the RTD Project Special Provisions for all interested bidders / contractors.

Contractors, this project is funded through RTD with Federal FTA funds, therefore understand that the awarded contractor must adhere / comply to the Federal terms outlined in Exhibit B and is required to submit the necessary certifications. **The Contractor agrees they will be acting as the City for the purposes of Exhibit B and will be bound to each and every term and condition included therein.**

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RTD Civil Rights DBE Compliance Monitoring and Enforcement

DBE Compliance Monitoring and Enforcement Requirements for RTD's Subrecipients Receiving USDOT Financial Assistance

A Subrecipient is defined for the purposes of the DBE Program Plan as an entity that receives USDOT financial assistance from an Agency that has received funding directly from USDOT – in this instance – “RTD”. Accordingly, RTD is required, as a grant recipient to mandate all applicants that submit applications or proposals for a share/use of the federal funding (applicable Subrecipients) must comply with the federal DBE Program requirements. As a condition of receiving USDOT funds (so-called flow down provisions) RTD has an overall numerical DBE goal (established on a triennial basis) that has been approved by the Federal Transportation Administration (FTA) and the USDOT. All Subrecipients that meet the threshold dollar value requirements are required to comply with the DBE Program requirements set forth in 49 CFR Part 26, including undertaking due diligence to assist in the attainment of the goal.

All Subrecipients that receive RTD USDOT-assisted contracts must include appropriate DBE provisions/clauses in their agreements and contracts as applicable. The executing agreement, for example, must include a nondiscrimination and other required clauses as discussed in section D below.

RTD requires local municipalities and other Subrecipients to comply with all federal requirements including meeting the established DBE participation goals as a condition precedent to receiving a contract award/federal funding.

It is RTD's responsibility to monitor the activities of Subrecipients to ensure that in their use and administration of all federal funds that Subrecipients comply with DBE program requirements and related federal civil rights program requirements. To accomplish this objective, RTD performs oversight compliance monitoring to ensure compliance.

Pre-award activities

A. How DBE requirements apply to Subrecipients:

- DBE requirements as set forth in 49 CFR Part 26 applies to all Subrecipients where contracting opportunities exist. Contracting opportunities may include but are not limited to professional services, construction work and the purchase of goods and services;
- Where there are no contracting opportunities, DBE requirements are not applicable;
- DBE requirements for vehicle projects, TVMs (Transit Vehicle Manufacturers), are satisfied by the vehicle manufacturer and are not passed on to the Subrecipient; and

- RTD’s DBE Special Provisions provide specific instructions to contractors concerning their obligations and procedures to be followed on contracts containing DBE goals. On construction projects, Subrecipients will be required to insert RTD’s DBE Special Provisions.

B. Establishing DBE contract goals

Prior to awarding any contract, Subrecipients are required to submit to the RTD Small Business Office the following information which will be analyzed for the purposes of determining if a DBE goal would be applicable. The following are information that must be submitted to the RTD Small Business:

- A detailed description of the project including the necessary scope of services, equipment and/or supplies being provided. Preferably an Independent Cost Estimate/Internal Cost Estimate (ICE) inclusive of the individual scope of services
- Estimated value of the project. Additionally please identify the funding source(s) and applicable percentages (reminder: \$1 of federal funding = federally funded project)
- Please identify the type of procurement, (IFB or RFP)
- Identify the project delivery methodology (only if the normal/traditional method is not applicable)
- Provide explanation of any requirements, special conditions or information that may have an impact on the DBE goal determination analysis
- Please provide anticipated project duration
- Percentage of project expected to be completed by the prime, if any
- The location or area where the service/work is to be performed
- Documentation and justification of sole source or highly specialized element of work, not conducive to DBE participation
- Provide any historical information of the project
- Please identify any subcontracting opportunities

After evaluating all the factors indicated in the above paragraph, the RTD Small Business Office will make further assessment and make a goal determination. A goal determination/assessment will be forwarded to the Subrecipient along with an Attachment A which includes all provisions and requirements of 49 CFR Part 26. The Attachment A must be inserted within each Subrecipient procurement that has a DBE goal.

The RTD Small Business Office will require that a representative from the Subrecipient meet with a representative from RTD Small Business Office prior to the posting of the solicitation to go over DBE program requirements and RTD processes and procedures.

Post-award activities

C. Monitoring oversight of Subrecipients

The RTD Small Business Office will require that once an apparent low bidder or proposer has been identified, all completed required enclosures within Attachment A be submitted to RTD Small Business Office for evaluation and approval.

The Subrecipient must also notify the RTD Small Business Office of the date of the NTP meeting. A representative from the RTD Small Business Office will need to attend the NTP to go over the DBE program requirements including reporting and monitoring requirements.

The RTD Small Business Office will require the primes to submit a copy of the subcontract agreement with each DBE subs to the RTD Small Business Office within 30 days of the NTP being executed. Additionally, there are required provisions that must be included in each subcontract agreement with DBEs including but not limited to: Non-discrimination clauses, prompt payment clauses, removal/termination/substitution clauses, changes clauses, etc. All DBE subcontract agreements must be reviewed by The RTD Small Business Office.

Once the contract is awarded and the subs have been identified, the primes are required to submit Form E and the DBE subs are required to submit form E-2 by the 7th of each month to the RTD Small Business Office.

The RTD Small Business Office will be responsible for monitoring all contracts and subcontracts (including purchase orders) to ensure compliance with RTD's policies and FTA requirements. The following will apply:

- The RTD Small Business Office will conduct at least one review during major portion of work and keep written certification that contracting records have been reviewed and that projects on which DBEs have participated have been monitored;
- Written certification will include a statement that the project was monitored for DBE compliance and that a commercially useful function (CUF) review was conducted for all DBEs performing on the contract. These documents and records of compliance activities will be kept at the RTD Small Business Office for a minimum of three years;
- Provision of a monitoring mechanism at a substantially completed stage of the project to verify that work committed to DBEs at contract award stage is actually performed by the DBEs. This will be accomplished by the RTD Small Business Office conducting reviews and DBE contracting interviews. The RTD Small Business Office will keep records of actual payments to contractors for distinct elements of work performed by DBE firms and compare to commitments made at time of award. The final report will include completed CUF forms, written certification for each project and will show, for each DBE, the contract amount, the amount paid to DBEs in this report, and the total amount paid to the DBEs to date.

- These records will be reviewed as part of the grant auditing process that is conducted by RTD before final payment is made;

D. Required contract clauses:

Subrecipients must include the following clauses in their agreements or contracts with contractors or suppliers whenever USDOT funds are being used.

- **Contract Assurance:**

Each contract that a Subrecipient signs with a contractor must include a non-discrimination assurance as required by 49 CFR 26.13(b). This clause prohibits the contractor from discriminating based on protected categories in the performance of the contract.

- **Prompt Payment and Retainage:**

The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its work no later than 7 days from the receipt of each payment the prime contractor receives from RTD. The Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of RTD. Failure to comply with this requirement may result in the withholding of payment to the prime contractor until such time as all payment due under this provision has been received by the subcontractor(s). This clause applies to both DBE and non-DBE subcontractors.

E. Reporting requirements

What Subrecipients must report to the RTD Small Business Office:

- On Awards/Commitments, Subrecipients must report on all contracts and subcontracts awarded during the reporting period. “Awarded” means the procurement of goods and services in any manner (i.e. purchasing supplies at a store): and
- With respect to Actual Payments information, Subrecipients must report payments on all completed contracts and subcontracts. “Completed” means the inclusion of final payment on a large contract or more informal procurements that are awarded and completed in the same instant (e.g. purchasing supplies).

When Subrecipients are required to report:

- Data for October 1 to March 31 must be submitted to RTD by April 21; and
- Data for April 1 to September 30 must be submitted to RTD by October 21.

F. *Other reporting requirements (Bidders list)*

All Subrecipients must create and maintain a bidders list consisting of information about all DBE and non-DBE firms that bided or quoted or expressed an interest in working on all federal-aided contracts. This information may be used by RTD to assist in developing the overall triennial goal and must include the following:

1. Firm name;
2. Firm contact information;
3. Firm status (whether DBE or non-DBE);
4. Age of firm; and
5. The annual gross receipts of the firm (by categories).

Attachment A

Civil Rights/Equal Employment Opportunity/

DBE Program Requirements

RFP/IFB

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PART A

SPECIFIED FEDERAL REQUIREMENTS

The Contractor shall perform its obligations and shall require each Subcontractor to perform its respective obligations under this Contract and the Subcontracts in accordance with, the following requirements. The Contractor shall insert this Part A, Attachment A and its enclosures (Civil Rights/WIN Requirements) into each Subcontract regardless of the tier.

1. CIVIL RIGHTS REQUIREMENTS APPLICABLE TO THE CONTRACT

1.1 CIVIL RIGHTS

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

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

Race, Color, Creed, National Origin, Sex- In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action 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. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

Disabilities- In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

1. **During the performance of this contract, the contractor or subcontractor:**

(i) will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or age. The contractor will ensure that equal employment opportunity is afforded to all applicants in recruitment and employment, and that employees are treated, during employment, without regard to their race, color, religion, national origin, sex, disability or age. Such equal employment opportunity 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to setting forth provisions of this nondiscrimination clause.

