

Park City Municipal Corporation ("PCMC")



REQUEST FOR PROPOSALS

PROCUREMENT OF PROFESSIONAL TRANSIT CONSULTING SERVICES TO DEVELOP A SHORT RANGE TRANSIT PLAN

ADVERTISED:
December 30, 2020

1053 Iron Horse Drive
PO Box 1480
Park City, UT 84060

Park City Municipal Corporation Contact for RFP Questions:
Jerry Benson, Transit Consultant
jerry.benson@parkcity.org

RFP questions due by 5:00 PM MST on Friday, January 15, 2021, via email to Jerry Benson

1.0 City Overview

Park City is a rural mountain town situated on the back of the Wasatch mountain range in Northern Utah. Park City began as a silver mining town and has flourished into a world-class destination resort community, attracting visitors for year-round outdoor recreation as well as high-profile events such as the Sundance Film Festival, the FIS Freestyle Ski and Snowboarding World Championships, and the 2002 Winter Olympic Games. Accommodating four million visitor nights per year, Park City's visibility on the world stage is comparable to that of much larger municipalities.

Park City Transit ("PCT") operates as an enterprise fund department of PCMC. In collaboration with its regional funding partner, Summit County, PCT has served the residents and visitors of the Park City area with fare-free public transit services for over forty years. PCT operates 365 days a year, up to 21 hours a day. There are four major seasonal transit service configurations - winter, spring, summer and fall, plus numerous special event service configurations. There are 12 fixed routes during winter service with supplemental event routes, raising the total route number to 20.

PCT's fleet is comprised of twenty-nine 35' diesel buses, six 40' battery electric buses, seven 35' battery electric buses, one clean diesel trolley, six 24' cutaways, one Sprinter van and two Dodge Caravans used for ADA service. PCT plans to continue to replace diesel buses with battery electric buses until the fleet is 100% electric. PCMC employs between 50 and 160 drivers, with winter peak season requiring the highest number of drivers.

PCT partners with the Utah Transit Authority ("UTA") and Summit County to fund an intercity bus link between Summit County and Salt Lake City called the PC-SLC Connect. This service, operated by UTA, provides a crucial connection between Park City and Salt Lake City, the University of Utah and Medical Center, and by connection to the UTA system, the entire Wasatch Front region.

1.1 Short Range Transit Plan Project Overview

The most recent Short Range Transit Plan ("SRTP") was completed for PCMC and Summit County in 2016 and is available here <https://www.parkcity.org/home/showdocument?id=32688>. Most of the projects and services outlined in the 2016 plan have been implemented. Two significant developments will shape the next SRTP; namely, passage of additional transit taxes in 2016 and 2018, and a planned takeover of responsibility for regional transit operations by Summit County via a regional transit district. PCMC does not plan to annex into the regional transit district, but rather to retain responsibility for transit service within city boundaries. In addition, PCMC expects to continue to operate express bus service along the entry corridors of SR 224 and SR 248, under funding and operating agreements with Summit County.

PCMC is requesting proposals for a new SRTP covering the period from 2022 – 2025. PCMC is especially interested in ensuring that the new SRTP incorporates innovative,

high-value options for transit service; including, on-demand microtransit, smart phone apps, mobility as a service, aerial systems, autonomous transit vehicles, coordination with private transportation companies, and integration with walking and biking. In addition to the standard elements of an SRTP in Phase I, PCMC is requesting proposals for a Phase II of the project to evaluate an aerial transit system compared with dedicated busways to connect the four primary destinations within the city. Those four destinations include Park City Mountain Resort base area, Deer Valley Resort Snow Park base area, Old Town Park City, and the Park City Arts and Culture District. Both resort base areas and the Arts and Culture District are being completely redeveloped in the next several years. PCMC desires to create a system to enable visitors, residents and workers to travel conveniently between the four primary destinations without a car.

PCMC expects to complete a Long Range Transportation Master Plan in the Spring of 2021. The Long Range Plan was launched in 2018 and will provide the SRTP team with a great deal of information regarding vision, transportation forecasts, modeling, infrastructure projects, traffic, parking, and active transportation. The SRTP is one of several modal and area plans flowing from the Long Range Plan.

1.2 Project Timeline and Budget

Request for Proposals issued: December 30, 2020

Last date for written questions: 5:00 p.m. MST on Friday, January 15, 2021

Proposals due by 5:00 p.m. MST on Friday, January 29, 2021

Proposer interviews and presentations the week of February 8-12, 2021

Staff selection of the vendor: February 26, 2021

City Council Approval of Vendor, Contract: March 4, 2021

Completion of Phase I: September 30, 2021

Completion of Phase II: November 30, 2021

PCMC reserves the right to modify the timeline as needed

The total project budget for Phase I and Phase II is One Hundred Sixty Two Thousand Dollars (\$162,000.00).

1.3 Proposal Format

The Proposer shall submit written proposals in compliance with the following requirements:

- Maximum length is twelve (12) pages - page limit is for the proposal content only and does not include covers, cover letter, table of contents, dividers, or resume appendix.
- Standard 8 ½" x 11 page size
- 11 point font minimum for text content
- 10 point font minimum for tables, charts, graphs, captions, and team organization chart
- Cover letter shall be limited to one (1) page only and must be signed by a party authorized to bind the entity submitting the proposal.

- One (1) original and three (3) bound copies, plus an electronic copy in pdf format on USB storage device.
- Submitted proposals become the property of PCMC and will not be returned.
- Faxed or e-mailed responses will not be accepted.
- All costs incurred for the response preparation, presentation, or contract negotiations are the responsibility of the Proposer.
- Proposals lacking required information will not be considered.
- The outside of the response envelope shall indicate the name and address of respondent and the RFP Title, “PROCUREMENT OF PROFESSIONAL TRANSIT CONSULTING SERVICES TO DEVELOP A SHORT RANGE TRANSIT PLAN”
- The proposals are to be sent to the attention of:

Jerry Benson, Park City Transit Consultant
 1053 Iron Horse Drive
 Park City, UT 84060

In the absence of the transit consultant, proposals should be dropped off to the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060.

1.3.1 Proposal Information

PCMC is requesting a professional service firm that has demonstrated experience in transit planning and development of Short Range Transit Plans (or Transit Development Programs). Proposals will be valid until May 31, 2021. The following items should be included in the proposal:

- The Proposer’s understanding of the project objectives and deliverables.
- Project approach and plan, including tasks, milestones, communication with PCMC, project reports and presentations.
- Project cost, broken down by major tasks.
- Project staff, the percentage of time each staff member will devote to this project, and the qualifications and experience of each staff member.
- A list of what portion of the Request for Proposals will be completed by third parties, if any, and the name, if known, of the third party.
- An organization chart for the project team.
- Relevant project experience for Proposer staff and firm.
- References from relevant projects.
- An acknowledgement of compliance with applicable federal clauses and signed federal clause certifications (see Appendix B).

1.4 Project Evaluation Criteria

Proposals will be evaluated by a selection committee of PCMC staff. Proposals will be rated on the following criteria:

- Firm Experience and Success with Similar Projects: 20 points
- Experience and Qualifications of the Project Team: 30 points
- Approach to the Project: 30 points
- Cost and Value: 20 points
- Total: 100 points

The nature and extent of requested changes to our standard agreement (i.e., unwillingness to comply with our insurance/indemnity provision) counts against a Proposer.

1.5 Official Point of Contact

The official point of contact for this Request for Proposals is Jerry Benson, Transit Consultant. All communications with PCMC during the procurement process shall be through the official point of contact.

Jerry Benson
Email: jerry.benson@parkcity.org
Address: 1053 Iron Horse Drive
Park City, UT 84060
Phone: (801) 588-9885

All communications with the official point of contact shall be in writing. Verbal communications will not be binding. Proposers shall review the Request for Proposals and shall promptly report and request clarification of any discrepancy, deficiency, ambiguity, error, inconsistency or omission contained therein.