(ii) Will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability or age. The contractor agrees to comply with any regulations promulgated by the EEOC, OFCCP, Department of Labor, Department to Justice, the Regional Transportation District, Colorado Revised Statutes and all other relevant state and local laws.

PART B
DISADVANTAGED BUSINESS ENTERPRISES
PROGRAM REQUIREMENTS

1. DEFINITIONS

Unless the context requires otherwise, capitalized terms used in this Attachment A shall have the meanings given to them in Appendix H (*Definitions*) of the Instructions to Proposers. However, if there is a conflict, the definitions in this section shall prevail. In addition, the following capitalized terms shall have the meanings set out below:

Contract Goal (DBE goal) means a goal determined by such factors as the type of work involved, the location of the work and the availability of the DBEs for the work of the particular contract.

Contractor means any Project Contractor that subcontracts with a DBE for performance of the Work, as applicable.

Commercially Useful Function occurs when a DBE firm is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved in substance as contemplated by the federal regulations codified at 49 CFR Part 26. The DBE firm must also be responsible for materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the materials itself.

Disadvantaged Business Enterprise (DBE) means each of the following:

- (a) that is at least 51% owned and controlled by one or more Socially and Economically Disadvantaged individuals or, in the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding; In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals; In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals;
 - (i) whose eligible principle(s) personal net worth does not exceed \$1,320,000. The personal net worth excludes the equity of the eligible principle's primary residence and the equity of the eligible principle's firm
 - (ii) whose average annual gross receipts for the past 3 years cannot exceed \$22.41 million
 - (iii) whose management and daily operations are controlled by one or more of the Socially and Economically Disadvantaged individuals who owns it; and
 - (iv) that is certified as a "Disadvantaged Business Enterprise" in the state's Unified Certification Program.

DBE Enclosures means the certificates and forms provided in Appendix B of this Attachment.

DBE Goals has the meaning given to it in Section 3.1 of this Attachment.

DBE Liaison means a representative of the Contractor with direct and independent access to the Contractor's project manager and/or chief operating officer. This can be a collateral duty. The DBE Liaison has management responsibility for implementing, managing and reporting on achievement of the DBE Goals, ensuring compliance with 49 CFR Part 26, communicating subcontracting, business

development and supportive services activity at all tiers. The DBE liaison is also responsible for serving as the point of contact with RTD's Disadvantaged Business Office for all reporting, submission of properly completed forms/documents, and for responding to any compliance issues/matters.

DBE Participation Report has the meaning given to it in Section 3.10 of this Attachment.

Small Business Office or ***SBO*** means the RTD Department responsible for administering the DBE/SBE Programs.

2. OVERVIEW OF RTD'S DBE PROGRAM POLICY

- (a) RTD's policy is to ensure nondiscrimination in the award and administration of the District's construction contracts, professional service contracts, and in the procurement of common goods and services. The Contractor shall comply with and implement requirements of RTD's DBE Program and 49 CFR Part 26 in the award and administration of Subcontracts under this Agreement. The Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the performance of this Contract. The Contractor shall ensure that the nondiscrimination clause(s)/ flow-down provisions found in Section I be incorporated in all subcontract agreements regardless of tier. It is RTD's intention to create a level playing field on which DBE's can compete fairly for federally funded contracts. Failure by the Contractor to comply with or implement these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as RTD deems appropriate. RTD's commitment to the DBE Goals is not intended to and shall not be used as a justification to discriminate against any qualified company or group of companies.

Additionally:

(i) The average annual gross receipts for the past 3 years cannot exceed \$22.41 million. This amount includes any affiliate businesses owned in whole or part by any applicant owner or stockholder regardless of their ownership interest.

(ii) The personal net worth of the eligible principle(s) of a DBE firm must be less than \$1,320,000 (on an individual basis) - excluding the equity of the eligible principle's primary residence and the equity of the eligible principle's firm. At least 51% of the owners/stockholders must meet the personal net worth criteria for the business to be eligible. Applicants cannot transfer ownership solely for the purpose of qualifying for the DBE Program. If it comes to RTD's attention, that there has been a transfer of an owner's assets, RTD may request the certifying authority under the Colorado UCP to evaluate transfers of ownership within the past two years to determine compliance with the personal net worth requirements.

(iii) To count a Disadvantaged business' participation toward the goal established for this contract, the proposed DBE(s) must be certified as a DBE(s) with the City and County of Denver or CDOT (Colorado UCP) under the NAICS code that coincides with the scope of work that they will execute in the project. The DBE firm must be certified as a DBE and perform a "commercially useful function" as defined in this Attachment. Prime contractors should also be sure that the DBE is certified as of the date that RTD receives this bid/proposal unless some other time frame is required by the nature of the project delivery method, project duration or when the DBE is approved by RTD to be added to the Contractor's Schedule of Participation.

3. GENERAL REQUIREMENTS

3.1 DBE GOALS

- (a) Unless otherwise indicated in the Contract or an addendum to the Contract, for Invitations for Bids (IFB), the contract will be awarded to the lowest responsive and responsible bidder. For Request for Proposals (RFP) with best value criteria, the contract will be awarded to the responsive and responsible proposer or proposers who best meet the Evaluation Criteria, cost and other factors considered (including DBE Program requirements and DBE approach/strategy). A bidder/proposer who fails or refuses to complete and return the required enclosures to this Attachment will be deemed non-responsive. The specified DBE participation goal applies to all post selection negotiations. The contractor's commitment to the percentage of certified DBE

utilization during the term of this contract will be stated in the DBE Affidavit (Enclosure 1A). All extensions, amendments, and options of the contract are subject to review by RTD's SBO. The SBO may determine that a modification may impact the Contractor's ability to comply with its initial commitment. However, a partial waiver of the goal will not be considered until the end of the contract and the totality of the Contractor's compliance efforts are assessed to determine its ability to comply with the initial commitment. The SBO will evaluate all decisions to self-perform scopes of work where DBE availability was present, yet not solicited, not utilized or disregarded.

RTD has specified a % DBE Participation goal. During the entire project duration the Contractor shall ensure:

- (i) that at least % (calculated by Dollar value) of the Work be performed by DBEs. If this contract involves an alternative project delivery method or the project duration is multi-year, RTD may specify that certain percentages of participation be attributable to specific phases of the project. If that is the case, this section will reflect the additional requirements including the requirements associated with a DBE Plan/Program submission.

or

- (ii) demonstrate with satisfactory documentation that it has made good faith efforts to meet the DBE Goal, as applicable. Contractors failing to meet the specified DBE goal are required to submit DBE Unavailability Certification, in the form set out in the Attachment A (Enclosure 7: DBE Unavailability Certification) along with complete documentation of good faith efforts to meet the goal. Failure to provide complete documentation/detailed written explanations of good faith efforts will result in the bid/proposal being deemed non-responsive. Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Additionally, bidders/proposers are required to solicit the support and assistance of RTD's SBO if they are unable to meet the DBE participation goal assigned to this contract.

Multi-Year and Design Build Project Requirements

To be considered a responsive bidder/proposer, when a DBE goal is specified for design-build projects, a bidder/proposer must meet the goal referred to in the bid specification by committing to meet the DBE participation goal for each phase of the design build process in its DBE Plan specifically identifying certified DBE firms that will be performing services or providing supplies in the first year of the design/build contract (in both the design and construction phases, as applicable) and Attachment A enclosures or make a good faith effort to attain the goal. The documentation evidencing good faith efforts shall be submitted with the bid/proposal. At a minimum, the bidder/proposer must identify the value of both the design and construction services to be spent during the first year (unless a greater timeframe is specified/required in the instructions to bidders/proposers.

- (b) The DBE participation goal applies to the total value of all work performed under the contract which includes the value of all change orders, amendments and modifications. Any partial waiver determination will be made at or near the conclusion of the contract when the totality of the circumstances can be taken into consideration and the Contractor's efforts can be objectively evaluated. Material supplies are credited for 60% of their contract value unless they are deemed to be a broker or transaction expediter in which case only the fee or commission may be counted toward the goal (so long as the DBE is performing a commercially useful function). If it is determined that the DBE is not performing a commercially useful function, then no participation

credit shall be attributable to their participation on the contract.

- (c) To count DBE participation toward the goal established for this contract, the proposed DBE(s) must be certified as a DBE(s) with the City and County of Denver or CDOT under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Additionally, the DBE firm must be certified as a DBE and perform a “commercially useful function” as defined in this Attachment.

3.2 JOINT VENTURES

- (a) A Joint Venture is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- (b) RTD will count toward its DBE goal a portion of the total dollar value of a contract with a joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE goal(s) and such services/supplies/NAICS codes are approved for DBE participation credit. The joint venture agreement MUST specify the services, dollar value, reporting structure and details of the DBEs performance requirements associated with the percentage of the joint venture ownership.