1.6 Addendums and Notices

PCMC reserves the right to cancel or modify the terms of this Request for Proposals and/or the project at any time and for any reason preceding contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this Request for Proposals. PCMC will provide respondents written notice of any cancellation and/or modification. Changes to the Request for Proposal shall be made by addendum only. Such changes made by addendum shall be supplementary to and an integral part of the Request for Proposals. In the event of any conflict or inconsistency in the wording or any issue of interpretation, addenda, when issued, shall, to the extent of such conflict or inconsistency, take priority over the original wording in the documents and any wording in prior addenda. Upon the issuance of any addendum, PCMC shall provide at least five (5) business days between the issuance of the addendum and the closing date for the receipt of Proposals. If a Proposer has already submitted its Proposal to the City and an addendum is subsequently issued by the City, the Proposer shall resubmit prior to the

closing date for receipt of Proposals the addendum acknowledgment form acknowledging all addenda issued by PCMC. Furthermore, PCMC shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.

1.7 Errors and Omissions

PCMC shall not be held liable for any errors or omissions in any part of this Request for Proposals. While PCMC has used considerable effort to ensure an accurate representation of information in this Request for Proposals, the information contained is supplied solely as a guideline for Proposers. The information is not guaranteed or warranted to be accurate by PCMC, nor is it necessarily comprehensive or exhaustive. Nothing in the Request for Proposals is intended to relieve the Proposers from forming their own opinions and conclusions with respect to the matters addressed herein.

1.8 Reserved Rights

PCMC reserves the right, in its sole discretion, to reject any or all Proposals for any reason. PCMC shall not be required to award or accept any Proposal and may, in its sole discretion, and at any time, choose to cancel the Request for Proposals. PCMC reserves the right to waive any issues of non-compliance that it deems, in its sole discretion, to be non-material. PCMC may accept the Proposal as submitted or may negotiate modifications with one or more Proposers before making a final selection.

1.9 Award

PCMC shall award the project to the Proposer having submitted the Proposal which provides the best value for PCMC as determined by the scoring of the Proposals in accordance with the evaluation criteria contained herein. **Price may not be the sole deciding factor.** PCMC reserves the right, in its sole discretion, to award the project in whole or in part to one or more Proposers. The award of the project contract is conditional upon the approval by the PCMC City Council.

1.9.1 Government Records and Management Act (“GRAMA”) Provisions

All submittals shall be public records in accordance with government records regulations (“GRAMA”) unless otherwise designated by the applicant pursuant to UCA § 63G-2-309, as amended.

1.9.2 Park City Municipal Standard Service Provider/Professional Services Agreement

- The successful Proposer will be required to enter into PCMC’s Service Provider/Professional Service Agreement, in its current form. A draft of the Agreement is attached to this RFP as Appendix “A” and incorporated herein. If there is a conflict between the written and numerical amount of the proposal, the written amount shall supersede.

- **ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC’S STANDARD AGREEMENT MUST BE SUBMITTED TO PCMC NO LATER THAN THE PROPOSAL/SUBMITTAL DEADLINE. PCMC MAY, IN ITS SOLE DISCRETION, CONSIDER SUCH INQUIRIES. ANY CHANGES TO PCMC’S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS SHALL BE APPROVED IN PCMC’S SOLE DISCRETION.**
- Any service provider who contracts with PCMC is required to have a valid Park City business license.

2.0 Federal Requirements

The SRTP project is being funded, in part, by a grant from the Federal Transit Administration. Proposers must include in their proposal a statement certifying their compliance with all federal laws and regulations. Appendix “B”, attached hereto and incorporated herein, lists Federal Clauses related to federally funded transit projects. Proposals must include signed federal clause certifications.

3.0 Scope of Project

The SRTP is to cover the period of time from 2022 – 2025. The plan should build upon the Long Range Transportation Plan that is nearing completion and should incorporate the best available transit technologies and service models. The project is organized into two phases. Proposers are expected to include all work for both phases in their proposals and work can begin on Phase II concurrently with Phase I work. Sections 3.1 through 3.5 below describe Phase I. Section 3.5.1 describes Phase II.

3.1 City Goals, Policies, Vision, Long Range Transportation Plan

The SRTP must include PCMC’s articulated goals, policies and vision. PCMC has conducted extensive public outreach and visioning, and is completing a Long Range Transportation Master Plan. This information should be integrated into and guide the SRTP.

3.2 Public Input and Involvement

Proposals should include a plan to gain input from various stakeholder groups, including full time and part time residents, workers, employers, and visitors. Public input and involvement should be considered at multiple stages of the project. A communication plan for the final SRTP should also be included.

3.3 Current Conditions and System Evaluation

The Proposer shall evaluate current transit systems, including fixed route, ADA and on-demand services. The Proposer shall collect, compile, and evaluate population, socioeconomic, and other related and pertinent data, and evaluate the value of transit service to PCMC. Service shall be compared with three (3) or more similar communities

in the Western United States. The Proposer shall gather and review data, and measure performance against national rural standards and local, regional standards for the following metrics and provide a summary of findings:

3.3.1 Quantitative Evaluation of Fixed Route and Demand Responsive

- Passengers per revenue hour
- Operating cost per mile
- Operating cost per passenger
- Operating cost per hour
- On-time performance

3.3.2 Qualitative Evaluation

- Service Coverage
- Frequency
- Span of service
- Directness
- Transit network effectiveness, modal optimization

3.3.3 Convenience, Comfort and Safety

- Speed relative to auto alternatives
- Bus stops and shelters
- Customer information
- Customer complaints
- Bus stop signs
- Vehicle cleanliness and comfort
- Pedestrian access and safety

3.3.4 ADA, Non-ADA Demand Responsive

- Service coverage
- No-shows and trip cancellations
- On-time performance/reliability
- Response time for non-ADA trips
- Trip denials
- Reservation system
- Complaints

3.3.5 Fleet and Facility Evaluation

- Revenue fleet
- Non-revenue fleet
- Battery electric buses and charging equipment

- Maintenance and operating buildings and equipment
- Office and administrative facilities
- Equipment and tools
- Parts and materials

3.3.6 Equity Analysis and Unmet Needs

- Evaluation of service to minority and low income sectors
- Identification of unserved or underserved populations or regions

3.4 Travel Demand, Future Conditions and Multimodal Assessment

The Proposer shall assess future conditions for the next five (5) years, including assessment of public transportation and transit needs and the likely demand for various modes and service models. Consideration should be given to projections and analysis of:

- Population growth
- ‘Aging in Place’ of the senior population
- Needs and gaps in public transportation services
- Human service transportation needs and programs
- Job, residential population, and visitor growth
- Changes in travel patterns to, from and within PCMC
- Pedestrian and bicycle transportation and how they relate to and interconnect with public transit
- Emerging transit modes, including on-demand microtransit, subsidized private transportation, automated transit vehicles, mobility as a service, aerial transit, etc.
- Opportunities for more effective routes and service models for currently served areas as well as identification of areas where transit service should be added.
- Previous and current ongoing studies will be utilized and documented for background information and to inform the SRTP.

3.5 Development of Transit System Design and Plan

The Proposer shall develop a transit system design and plan to address the goals and vision of PCMC, the needs and preferences of the public, and gaps in service and equity. The plan should incorporate the most innovative, high-value transit service models and technologies available today. The SRTP must include the following elements:

- Demand Estimation
- Key Origin and Destination Analysis
- Customer/Market Segment Analysis
- Key Stop Prioritization
- Park and Ride Lots and Facilities Plan
- Park Ave. to Arts & Culture Connection

- Multi-Modal System Design – BRT, Express, Local Fixed Route, On-Demand Microtransit, ADA, Aerial, Mobility as a Service, etc.
- Coordination with Private Transportation Providers
- Customer Information
- Electric Vehicle Optimization
- Pedestrian Connections and Safety
- Pilot projects to continue the advancement of transit technologies and service innovations

3.5.1 Phase II Analysis of Aerial Versus Dedicated Busway

PCMC is considering an aerial transit system to connect the major destinations within the city, including the Deer Valley and Park City ski resorts, Main Street and the Arts and Culture District. A preliminary analysis of aerial alignment, capacity and cost has been completed and will be available to Proposers. Phase II of the Short Range Transit Plan is an evaluation of aerial transit compared with a dedicated busway alternative to connect the four major destinations. Proposers shall present their approach for completing the Phase II analysis in their proposal, including, at a minimum, the following:

- Analysis of travel demand between nodes
- Comparison of capital and operating cost for aerial and dedicated busway systems
- Comparison of aerial versus busway systems on qualitative and quantitative criteria; including, cost, capacity, speed, environmental impact, customer experience (including customers with disabilities), safety, aesthetics, and impact on property owners

3.6 Operating, Financial, Marketing, and Capital Plans

The Proposer shall describe the operating, financial, marketing and capital plans necessary to implement the transit system design. These plans will detail the resource requirements, communication strategies, infrastructure needs and requirements for maintenance of the entire system in a state of good repair.