3.3 DBE LIAISON

- (a) The Contractor shall designate a DBE Liaison who shall be responsible for the following:
 - (i) day-to-day operational components of the DBE Program;
 - (ii) effectively responding to and reporting to the SBO on the status of any DBE contractor/supplier;
 - (iii) submitting executed DBE subcontracts/purchase orders and any subsequent material amendments thereto to the SBO within thirty (30) days of the Subcontractor Agreement Execution (however, no DBE shall commence any work or provide any material/supply without an executed subcontract/purchase order);
 - (iv) interfacing with the SBO regarding DBEs’ issues and obtaining approvals for all DBE replacements, substitutions or terminations; and
 - (v) carrying out or implementing technical assistance activities so that the playing field is level for DBEs.
 - (vi) prepare, complete and submit all required compliance documentation, inclusive of subcontract agreements, schedule of participation enclosure, monthly payment forms
 - (vii) ensure all contractual requirements of the DBE program inclusive but not limited to prompt payment, termination/substitution/replacement/reduction of scope, changes, non-discrimination are complied with and in their subcontract agreements with all of their subcontractors regardless of tier
 - (viii) a representative of the Contractor having management responsibility for implementing, managing and reporting on achievement of the DBE Goals, communicating subcontracting, business development and supportive services activity at all tiers, ensuring compliance with the non-discrimination provisions and the affirmative action and equal employment opportunity provisions.

- (ix) Monitoring lower tier subcontractors and suppliers to ensure that they comply with the DBE Program requirements and the DBE Plan submitted by the prime contractor.
- (x) In lower value or shorter duration contracts, the DBE Liaison responsibilities may be a collateral responsibility.
- (b) The DBE Liaison shall submit a written monthly report detailing the activities and documentation of good faith efforts of the previous month as well as submitting DBE Participation Reports, all additional requested forms and shall schedule monthly meetings with the SBO to address any issues or concerns.

Flow-Down Provisions:

The Contractor must include the following provisions in their subcontract agreements with their DBE subcontractors as well as ensure that tiered-contractors comply with this Section and insert the provisions of this Section into all lower tiered subcontractor agreements: 3.4 prompt payment provisions, 3.5 DBE Removal/Termination/substitution/Reduction of Scope provisions, and 3.7 Changes provisions. The contractor will be required to submit to the RTD Small Business Office all DBE subcontracts/purchase orders within 30 days of the execution of its contract with RTD or issuance of the notice to proceed (whichever occurs first). However, in no event shall a DBE perform any service or procure any supply unless RTD's SBO has a copy of the executed subcontract agreement or purchase order.

3.4 PROMPT PAYMENT OF DBE SUBCONTRACTORS

- (a) The Contractor shall ensure that:
 - (i) each Contractor shall pay its respective DBE Subcontractors any undisputed amount owed to such Subcontractor within 30 days of receipt of the subcontractor's receipt by such Contractor, regardless of whether such Contractor has been paid for such invoice by RTD;
 - (ii) approval of invoices is not unreasonably delayed and that invoices shall be either approved or rejected with written notice of deficiency or dispute to the payee DBE Subcontractor within ten days of receipt of invoice by the Contractor; and
 - (iii) each Contractor makes prompt and full payment of any retainage kept by such Contractor to its respective subcontractors DBE within 30 days after such DBE's work has been accepted and completed by Contractor, unless claim is filed against a subcontractor;
 - (iv) failure to comply with the above may give just cause to withhold payment from Contractor until payment to the subs is satisfied. Depending on extent of failure to comply with the above, such failure may also be construed to be a breach of contract.
 - (v) The Contractor shall ensure that tiered subcontractors comply with this Section and insert the provisions of this Section into all lower tiered subcontractor agreements.
- (b) Joint Check Utilization: A joint check is a two party check between a DBE, a prime contractor and a regular dealer of materials/supplies. All joint check arrangements must be pre-approved by the SBO and must strictly adhere to the joint check requirements set forth in USDOT guidance regarding same. At a minimum, the request must be initiated by the DBE and remedy a financial hardship for a specific period of time. There are monthly reporting requirements that must be complied with in order to receive DBE participation credit. The SBO will closely monitor the use of joint checks to ensure that the independence of the DBE firm is not compromised. Joint check usage will not be approved merely for the convenience of the prime contractor.

3.5 DBE REMOVAL/TERMINATION/SUBSTITUTION/REDUCTION OF SCOPE FROM CONTRACT

- (a) A Contractor must have good cause to remove/terminate/substitute/replace a DBE contractor and such removal/termination/substitution requires the consent and approval of RTD's SBO. This section also includes reductions to the DBEs scope of services and/or commitment values. No DBE subcontract may contain a "termination for convenience" clause/provision because any termination for convenience provision/clause is contrary to the objectives of this part. To initiate the termination, substitution, removal or replacement process with a DBE contractor/supplier (regardless of the tier), the Contractor or lower tier contractor/subcontractor must do the following:
- (i) Before transmitting to RTD's SBO its request to terminate and/or substitute a DBE contractor, the contractor must give notice in writing to the DBE contractor and RTD SBO. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to RTD's SBO at the time the original letter is sent to the DBE contractor;
 - (ii) the Contractor must give the DBE contractor five (5) business days to respond to the notice and provide the SBO with reasons, if any, why it objects to the proposed termination of its DBE contract and why the SBO should not consent the Contractor's action;
 - (iii) RTD's SBO will then open a formal investigation inclusive of review of all documentation, conduct interviews and site visits, if necessary. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution;
 - (iv) If RTD's SBO determines the Contractor has good cause to terminate the /DBE firm, the SBO will provide written consent of /DBE removal and the requirements to substitute work to another DBE firm. If RTD's SBO finds that good cause does not exist to terminate the DBE firm, the SBO will provide a written denial of the request to terminate/replace the DBE contractor and will immediately request a corrective action plan from the Contractor.
 - (v) For purposes of good cause to remove, replace, terminate or replace a DBE the following circumstances should exist: (1) failure or refusal to execute a written contract without good cause, (2) failure or refusal to perform the work of its subcontract in a way consistent with normal industry practice and the contractor has not acted in bad faith, (3) failure to meet the contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness that creates a risk for the contract, (5) ineligibility to work on public works project because of suspension or debarment proceedings, (6) a determination that the DBE is not a responsible contractor, (7) voluntary withdrawal from the project by written notification that has been verified, (8) ineligibility to receive DBE participation credit for the type of work to be performed, (9) other documented good cause that compels the replacement of the DBE.
 - (vi) If the contractor is approved to replace/remove/terminate the DBE, the contractor must make good faith efforts to replace the DBE with another certified DBE and shall not self-perform the work/services.
- (b) The Contractor shall ensure that tiered subcontractors comply with this Section and insert the provisions of this Section into all lower tiered subcontractor agreements, regardless of their certification status.

3.6 GOOD FAITH EFFORTS

- (a) To award a contract to a bidder/proposer that has failed to meet the DBE contract goals, the RTD SBO Manager will decide whether the contractor made a "good faith" effort to actively,

effectively and aggressively seek DBEs to meet those goals prior to bid/proposal submission and in its commitments as set forth in their Schedule of Participation/the DBE Plan to continue its efforts to meet the DBE participation goals for subsequent phases of the project. Contractors are also responsible for collecting good faith effort documentation of all major non-DBE subcontractors/suppliers as part of their responsibility to implement the DBE Program.

The kinds of efforts that are considered demonstrative of a “good faith” effort include, but are not limited to, the following:

- (i) Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - (ii) Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - (iii) Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (iv) Whether the contractor negotiated in good faith with interested DBEs. It is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. The fact that a bidder may perform 100% of the work with its own workforce is not sufficient justification to fail to negotiate with DBEs or not to meet the DBE participation goal assigned to a project.
 - (v) Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (vi) Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - (vii) Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (viii) Whether the contractor effectively used the services of available minority/women community organizations, contractors’ groups and other organizations to provide assistance in the recruitment and placement of DBEs, including RTD’s SBO.
 - (ix) Whether other bidders/proposers on the procurement met the DBE goals and submitted an acceptable DBE Plan demonstrating compliance with the DBE Program requirements for a design-build project.
- (b) If, after reviewing the “good faith efforts” documentation submitted by the contractor, the RTD SBO Manager determines that “good faith efforts” were met, the contract will be recommended for award to the contractor. If the SBO Manager determines that the contractor failed to meet the “good faith efforts” requirements, the contractor will be informed in writing that their submittal was deemed non-responsive to the Attachment A requirements and will not be considered for

contract award. The contractor may appeal the decision of the RTD SBO Manager to the Good Faith Efforts (GFE) Committee. If the contractor wishes to appeal, they must do so in writing to the RTD Senior Manager of Materials Management within 5 business days of being informed of the decision of the RTD SBO Manager that their submission was non-compliant.