3.6.1 Operating Plan

The operating plan provides a framework for the implementation of service changes over the time period of the SRTP. The Proposer shall include the following minimum elements in the operating plan for all service modes, including innovative pilot projects:

- Level of service
- Cost of service (including operating, administration and capital)
- Number of vehicles
- Number of employees
- Service miles
- Service hours

- Plan and timeline for making changes to service

3.6.2 Financial Plan

The financial plan provides expense forecasts, revenue projections (federal, regional and local), service agreements, etc., that all tie back to the level of service described in the operating plan. The financial plan must describe how PCMC can pay for services, infrastructure and maintenance of a state of good repair. Information about financial revenue and expense forecasts will be provided in the PCMC Long Range Transportation Master Plan.

3.6.3 Marketing Plan

The marketing plan includes strategies to inform the public and stakeholders about planned changes to transit service and to maximize awareness and use of transit and non-auto travel options. The marketing plan should include specific strategies for each period of the SRTP, and should address individual market segments and stakeholder groups. The marketing plan should make use of the most effective media channels, matching the unique needs and culture of the Park City region.

3.6.4 Capital Plan

The capital plan discusses capital projects that need to be undertaken within the SRTP timeframe to support the services and operations set forth in the operating plan. After the evaluation of current facilities, vehicles, and equipment, tools, and materials, the Proposer shall provide a plan to acquire, modify, liquidate or replace capital assets as needed to implement the transit system design and operating plan. The following minimum elements should be included in the capital plan.

- Revenue fleet makeup and replacement schedule
- Electrification plan, including charging infrastructure
- Asset life cycle
- Passenger amenity needs
- Facility expansion, upgrade, or capital maintenance needs
- Capacity issues
- Park and ride lot needs

3.7 Performance Measures

The Proposer shall develop a performance measurement framework to evaluate the effectiveness of the overall transit system as well as the individual service modes and features. The performance measurement framework should take into account the fact that many of the innovative service models being implemented around the world today provide customer and public value that is not easily measured by traditional transit measures, such as cost per passenger or passengers per mile. The Proposer should provide a framework that includes broad, community outcome measures such as carbon

footprint, access to opportunities, public support, and mode split by zone; more traditional operational and financial measures; and measures of the customer experience.

Appendix "A"

PARK CITY MUNICIPAL CORPORATION SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

This Service Provider/Professional Services Agreement (the "Agreement") is made and entered into as of this ____ day of _____, 20__, by and between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation, ("City"), and _____, a _____ (Insert state of incorporation) _____ (insert either "corporation" or "limited liability company"), ("Service Provider"), collectively, the City and the Service Provider are referred to as (the "Parties")."

WITNESSETH:

WHEREAS, the City desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities;

WHEREAS, sufficient City resources are not available to provide such services; and

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the Parties hereto agree as follows:

1. **SCOPE OF SERVICES.**

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Exhibit A" and incorporated herein (the "Project"). The total fee for the Project shall not exceed _____ Dollars (\$_____).

The City has designated _____, or his/her designee as City's Representative, who shall have authority to act on the City's behalf with respect to this Agreement consistent with the budget contract policy.

2. TERM.

No work shall occur prior to the issuance of a Notice to Proceed which cannot occur until execution of this Agreement, which execution date shall be commencement of the term and the term shall terminate on _____ or earlier, unless extended by mutual written agreement of the Parties.

3. COMPENSATION AND METHOD OF PAYMENT.

- A. Payments for services provided hereunder shall be made monthly following the performance of such services.
- B. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- C. For all "extra" work the City requires, the City shall pay the Service Provider for work performed under this Agreement according to the schedule attached hereto as "Exhibit B," or if none is attached, as subsequently agreed to by both Parties in writing.
- D. The Service Provider shall submit to the City Manager or her designee on forms approved by the City Manager, an invoice for services rendered during the pay period. The City shall make payment to the Service Provider within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.
- E. The Service Provider reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.
- F. Service Provider acknowledges that the continuation of this Agreement after the end of the City's fiscal year is specifically subject to the City Council's approval of the annual budget.