- (c) If the decision of the SBO Manager is appealed in writing, with in the 5 day submission window, the GFE Committee will review the documentation initially submitted by the contractor – and no other information - under this Section to decide whether the DBE requirements have been satisfied through “good faith efforts”.
- (d) If the written appeal request is received after the 5 business day submission window, it will be disallowed and the determination of the RTD SBO Manager that the submission was non-compliant will stand.
- (e) If the GFE committee determines that “good faith efforts” were met, the contract will be recommended for award to the contractor. If the GFE Committee determines that the contractor has failed to meet the good faith effort requirements, the contractor will be informed in writing. The contractor has an opportunity for administrative reconsideration of the determination of the GFE committee. If the contractor requests administrative consideration, they must do so in writing to the RTD Senior Manager of Materials Management within 5 business days of receiving the decision of the GFE Committee that their submission was non-compliant. If the written administrative consideration request is received after the 5 business day submission window, it will be disallowed and the determination of the GFE committee that the submission was non-compliant will stand.
- (f) The reconsideration official will be a member of RTD staff who did not take part in the initial “good faith” effort decision. The reconsideration official will review the documentation initially submitted – and no other information - under this Section to decide whether the DBE requirements have been satisfied through good faith efforts.
- (g) If the reconsideration official determines that “good faith” efforts were met, the contract will be recommended for award to the contractor. If the reconsideration official determines that the contractor has failed to meet the “good faith effort requirements, the contractor will be informed in writing. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

3.7 CHANGES

- (a) The DBE participation goal shall apply to the performance/dollar value of all obligations under this Contract, including any Changes, Modifications, Amendments and Change Orders whether initiated by the contractor or RTD. Post award requests for partial waivers may be considered by RTD’s SBO but a final determination shall not be rendered until the contract has been substantially completed and the Contractor lacks the ability to satisfy the DBE participation goal.
- (b) Changes to the value or scope of work committed to a DBE must be pre-approved by the SBO and must be for good cause as set forth in the termination, substitution, replacement provisions set forth in section 3.5 above.

3.8 REQUIREMENTS OF ATTACHMENT A ENCLOSURES

- (a) The Contractor must complete and return all applicable Enclosures in the forms set out in this Attachment with bid/proposal. All enclosures must also be submitted with the bid/proposal.
- (b) The Enclosure 2 Schedule of Participation enclosure subsequent to the award must be submitted

with the addition of each identified DBE firm.

- (c) The Enclosure 3 Letter of Intent (LOI) enclosure subsequent to the award must be submitted with the addition of each identified DBE firm.
- (d) The Contractor completing the Attachment A Enclosures is advised to contact the RTD's SBO at (303) 299-2111 if they have any questions or concerns prior to submitting bid/proposal documentation. Additional Attachment A documentation will not be accepted after the contractor submits their bid/proposal to RTD.

As a condition of the award, the contractor must use those DBEs listed to perform the specific work items or supply the materials as committed in the Enclosure 2 Schedule of Participation and Enclosure 3 Letter(s) of Intent (LOI) and the contractor is not entitled to any payment for work or materials performed by its own or any other forces if the work or supplies were committed to a DBE, unless it receives prior written consent by RTD Small Business Office for a replacement of the DBE for good cause.

- (e) **Failure to return all required DBE Enclosures will result in your bid/proposal being deemed non-responsive. Modification of any Enclosure documentation will result in your bid/proposal being deemed non-responsive.**

Periodically, after award of the contract, RTD's SBO in conjunction with the contractor may determine that an enclosure is more beneficial with modifications or that an additional enclosure is necessary to more effectively report the status of DBE participation or performance and resolution of DBE concerns/issues. RTD has the right to ask for a modification. Such a revised enclosure shall be incorporated into contract as an additional requirement.

3.9 REPORTING AND ORIENTATION REQUIREMENTS

- (a) The Contractor shall submit at least monthly, a DBE Participation Report in the form set out in Appendix A (*Form of DBE Participation Report*). The Contractor shall submit each completed DBE Participation Report to RTD's SBO.
- (b) The Contractor acknowledges that the SBO has the right to independently confirm the information contained in the submitted DBE Participation Reports by soliciting such information from each DBE Subcontractor as may be required to verify payments received, distribution of payments received, subcontracting practices, participation credit, and sharing of resources/personnel. The Contractor shall not attempt to dissuade any such DBE contractor from disclosing any such information or cooperating in any investigation initiated by the SBO.
- (c) The Contractor shall submit to RTD's SBO a Subcontractors Participation and Payment Form documenting all payments made to all DBEs and non-DBEs on a form provided/approved by RTD's SBO.
- (d) The DBE contractor shall submit to RTD's SBO a summary of payments received from its contractor, regardless of their lower tier, on a form approved by RTD's SBO.
- (e) The DBE contractor may be selected to participate in a commercially useful function review or a DBE compliance review before their contract can be closed by RTD. DBEs are required to fully cooperate with RTD's SBO or its designee in the compliance review process. The commercially useful function review process will be initiated with a request for documents relating to contract performance and management of the actual work performed on the contract. The scope and intensity of each commercially useful function review will depend on the specific facts and circumstances. The commercially useful function is purposed to verify the amount of DBE participation credit, to ensure that work is actually performed by the DBE consistent with the

DBE Program requirements and/or to ensure that there is no activity engaged in by the DBE that would be inconsistent with the intent and objectives of the DBE Program. The commercially useful function review is more formal and will be initiated with an orientation/explanation process and closed out with a briefing and determination. The DBE contractor may be subjected to an informal compliance review by RTD's SBO or its designee with or without notice. The informal compliance review will generally be conducted at the work site where RTD actually observes and assesses the services/supplies being provided by the DBE.

- (f) The Contractor or any of its lower tier non-DBE subcontractors may be selected for a DBE compliance review to ensure that they are in compliance with the DBE Program requirements. This process will be initiated in a formal manner with written notice and instructions sent to the Contractor or its major subcontractor. The process will conclude with a close-out interview or debriefing where the Contractor or non-DBE firm will be given an opportunity to refute the determination or add to any corrective action requested by RTD. The contractor must cooperate with any DBE Program audit or compliance review. Failure to cooperate can result in part or all of the DBE participation credit being denied/removed from counting toward the DBE participation goal for the contract.
- (g) All DBEs are required to participate in the RTD's DBE Orientation Program if awarded an RTD contract, subcontract or purchase order before commencing work or providing supplies on this contract. Failure to participate in the DBE orientation program may result in a denial of DBE participation credit for the project/contract. For good cause, the orientation may be delayed if pre-approved by RTD. DBEs may be required to repeat the orientation if there are changes to the DBE Program requirements, changes in the DBE regulations, changes in the DBE personnel, or if the DBE is experiencing challenges in complying with the reporting requirements.

ATTACHMENT A DBE ENCLOSURE CHECKLIST

This checklist will help you verify all the required enclosures are complete and submitted as required. Submit this checklist as the front page of your Attachment A Enclosures. Attachment A Enclosures are to be submitted with bid/proposal. Failure to submit a completed checklist with your Attachment A Enclosures may result in your proposal to be deemed Non-Responsive. Modification of any Attachment A Enclosure prior to the official award of the contract will result in your proposal being deemed Non-Responsive. All enclosures must be submitted with the bid/proposal. If you have any questions concerning the completion of any of the Enclosures, please contact RTD's Disadvantaged Business Office at (303) 299-2111.

Form of DBE Participation

This form must be submitted monthly by all prime contractors throughout the entire duration of the contract. This form needs to be submitted directly to the RTD SBO.

Enclosure 1A: DBE Affidavit

This form must be completed, signed and notarized by all Prime Contractors, whether DBE or not, to acknowledge the percentage of DBE participation and indicate intent to comply with the DBE goal

Enclosure 1B: DBE Prime Affidavit

This form must be completed, notarized and signed only if the bidder/proposer is a DBE submitting a proposal/bid as a Prime Contractor. This form, if applicable, must be submitted with a current DBE certificate by all **DBE prime contractors** to affirm DBE status.

Enclosure 2: Schedule of DBE Participation

This form must be submitted by all Prime contractors including DBE Prime contractors. It must contain the following information: names and addresses of certified DBE participating subcontractors, the work they are to perform and the dollar value of each proposed certified DBE contract. The Contractor subsequent to award must update and submit this form with the addition of each identified DBE firm. The Contractor is required to enter into subcontract agreements or issue purchase orders to all DBEs within thirty (30) days of notice to proceed.

Enclosure 3: Letter of Intent to Perform as a Subcontractor

This form must be submitted by the Contractor. It must contain the following information: names and addresses of certified DBE participating subcontractors, the work they are to perform and the dollar value of each proposed certified DBE contract and be signed by the DBE subcontractor. The Contractor subsequent to the award must submit this form with the addition of a DBE. A copy of the current DBE Certificate for each listed DBE subcontractor must be attached.

Enclosure 4: Solicitation Statistics

This form is for statistical purposes only. It is for the prime and all companies the prime receives bids from on subcontract work.

Enclosure 5: Employer Certification of Workforce

This form defines the make-up of the company's work force and must be filed by every prime contractor with 50 or more employees or has a contract of \$50,000 or more.

Enclosure 6: Disadvantaged Business Outreach

This form provides current outreach program information for contracted prime and subcontractors.

Enclosure 7: Unavailability Certification

This form must be submitted - along with complete documentation of good faith efforts - with the bid/proposal by a prime contractor who has failed to meet the specified DBE goal.

APPENDIX A

FORM OF DBE PARTICIPATION REPORT

DENVER REGIONAL TRANSPORTATION DISTRICT



PRIME CONTRACTOR MONTHLY REPORT
FORM E REPORT OF PAYMENTS TO DBEs

CONTRACT INFORMATION

Original Contract Value: \$ -
 Change Orders Values: \$ -
 Current Contract Value: \$ -
 Total Payments Received To Date: \$ -
 Payments Received This Month: \$ -
 Start Date: _____
 Completion Date: _____

Contract Duration: _____
 Contract No.: _____
 Report for Month of: _____
 Name and Location of Project: _____
 Name and Address of Prime Contractor: _____

Respond "Yes" or "No" to the Questions Below:

Did your firm or an affiliate rent or lease equipment or issue a joint check to a DBE? _____
 Did any DBE utilize employees (or former employees) of your firm or an affiliate? _____
 Did any DBE subcontract any portion of its work to a non-DBE since the last report firm? _____
 Has the scope of work or subcontract amount changed for any DBE since the last report? _____

Name of DBE Subcontractor and/or Non DBE Subcontractor	Project Task	DBE or Non DBE	Original Contract Amount	Original Contract +/- Amount C.O.	Payment This Month	Billed This Month	Total Payments	Pending C.O.'s Amount and Date	Overall Work Completed %	Contract P.O. Submitted
TOTAL			\$ -	\$ -	\$ -	\$ -	\$ -			

COMMENTS: _____

Prime Contractor Compliance Officer: _____
 Telephone: _____

Signature: _____
 Date: _____

By signing this form, I personally and on behalf of the contractor affirm that the information presented in this document is truthful, accurate, complete and not misleading.

SEND COMPLETED FORM TO:
SBO Office
 Regional Transportation District
 1600 Blake Street BLK-31, Denver, Colorado 80202; Fax: 303-299-2061
 If You Need Assistance In Filling Out This Form, Please contact (303) 299-2111

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APPENDIX B- DBE ENCLOSURES
ENCLOSURE 1A- DBE AFFIDAVIT

THIS PAGE MUST BE COMPLETED BY ALL PRIME PROPOSERS/BIDDERS TO INDICATE THE PERCENTAGE OF DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.

The undersigned contractor hereby agrees that the goal established for DBE participation and its commitment in this project through subcontracting or entering into a joint venture with Disadvantaged Business Enterprise(s) in conformity with the Requirements, Terms, and Conditions of this Attachment is:

_____ % - DBE (Disadvantaged Business Enterprise)

THIS PERCENTAGE RELATES TO DBE SUBCONTRACTING ONLY AND IS CONSISTENT WITH THE DISADVANTAGED BUSINESS ENTERPRISE STATEMENT LISTED IN THE BID/PROPOSAL FORM.

THIS BIDDER/PROPOSER IS COMMITTED TO COMPLY WITH OR EXCEED THE ABOVE GOAL.

Business Name: _____

Contact Name: _____

Address: _____

City, State, ZIP: _____

Phone: _____ Fax: _____

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF

_____ TO MAKE THIS AFFIDAVIT.

(Name of Business Entity)

(Date) (Affiant Print Name) (Title)

(Affiant's Signature)

State of _____:

City and County of _____:

On this _____ day of _____, _____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(Notary Public) (SEAL)

**APPENDIX B- DBE ENCLOSURES
ENCLOSURE 1B- DBE AFFIDAVIT**

THIS PAGE MUST BE COMPLETED BY THE DISADVANTAGED BUSINESS ENTERPRISE PRIME CONTRACTOR (PROPOSER/BIDDER)

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title)

and duly authorized representative of (the firm of) _____
(Name of Corporation or Joint Venture)

whose address is _____

(Telephone No.)

I hereby declare and affirm that I am a Disadvantaged Business Enterprise (DBE) and am certified as of the date that the RTD receives this bid/proposal and as defined by the Regional Transportation District in Attachment A for

_____ and that I will provide
(Contract number and name)

information and/or the certification to document this fact with this enclosure.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Date) (Affiant Print Name) (Title)

(Affiant's Signature)

State of _____:

City and County of _____:

On this _____ day of _____, _____, before me, the

undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(Notary Public) (SEAL)

APPENDIX B – DBE ENCLOSURES

ENCLOSURE 2 – SCHEDULE OF [DBE] PARTICIPATION

NAME OF CONTRACTOR: [•]

RTD Contract No.

Total Proposed Cost: US\$ _____

DBE FIRM NAME	TYPE OF WORK (ELECTRICAL, PAVING, ETC.) AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED	PROJECTED START & COMPLETION DATES FOR DBE	AGREED PRICE TO BE PAID TO DBE

1. Please list all DBEs involved on the contract including the Prime Contractor if it is a DBE. DBE must be certified in area of work specified on project; work performed for which they are not certified to perform will not count towards goal. A current DBE certification for each listed DBE must accompany this enclosure. Failure to provide proof of current DBE certification for any or all listed DBEs will eliminate such listed DBE’s participation, and work performed by such DBE will not count towards satisfaction of the DBE Goal. If additional pages are required to list all contracted DBE, photocopy this enclosure as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE Goal as follows:

- (i) materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE Goal; and
- (ii) materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE Goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE Goal.

3. Contractor must submit copies of all DBE subcontracts, purchase orders or change orders within 30 Days of execution of the notice to proceed. Failure to submit will result in a determination that no DBE participation credit shall a DBE work on the project or provide equipment, materials or supplies for DBE participation credit without an executed subcontract agreement or purchase order.

APPENDIX B, ENCLOSURE 4 – SOLICITATION STATISTICS

RTD is required to create and maintain bidder statistics for all firms bidding on prime contracts and bidding or quoting Subcontracts on USDOT-assisted projects per 49 CFR Part 26.11. The Contractor is required to make copies of this form, send a copy with its initial contact to each Subcontractor (whether DBE or non-DBE) and require each Subcontractor to return a completed form with its Subcontract bid to the Contractor. The Contractor must submit all completed forms with each submission of DBE Enclosures to the SBO.

Firm Name: _____

Firm Address (Office Reporting): _____

Status as a DBE or Non-DBE (check one):

RTD DBE _____ Non-DBE _____

Annual Gross Receipts of the Firm: (check one):

U.S.\$0 to U.S.\$500,000 _____ U.S.\$500,000 to U.S.\$1,000,000 _____ U.S.\$1 Million to U.S.\$5 Million _____

U.S.\$5 Million to U.S.\$10 Million _____ U.S.\$10 Million to U.S.\$20.41 Million _____ Above U.S.\$20.41 Million _____

Age of the firm: _____

Signature: _____

Name:

Title:

Date: _____

Job Categories	TOTAL EMPLOYEES IN ESTABLISHMENT			M = Male								F = Female			
	Total Employees Including Minorities	Total Male Employees Including Minorities	Total Female Employees Including Minorities	Black Americans		Hispanic Americans		Native Americans		Asian-Pacific Americans		Subcontinent Asian Americans		Other	
				M	F	M	F	M	F	M	F	M	F	M	F
Officials & Managers															
Professionals															
Technicians															
Sales															
Office & Clerical															
Craft Workers (skilled)															
Operatives (semi-skilled)															
Laborers (unskilled)															
Service Workers															
TOTAL															

APPENDIX B, ENCLOSURE 5 – EMPLOYER CERTIFICATION OF WORKFORCE¹

The undersigned certifies that he/she is legally authorized to make the statements and representations contained in this report and that the statements and representations contained herein are true and correct to the best of his/her knowledge and belief.

Firm Name:

Owners (individuals or holding companies with any ownership interest in your firm):

Ownership Interest (by %)	Ethnicity (natural persons)	Gender (natural persons)

Signature: _____

Name:

Title:

Date of Execution: _____

Please note that this data may be obtained by visual survey or post-employment records. Neither visual surveys nor post-employment records are prohibited by Federal, State or local law. Current utilization as of _____:

¹ **NOTE: Submission of the Employer Certification of Workforce form is voluntary. Unless this form is marked 'confidential' upon submission, RTD cannot guarantee confidentiality of the information contained in this Employer Certification of Workforce form.**

DESCRIPTION OF JOB CATEGORIES

Officials and Managers – Occupations requiring administrative personnel who set board policies, exercise full responsibility for execution of these policies, and individual departments or special phases of the operations.

Professionals – Occupations requiring either college education or experience of such kind and amount as to provide a comparable background.

Technicians – Occupations requiring a combination of specific scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Sales – Occupations engaging wholly or primarily in selling.

Office and clerical – Includes all clerical-type work, regardless of level of difficulty, where the activities are predominately non-manual though some manual work directly involved with altering or transporting the products is included.

Craft Worker (skilled) – Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercises considerable independent judgment and usually requires an extensive period of training.

Operatives (semi-skilled) – Workers who operate machines or processing equipment or perform other factory-related duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Laborers (unskilled) – Workers in manual occupations which generally require no special training perform rudimentary duties that may be learned in a few days and require the application of little or no independent judgment.

Service Workers – Workers in both protective and unprotective service occupations.