4. RECORDS AND INSPECTIONS.

- A. The Service Provider shall maintain books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement, including (but not limited to) that which is necessary to sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement, and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement.
- B. The Service Provider shall retain all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement for six (6) years after expiration of the Agreement.
- C. The Service Provider shall, at such times and in such form as the City may require, make available for examination by the City, its authorized representatives, the State Auditor, or other governmental officials authorized by law to monitor this Agreement, all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement. The Service Provider shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider's activities, which relate directly or indirectly to this Agreement.
- D. The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code, 1953, as amended and Park City Municipal Code Title 5 ("GRAMA"). All materials submitted by Service Provider pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure rests solely with Service Provider. Any materials for which Service Provider claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Service Provider of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury.

The City will make reasonable efforts to notify Service Provider of any requests made for disclosure of documents submitted under a claim of confidentiality. Service Provider specifically waives any claims against the City related to any disclosure of materials pursuant to GRAMA.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The Parties intend that an independent Service Provider/City relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the City provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated, the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

The City may at its sole discretion require the Service Provider to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Service Provider may, however, employ that (those) individuals(s) on other non-City related projects.

7. HOLD HARMLESS INDEMNIFICATION.

- A. The Service Provider shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this

indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the City for a loss or injury that Service Provider would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the Parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

- B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8. **INSURANCE.**

The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees, or subcontractors. The Service Provider shall provide a Certificate of Insurance evidencing:

- A. General Liability insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate for personal injury, bodily injury and property damage.

The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

- B. Automobile Liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000) each accident for bodily injury, death of any person, and property damage arising out of the ownership,

maintenance, and use of owned, hired, and non-owned motor vehicles. This policy must not contain any exclusion or limitation with respect to loading or unloading of a covered vehicle.

- C. Professional Liability (Errors and Omissions) insurance (if applicable) with annual limits no less than One Million Dollars (\$1,000,000) per occurrence. Service Provider agrees to continue to procure and maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after the project completion or termination of this Agreement.

If written on a claims-made basis, the Service Provider warrants that the retroactive date applicable to coverage precedes the effective date of this agreement; and that continuous coverage will be maintained for an extended reporting period endorsement (tail coverage) will be purchased for a period of at least three (3) years beginning from the time that work under this agreement is complete.

- D. Workers Compensation insurance and Employers Liability coverage with Workers Compensation limits complying with statutory requirements, and Employer's Liability Insurance limits of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) for bodily injury by accident, and One Million Dollars (\$1,000,000) each employee for injury by disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Park City Municipal Corporation for all work performed by the Service Provider, its employees, agents and subcontractors.

- E. Park City Municipal Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds on general liability and auto liability insurance policies, with respect to work performed by or on behalf of the Service Provider including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Service Provider and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance.

- F. Should any of the above described policies be cancelled before the expiration date thereof, Service Provider shall deliver notice to the City within thirty (30) days of cancellation. The City reserves the right to request certified copies of any required policies.
- G. The Service Provider's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- H. For any claims related to this Agreement, the Service Provider's insurance coverage shall be primary insurance coverage with respect to Park City Municipal Corporation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Park City Municipal Corporation, its officers, officials, employees, or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

9. TREATMENT OF ASSETS.

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement (contingent on City's performance hereunder).

10. COMPLIANCE WITH LAWS AND WARRANTIES.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. Unless otherwise exempt, the Service Provider is required to have a valid Park City business license.
- C. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.
- D. If this Agreement is entered into for the physical performance of services within Utah, the Service Provider shall register and participate in E-Verify

or an equivalent program. The Service Provider agrees to verify employment eligibility through E-Verify, or an equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code § 63G-12-302.

- E. Service Provider shall be solely responsible to the City for the quality of all services performed by its employees or sub-contractors under this Agreement. Service Provider hereby warrants that the services performed by its employees or sub-contractors will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions.