RACE/ETHNIC IDENTIFICATION

White (not Hispanic origin) – All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East

Black Americans (not Hispanic origin) – All persons having origins in any of the Black racial groups of Africa

Hispanic Americans – All persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race

Asian-Pacific Americans – All persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong

Subcontinent Asian Americans – All persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka

Native American – All persons having origins in any of the original peoples of North America, including American Indians, Eskimos, Aleuts, or Native Hawaiians

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APPENDIX B, ENCLOSURE 6 – DISADVANTAGED BUSINESS OUTREACH

As part of RTD's ongoing outreach activities to the Denver metro Disadvantaged business community, it is our goal to identify and to establish a relationship with the Disadvantaged business outreach programs sponsored by the prime and subcontractors we partner with.

The prime and all contracted subcontractors are requested to provide the following information pertaining to their current DBE outreach efforts – additional sheets may be used if necessary:

RTD Contract Name and Number:

Contract No. (the *Contract*).

Proposer:

Subcontractor – if applicable:

Disadvantaged Business Outreach Contact (if none, list contact for the Contract):

Phone: _____ Fax: _____

Email: _____

Website: _____

Currently Sponsored Disadvantaged Business Outreach Activities:

How can RTD assist you in your current Disadvantaged business outreach efforts?

Would you be interested becoming involved in current and future RTD-sponsored outreach activities and committees: [] Yes [] No

If so, how? _____

Date Contacted	Name of DBE Firm	Contact Person	Phone #	Work Category

- Followed up with initial contacts

Date	Name of DBE	Phone #	Bidding (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of DBE including RTD:

Date	Organization	Phone #

As shown by the documentation provided to RTD, we feel that we have made good faith effort to attain the DBE Goals.

Signature: _____

Date: _____

EXHIBIT B

FEDERAL REQUIREMENTS

The City shall comply with and perform its obligations under this IGA in accordance with the following requirements and provisions, and ensure that (where relevant) this Exhibit is incorporated into and appended to each contract or subcontract entered into for the work to be performed under this IGA:

1. FEDERAL REQUIREMENTS APPLICABLE TO ARCHITECTURAL AND ENGINEERING CONTRACTS AND SUBCONTRACTS

1.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

1.2 Incorporation of FTA Terms

The provisions of this IGA include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (DOT) whether or not expressly set forth in the IGA provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 01, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the IGA. The City shall not perform any act, fail to perform any act, or refuse to comply with any RTD requests which would cause RTD to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

1.3 Federal Changes

All applicable FTA regulations, policies, procedures and directives, as may be amended or promulgated from time to time during the term of this IGA.

1.4 No Government Obligation to Third Parties

The City acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the IGA or the solicitation or award of the underlying contracts or subcontracts, absent the express written consent by the Federal Government, the Federal Government is not a party to this IGA or such contracts and subcontracts and shall not be subject to any obligations or liabilities to RTD, the City, or any other party (whether or not a party to the IGAs or other contracts) pertaining to any matter resulting from the IGA.

1.5 Selection of Architects and Engineers (Brooks Act)

All applicable provisions of 40 U.S.C. § 1101, et seq. The City shall use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services as defined in 40 U.S.C. § 1101.

1.6 Debarment

(i) Federal Executive Order no. 12549 (Feb. 18, 1986), (ii) Federal Executive Order no. 12689 (Aug. 16, 1989), (iii) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (iv) 49 CFR Part 29 "Governmentwide Debarment and Suspension (Nonprocurement)".

1.7 Lobbying

31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) and 31 U.S.C. 3801, et seq.

1.8 Program Fraud and False or Fraudulent Statements and Related Acts

The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies", 49 CFR Part 31.

1.9 Civil Rights

- (a) 49 U.S.C. § 5332 (Nondiscrimination in Federal Public Transport Programs);
- (b) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transport – Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21;
- (c) All applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and any Federal regulations that prohibit discrimination on the basis of sex that may be applicable;
- (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and any U.S. Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance", 45 CFR Part 90;
- (e) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634 and any U.S. Equal Employment Opportunity Commission implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625;
- (f) All equal employment opportunity provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal implementing regulations and any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, and any applicable Federal equal employment opportunity directives that may be issued from time to time; and
- (g) All applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 CFR Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e, and also with any Federal laws, regulations, and directives that may in the future affect construction undertaken as part of the project.

1.10 Fly America Requirements

49 U.S.C. § 40118 (the FlyAmerica Act) and the General Services Administration's regulations at 41 CFR Part 301-10.

1.11 Access Requirements For Persons With Disabilities

- (a) 49 U.S.C. § 5301(d);
- (b) All applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. § 794;
- (c) The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 et seq.; and
- (d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq..

1.12 Energy Conservation Requirements

- (a) All applicable mandatory energy efficiency standards and policies within applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.; and
- (b) The Requirements of FTA regulations, "Requirements for Energy Assessments", 49 CFR Part 622, Subpart C.

1.13 Clean Water Requirements

All applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The City shall report all violations thereof to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office

1.14 Clean Air Requirements

All applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

The City shall report all violations to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office

1.15 Access to Records and Report

- (a) For a period of three years following final payment, the City shall maintain, preserve and make available to RTD, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of the City which are directly pertinent to this work for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to City's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

- (b) The City shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this work. This right of examination shall include inspection at all reasonable times of the City's office engaged in performing the work.
- (c) If this Contract is completely or partially terminated, the City shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The City shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to work until such appeals, litigation, or claims are finally resolved.

2. FEDERAL REQUIREMENTS APPLICABLE TO CONSTRUCTION CONTRACTS AND SUBCONTRACTS

2.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

2.2 Incorporation of FTA Terms

The Provisions of this IGA include, in part certain Standard Terms and Conditions required by the United States Department of Transportation (DOT) whether or not expressly set forth in the IGA provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 01, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the IGA. The City shall not perform any act, fail to perform any act, or refuse to comply with any RTD requests which would cause RTD to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

2.3 FTA regulations and policies

All applicable FTA regulations, policies, procedures and directives, as may be amended from time to time during the term of this IGA.

2.4 No Government Obligation to Third Part

The City acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the IGA or the solicitation or award of the underlying contracts or subcontracts, absent the express written consent by the Federal Government, the Federal Government is not a party to this IGA or such contracts and subcontracts and shall not be subject to any obligations or liabilities to RTD, the City, or any other party (whether or not a party to the IGAs or other contracts) pertaining to any matter resulting from the IGA.

2.5 Debarment

(i) Federal Executive Order no. 12549 (Feb. 18, 1986), (ii) Federal Executive Order no. 12689 (Aug. 16, 1989), (iii) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (iv) 49 CFR Part 29 "Governmentwide Debarment and Suspension (Nonprocurement)".

2.6 Lobbying

31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) and 31 U.S.C. 3801, et seq.

2.7 Program Fraud and False or Fraudulent Statements and Related Acts

The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies", 49 CFR Part 31.

2.8 Civil Rights

- (a) 49 U.S.C. § 5332 (Nondiscrimination in Federal Public Transportation Programs);
- (b) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq. and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transport – Eff of Title VI of the Civil Rights Act", 49 CFR Part 21;
- (c) All applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and any Federal regulations that prohibit discrimination on the basis of sex that may be applicable;
- (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and any U.S. Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance", 45 CFR Part 90;
- (e) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634 and any U.S. Equal Employment Opportunity Commission implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625;
- (f) All equal employment opportunity provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal implementing regulations and any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, and any applicable Federal equal employment opportunity directives that may be issued from time to time; and
- (g) All applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 CFR Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e, and also with any Federal laws, regulations, and directives that may in the future affect construction undertaken as part of the project.

2.9 Fly America Requirements

49 U.S.C. § 40118 (the Fly America Act) and the General Services Administration's regulations at 41 CFR Part 301-10.

2.10 Access Requirements For Persons With Disabilities

- (a) 49 U.S.C. § 5301(d);
- (b) All applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. § 794;
- (c) The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 et seq.; and
- (d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq. .

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- (a) All applicable mandatory energy eff standards and policies within applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.; and
- (b) The Requirements of FTA regulations, "Requirements for Energy Assessments", 49 CFR Part 622, Subpart C.

2.12 Clean Water Requirements

All applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The City shall report all violations thereof to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Office.

2.13 Clean Air Requirements

All applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

The City shall report all violation's to RTD, to FTA and to the appropriate Environmental Protection Agency Regional Off

2.14 Contract Work Hours and Safety Standards Act

All applicable requirements of the Contract Work Hours and Safety Standards Act 40 U.S.C. 3702 et seq., and all applicable implementing regulations.

2.15 Seismic Safety Requirements

The standards for Seismic Safety required in USDOT Seismic Safety Regulations, 49 CFR Part 41j.

2.16 Recycled Products

All requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended by 42 U.S.C. 6962, including the regulatory provisions of 40 CFR Part 247, and

Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

2.17 Buy America

49 U.S.C. 5323(j) and 49 CFR Part 661. The City shall obtain Buy America certifications from each contractor, supplier and vendor and shall provide copies of such certifications to RTD.

2.18 Cargo Preference Requirements

All applicable requirements of 42 U.S.C. 1241 and 46 CFR 381.

2.19 Access to Records and Report

- (a) For a period of three years following final payment, the City shall maintain, preserve and make available to RTD, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of the City which are directly pertinent to this work for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to City's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
- (b) The City shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this work. This right of examination shall include inspection at all reasonable times of the City's offices engaged in performing the work.
- (c) If this Contract is completely or partially terminated, the City shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The City shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to work until such appeals, litigation, or claims are finally resolved.

2.20 Davis-Bacon and Copeland Anti-Kickback Acts

The provisions of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 and any rulings and interpretations issued by the Secretary of the United States Department of Labor.

(a) Davis-Bacon-

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in

the wage determination of the Secretary of Labor which is attached hereto as Annex 1 and made a part of this IGA, regardless of any contractual relationship which may be alleged to exist between the City and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarter under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the City and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the City and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the City, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of

receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the City shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the City does not make payments to a trustee or other third person, the City may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the City, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the City to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** RTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the City under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the City or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, RTD may, after written notice to the City, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payroll and basic record** (i) Payrolls and basic records relating thereto shall be maintained by the City during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the City shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The City, if employing apprentices or trainees under approved

programs, shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The City shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5. 5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The City is responsible for the submission of copies of payrolls by all subcontractors. The City and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration, the City, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the City or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the City or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the

United States Code.

(iii) The City or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the City or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the City, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees — (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office of Apprenticeship Training, Employer and Labor Services or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the City as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the City is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman hourly rate) specified in the City's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency recognized by the Office withdraws approval of an apprenticeship program, the City will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not

less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and part in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the City will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements.** The City shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts.** The City or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as RTD may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The City shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of this IGA, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the City (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** (i) The City certifies that neither it (nor he or she) nor any person or firm who has an interest in the City's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Act Provisions-

(1) Overtime requirement. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (which terms are expanded to include watchmen and guards by 29 CFR 5.5(b)) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the City and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the City and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. RTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the City or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The City or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The City shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the City or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the City or

subcontractor for inspection, copying, or transcription by authorized representatives of RTD and the Department of Labor, and the City or subcontractor will permit such representatives to interview employees during working hours on the job.

3. DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS

(a) The City shall comply with all requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises ("DBEs") in Department of Transportation Financial Assistance Programs in the performance of the work. The goal for participation of DBEs is 20% for the Project.

(b) The City shall not discriminate on the basis of race, color, national origin, or sex in the performance of this IGA. RTD's commitment to the DBE goal is not intended to, and shall not be used as a justification to, discriminate against any qualified company or group of companies.

(c) The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted IGA. Failure by the City to carry out these requirements is a material breach of this IGA, which may result in the termination of this IGA or such other remedy as RTD deems appropriate. Each subcontract for the work include the assurance in this paragraph in accordance with 49 CFR 26.13(b).

(d) The City shall cooperate with RTD with regard to maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract Work under this IGA. The City shall assist RTD in verifying compliance with the DBE requirements of this IGA by submitting or requiring its prime subcontractor to submit the forms attached as Annex 2. Upon completion of the work, the City shall submit a summary of payments, by subcontract, made to all subcontractors to RTD's Business Opportunity and Outreach Office

(e) Prompt Payment of DBE Subcontractors

The City shall ensure that:

- (i) its contractor shall pay its DBE subcontractors for satisfactory performance of their contracts, as that concept is described in 49 C.F.R. 26.29(c), no later than 30 days from receipt of each payment a duly submitted invoice for payment, regardless of whether such the City has been paid for such invoice;
- (ii) approval of invoices is not unreasonably delayed and that invoices shall be either approved or rejected with written notice of deficiency or dispute to the payee subcontractor within ten days of receipt of invoice by the contractor; and
- (iii) the contractor makes prompt and full payment of any retainage kept by contractor to its DBE subcontractors within 30 days aft such DBE's work has been satisfactorily completed.

(f) Defaulting DBE Subcontractors/Termination of Subcontracts

- (i) The City shall not terminate or permit termination of a DBE subcontractor performing work related to this IGA without RTD's prior written consent, which RTD is prohibited

from providing unless the City has shown good cause, as that term is described in 49 C.F.R. 26.53(f)(3), to terminate the DBE subcontractor.

(ii) The City will follow the notice and opportunity for response identified in 49 C.F.R. 26.53(f)(4) and (5). The City shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work.

(g) RTD will follow the procedures set forth in 49 CFR. 26.53 and Appendix A to 49 CFR Part 26 in determining whether the City has demonstrated good faith effort in meeting the DBE Goals.

(h) The City shall submit, or require that its prime subcontractor submit, at least monthly a participation report (a DBE Participation Report in the form set out in Annex 2. At the completion of the work, the City shall submit to RTD a summary of payments made to all DBEs.

Annex 1
Wage Determinations Applicable to the Work

Element of the Work	Wage Determination to be Applied
[Roadway, Heavy, Building, etc]	[insert applicable] ¹

¹ This should be the wage determination included in the Concession Agreement if Eagle Project scope will be performed by a City/County instead of RTD. If other work this should be the wage determination as of the date of the City/County issuance of RFP for the work

Annex2 - DBE Forms

SOLICITATION STATISTICS

RTD is required to create and maintain bidder statistics for all firms bidding on prime contracts and bidding or quoting Subcontracts on USDOT-assisted projects per 49 CFR Part 26.11. The City is required to make copies of this form, send a copy with their initial contact to each contractor and subcontractor (both DBEs and non-DBEs) and require each contractor and subcontractor to return a completed form with its bid.

Firm Name: _____

Firm Address (Office Reporting): _____

Status as a DBE or Non-DBE (check one):

DBE _____ Non-DBE _____

Annual Gross Receipts of the Firm: (check one):

U.S.\$0 to U.S.\$500,000 _____ U.S.\$500,000 to U.S.\$1,000,000 _____ U.S.\$1 Million to U.S.\$5 Million _____

U.S.\$5 Million to U.S.\$10 Million _____ U.S.\$10 Million to U.S.\$20.41 Million _____ Above U.S.\$20.41 Million, _____

Age of the firm: _____

Signature: _____

Name:

Title:

Date: _____

Annex2 - DBE Forms

EMPLOYER CERTIFICATION OF WORKFORCE

The undersigned certifies that he/she is legally authorized to make the statements and representations contained in this report and that the statements and representations contained herein are true and correct to the best of his/her knowledge and belief.

Firm Name:

Signature: _____

Name:

Title:

Date of Execution: _____

Please note that this data may be obtained by visual survey or post-employment records. Neither visual surveys nor post-employment records are prohibited by Federal, State or local law. All specified data are required to be filled in by law. Current utilization as of _____:

Annex 2 - DBE Forms

Job Categories	Total Employees in Establishment			M = Male								F = Female			
	Total Employees Including Minorities	Total Male Employees Including Minorities	Total Female Employees Including Minorities	Black Americans		Hispanic Americans		Native Americans		Asian-Pacific Americans		Subcontinent Asian Americans		Other	
				M	F	M	F	M	F	M	F	M	F	M	F
Off & Managers															
Professionals															
Technicians															
Sales															
Off & Clerical															
Craft Workers (skilled)															
Operatives (semi-skilled)															
Laborers (unskilled)															
Service Workers															
TOTAL															

Annex 2 - DBE Forms

DESCRIPTION OF JOB CATEGORIES

Officer and Managers - Occupations requiring administrative personnel who set board policies, exercise full responsibility for execution of these policies, and individual departments or special phases of the operations.

Professionals - Occupations requiring either college education or experience of such kind and amount as to provide a comparable background.

Technicians - Occupations requiring a combination of specific scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Sales - Occupations engaging wholly or primarily in selling.

Officer and clerical - Includes all clerical-type work, regardless of level of difficulty, where the activities are predominately non-manual though some manual work directly involved with altering or transporting the products is included.

Craft Worker (skilled) - Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercises considerable independent judgment and usually requires an extensive period of training.

Operatives (semi-skilled) - Workers who operate machines or processing equipment or perform other factory-related duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Laborers (unskilled) - Workers in manual occupations which generally require no special training perform rudimentary duties that may be learned in a few days and require the application of little or no independent judgment.

Service Workers - Workers in both protective and unprotective service occupations.

RACE/ETHNIC IDENTIFICATION

White (not Hispanic origin) - All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East

Black Americans (not Hispanic origin) - All persons having origins in any of the Black racial groups of Africa

Hispanic Americans - All persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race

Asian-Pacific Americans - All persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of

Annex2 - DBE Forms

Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong

Subcontinent Asian Americans - All persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka

Native American - All persons having origins in any of the original peoples of North America, including American Indians, Eskimos, Aleuts, or Native Hawaiians

Annex 2 - DBE Forms

Contacted	Firm			

- Followed up with initial contacts

Date	Name of DBE	Phone #	Bidding (Yes or No)	Additional Comments

- Contacted the following other agencies, organizations in recruitment of DBEs including RTD:

Date	Organization	Phone #

As shown by the documentation provided to RTD, we feel that we have made good faith effort to attain the DBE goals.