11. NONDISCRIMINATION.

- A. The City is an equal opportunity employer.
- B. In the performance of this Agreement, Service Provider will not discriminate against any qualified person in matters of compensation and other terms, privileges, and conditions of employment because of: race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or protected expressions. Service Provider shall take such action with respect to this Agreement as may be required to ensure full compliance with local, State and federal laws prohibiting discrimination in employment.
- C. Service Provider will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or protected expressions.
- D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Service Provider shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENTS/SUBCONTRACTING.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of

the City, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The City reserves the right to reject without cause any such assignment. Any assignment made without the prior express written consent of the City, as required by this paragraph, shall be deemed null and void.

- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the City.
- D. Each subcontractor that physically performs services within Utah shall submit an affidavit to the Service Provider stating that the subcontractor has used E-Verify, or an equivalent program, to verify the employment status of each new employee, unless exempted by Utah Code § 63G-12-302.

13. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both Parties. Such amendments shall be attached to and made part of this Agreement.

14. PROHIBITED INTEREST, NO THIRD PARTY RIGHTS AND NO GRATUITY TO CITY EMPLOYEES.

- A. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- B. Nothing herein is intended to confer rights of any kind in any third party.
- C. No City employee who has procurement decision making authority and is engaged in the procurement process, or the process of administering a contract, may knowingly receive anything of value including but not limited to gifts, meals, lodging or travel from anyone that is seeking or has a contract with the City.

15. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the City.
- C. The City shall make provision for access to the property and/or project and adjacent properties, if necessary, for performing the services herein.

16. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days' written notice to the other party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the City. If the Service Provider has any property in its possession belonging to the City, the Service Provider will account for the same, and dispose of it in a manner directed by the City.
- B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days' written notice thereof, the City may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

17. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the Parties below. Notice is effective upon the date it was sent, except that a notice of termination pursuant to Paragraph 16 is effective upon receipt. All reference to “days” in this Agreement shall mean calendar days.

18. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in connection with that action or proceeding.

19. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Utah and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

20. SEVERABILITY AND NON-WAIVER.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

C. It is agreed by the Parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a subsequent waiver of the provisions of this Agreement. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

21. ENTIRE AGREEMENT.

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both Parties recognize time is of the essence in the performance of the provisions of this Agreement.

22. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

23. ELECTRONIC SIGNATURES.

Each party agrees that the signatures of the parties included in this Agreement, whether affixed on an original document manually and later electronically transmitted or whether affixed by an electronic signature through an electronic signature system such as DocuSign, are intended to authenticate this writing and to create a legal and enforceable agreement between the parties hereto.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

PARK CITY MUNICIPAL CORPORATION, a
Utah municipal corporation
445 Marsac Avenue
Post Office Box 1480
Park City, UT 84060-1480

Matt Dias, City Manager

Attest:

City Recorder's Office

Approved as to form:

City Attorney's Office

SERVICE PROVIDER NAME

Address:

Address:

City, State, Zip:

Tax ID#: _____

PC Business License# BL_____

Signature

Printed name

Title

THE CITY REQUIRES THE SERVICE PROVIDER TO COMPLETE EITHER THE NOTARY BLOCK OR THE UNSWORN DECLARATION, WHICH ARE BELOW.

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20__, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (*title or office*) of _____, a _____ corporation (or limited liability company), by authority of its Bylaws/Resolution of the Board of Directors (if as to a corporation) or Operating Agreement/Member Resolution (if as to a limited liability company), and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation (or limited liability company).

Notary Public

I declare under criminal penalty under the law of Utah that the foregoing is true and correct. Signed on the ____ day of _____, 2020, at _____ (insert State and County here).

Printed name _____

Signature: _____

EXHIBIT “A”

SCOPE OF SERVICES

EXHIBIT “B”

PAYMENT SCHEDULE FOR “EXTRA” WORK

Appendix “B” – Federal Clauses

UTAH DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION Professional Services / A& E Clauses

Contractor’s Capacity The Contractor agrees to maintain or acquire sufficient legal, financial, technical and managerial capacity to (1) plan, manage, and complete the Project; (2) plan and carry out safety and security aspects of the project and (3) comply with the terms of the Approved Project Budget, the Project Schedules, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing this Project. The most current FTA Master Agreement is hereby incorporated by reference and made part of this Agreement. The Contractor is an independent contractor with the Department. This Agreement does not create any type of agency relationship, joint venture, or partnership between the Contractor and the Department. Any periodic plan and specification review, construction inspection, or compliance oversight performed by the Department arising out of the performance of this agreement does not relieve the Contractor of its duty in the performance of this agreement or ensure compliance with acceptable standards.