Sign : _____

Date: _____

Applicability of Third-Party Contract Clauses – per FTA Master Agreement 21 (10/01/14)

CLAUSE	TYPE OF PROCUREMENT						
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies	RTD Clause Number	
No federal government obligations to third-parties (by use of a disclaimer)	All	All	All	All	All	FTA 1	
False statements or Claims and Criminal Fraud	All	All	All	All	All	FTA 2	
Access to Third Party Records	All	All	All	All	All	FTA 3	
Changes to Federal Requirements	All	All	All	All	All	FTA 4	
Termination Provisions	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000	FTA 8	
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All	FTA 5	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All	FTA 6 (Also see Attach A)	
Prompt Payment and Return of Retainage	All	All	All	All	All	FTA 6(C) (Also see Attach A)	
Incorporation of FTA Terms	All	All	All	All	All	FTA 7	
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	FTA 9	
Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, or manufactured products)	FTA 10	
Resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	FTA 11	
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	FTA 12	
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	FTA 13	
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	FTA 14	

Applicability of Third-Party Contract Clauses – per FTA Master Agreement 21 (10/01/14)

CLAUSE	TYPE OF PROCUREMENT						RTD Clause Number
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies		
Cargo Preference			Involves property transported by ocean vessel	Involves property transported by ocean vessel	Involves property transported by ocean vessel		FTA 15
Fly America	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air		FTA 16
Davis Bacon Act				>\$2,000 (including ferry vessels)			FTA 17
Contract Work Hours & Safety Standards Act		>\$2,500 (excludes transportation services)	>\$2,500	>\$2,000 (including ferry vessels)			FTA 18 (construction) or FTA 22 (for non-construction)
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)			FTA 19
Bonding				>\$100,000			FTA 20
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions			FTA 21
Transit Employee Protective Arrangements		Transit Operations					FTA 23
Charter Service Operations		All					FTA 24
School Bus Operations		All					FTA 25
Drug Use and Testing		Transit Operations					FTA 26
Alcohol Misuse and Testing		Transit Operations					FTA 27
Patent Rights	Research & Development						FTA 28
Rights in Data and Copyrights requirements	Research & Development						FTA 29

Applicability of Third-Party Contract Clauses – per FTA Master Agreement 21 (10/01/14)

CLAUSE	TYPE OF PROCUREMENT						
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies	RTD Clause Number	
TVM Certification			All			FTA 38	
Bus Testing			All			FTA 36	
Pre-Award and Post-Delivery Audit Requirements			All			FTA 37	
<u>Notification of Federal Participation for States</u>	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States	FTA 30 (N/A to RTD)	
Energy Conservation	All	All	All	All	All	FTA 31	
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year	FTA 32	
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects	FTA 33	
ADA Access	Architectural & Engineering	All	All	All	All	FTA 34	
Assignability Clause	All	All	All	All	All	FTA 35	

Required Third-Party Contract Clauses – as of 10/01/2014 - 4220.1F Appendix D, part A

All FTA-Assisted Third-Party Contracts and Subcontracts

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
No federal government obligations to third-parties by use of a disclaimer		§2.m	FTA 1		
False or fraudulent statements or claims – Civil and Criminal Fraud		§3.f	FTA 2		
Access to Third party Contract Records		§17.v	FTA 3		
Changes to Federal Requirements		§2.c(3)(d)	FTA 4		
Civil Rights (EEO, Title VI & ADA)		§13	FTA 5		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§13.d	FTA 6 (also see Attach A)		
Incorporation of FTA Terms	Per FTA C 4220.1F	§17.a	FTA 7		

Awards Exceeding \$10,000

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Termination	Contracts >\$10,000 (49 CFR §18 (i) (2))	§12	FTA 8		

Awards Exceeding \$25,000

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Debarment and Suspension	Contracts exceeding \$25,000	§3.b	FTA 9		

Awards Exceeding the Simplified Acquisition Threshold (\$100,000) 49 CFR §29

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Buy America	When tangible property or construction will be acquired	§16.a	FTA 10		
Resolution of disputes, breaches, or other litigation		§44	FTA 11		

Required Third-Party Contract Clauses – as of 10/01/2014 - 4220.1F Appendix D, part A

Awards Exceeding \$100,000 by Statute

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Lobbying		§3.d	FTA 12		
Clean Air		§29.d	FTA 13		
Clean Water		§29.e	FTA 14		

Transport of Property or Persons

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 20 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b	FTA 15		
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c	FTA 16		

Construction Activities

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Construction Employee Protections - Davis Bacon Act	For Construction contracts exceeding \$2,000	§28.a(1)	FTA 17		
Construction Employee Protections – Contract Work Hours and Safety Standards Act	For Construction contracts exceeding \$100,000	§28.a(2)	FTA 18		
Construction Employee Protections - Copeland Anti-Kickback Act	All Construction contracts	§28.a(3)	FTA 19		
Bonding for construction activities exceeding \$100,000	5% bid guarantee; 100% performance bond; Payment bond equal to: 50% for contracts < \$1 M 40% for contracts > \$1 M, but < \$5 M \$2.5 M for contracts > \$5 M	§17.q(1)	FTA 20		
Seismic safety	Contracts for new buildings or for existing buildings	§26.b	FTA 21		

Required Third-Party Contract Clauses – as of 10/01/2014 - 4220.1F Appendix D, part A

Non-construction Activities

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Non-construction Employee Protection (Contract Work Hours and Safety Standards Act)	For all turnkey (design/build), rolling stock and operational contracts (excluding transportation services contracts) in excess of \$100,000 per 40 USC 3701.	§28.b	FTA 22		

Transit Operations

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Transit Employee Protective Arrangements		§28.d	FTA 23		
Charter Service Operations		§32	FTA 24		
School Bus Operations		§33	FTA 25		
Drug Use and Testing	Safety sensitive functions	§40.b	FTA 26		
Alcohol Misuse and Testing	Safety sensitive functions	§40.b	FTA 27		

Planning, Research, Development and Demonstration Projects

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Patent Rights		§19	FTA 28		
Rights in Data and Copyrights		§20	FTA 29		

Special Notification Requirements for States ** (Does not apply to RTD)

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Special Notification Requirement for States	Limited to States	§42	(FTA 30) Not Required		

Required Third-Party Contract Clauses – as of 10/01/2014 - 4220.1F Appendix D, part A

Miscellaneous Special Requirements

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Energy Conservation		§30	FTA 31		
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA	§17.m	FTA 32		
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§17.o	FTA 33		
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g	FTA 34		
Assignability Clause	Procurements through assignments (piggybacks)	§17.a, which incorporates 49 CFR Parts 18 and 19	FTA 35		

Rolling Stock Procurements

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 21 REFERENCES 10/01/14	RTD Clause Number	Applicable To This Contract	
				Yes	No
Bus Testing		§17.p(4)	FTA 36		
Pre-Award and Post-Delivery Audit Requirements		§17.p(3)	FTA 37		
TVM Certification		§13.d(1)(c)	FTA 38		

Prepared By: _____ Date: _____

Reviewed By: _____ Date: _____

BUY AMERICA CERTIFICATION

Certification Requirement for Procurement of Steel, Iron, or Manufactured Products

Contractor must complete either the Certificate of Compliance or Certificate of Non-Compliance

Certificate of Compliance with 49 USC 5323(j)(1)

The Contractor hereby certifies that it will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance with 49 USC 5323(j)(1)

The Contractor hereby certifies that it cannot comply with the requirements of 49 USC 5323(j)(1) and 49 CFR 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

CERTIFICATION REGARDING LOBBYING

The undersigned, _____
certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, _____,
certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. 3801, et seq., apply to this certification and disclosure, if any.

_____Signature of Contractor's Authorized Official

_____Name and Title of Contractor's Authorized Official

_____Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: year quarter date of last report	
4. Name and Address of Reporting Entity: O Prime O Subawardee Tier • if known : Congressional District, if known: 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known :		
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:		
8. Federal Action Number, if known:	9. Award Amount, if known : \$		
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
<small> If you are requested to file this form by the Comptroller of the Currency, 31 U.S.C. section 1352. This disclosure of lobbying activities is material representation of fact upon which reliance will be placed by the Federal Government in the award of a contract or order. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who files the required disclosure shall be subject to a civil penalty of not more than \$10,000 and not more than \$100,000 for each violation. </small>	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only:			Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the Fund Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND
OTHER RESPONSIBILITY MATTERS**

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the Proposer is providing the certification set out above.
2. The inability of a person to provide the certification required will not necessarily result in denial of participation in this covered transaction. The Proposer shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with RTD's determination whether to enter into this transaction. However, failure of the Proposer to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. This certification is a material representation of fact upon which reliance is placed when RTD determines to enter into this transaction. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, RTD may terminate this transaction for cause or default. This certification concerns a matter which may be within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.
4. The Proposer shall provide immediate written notice to RTD if at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Orders 12549 and 12689. You may contact RTD for assistance in obtaining a copy of those regulations (49 CFR Part 29).
6. The Proposer agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by RTD.
7. The Proposer further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without

modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized by RTD, as provided herein, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND
OTHER RESPONSIBILITY MATTERS**

- A. The Proposer certifies to the best of its knowledge and belief that it and its principals:
1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
 4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal

Contractor Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

Signature of Authorized Representative