Cost of Project The cost of the Project shall be in the amount indicated in the attached Project description and budget(s) and shall be borne in the manner described herein. The Contractor agrees that it will provide funds in the amount sufficient, together with the Grant, to assure payment of the actual Project cost. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs. The Contractor further agrees that no refund or reduction of the amount so provided will be made at the same time, unless there is at the same time a refund to the State of a proportional amount of the Grant. The Contractor agrees that “Project Costs” eligible for federal participation must comply with the standards of OMB Circular A-87, Revised, “Cost Principles for State and Local Governments,” or OMB Circular A-122 Revised, “Cost Principles for Non-Profit Organizations,” whichever is appropriate. Submit contractor’s budget and source and amounts of local share as indicated in Exhibit B. If the contractor plans to request reimbursement for indirect costs, a cost allocation plan must be submitted to the Department prior to incurring any costs. Prior to submission, the cost allocation plan must be approved by the cognizant Federal agency and updated annually for it to be acceptable. If no plan is submitted which meets these requirements, indirect costs are not allowed.

Procurement The Contractor agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18 or 49 C.F.R. § 19, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except to the extent FTA determines otherwise in writing, and UDOT’s PTT Procurement Guide. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory.

Use of Project Property Use of project property must be in compliance with the Utah Department of Transportation State Management Plan. The Contractor agrees that the project equipment and other property shall be used for the provision of planning service described in attached Exhibit A for the duration of its useful life. If, during such period, any project property is not used in this manner or is withdrawn from planning service, the Contractor shall immediately notify the Department and shall dispose of such project property in accordance with procedures as referenced in the current FTA Master Agreement and the Utah Department of Transportation State Management Plan.

The Contractor shall keep satisfactory records with regard to the use of property and submit to the Department, upon request, such information as is required in order to assure compliance with this Section and shall immediately notify the Department in all cases where project property is used in a manner substantially different from that described in the Project Scope. The Contractor shall maintain in amount and form satisfactory to the Department such insurance or self- insurance as will be adequate to protect project property throughout the period of required use.

During the period of contract performance, the Contractor shall maintain the project property at a high level of cleanliness, safety and mechanical soundness. The Utah Department of Transportation State Management Plan requires the Contractor to have and implement a written project property maintenance plan. The Department and FTA shall have the right to conduct periodic inspections for the purpose of confirming proper maintenance pursuant to the Section.

The Department reserves the right to require the Contractor to restore project property or pay for damage to project property as a result of abuse or misuse of such property with the Contractor's knowledge and consent.

Contracts Under This Agreement Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. All contracts must include all the same terms and conditions and provisions included in this Agreement. However, the Contractor is responsible for ensuring that all work performed by subcontractor is insured under their insurance policy, or they require that the subcontractors meet the insurance provisions required under this Agreement.

Contract Changes Any proposed change in this contract shall be submitted to the Department for its prior approval.

Interest of Members of or Delegates to Congress No member or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.

Prohibited Interest No member, officer, or employee of the Contractor during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

State Lien In order to protect the State's interest and establish its right to claim property in the event of a bankruptcy or other creditor action against the Contractor, a security

interest lien on all equipment, vehicles, project property, etc., purchased under this contract shall be obtained and properly recorded, showing the Department as the secured party. In the event of inadvertent receipt of property title, the Contractor shall voluntarily return said title to the Department for proper lien processing.

Written Transactions The Contractor agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or other obligation that in any way would affect the Federal interest in any project real property or equipment.

Indemnity The Contractor agrees to hold harmless and indemnify the Department, its officers, employees and agents ("Indemnitees") from and against all claims, suits, and costs including attorneys' fees for injury or damages of any kind, arising out of Company's negligent acts, errors or omissions in the performance of this contract, and from and against all claims, suits and costs including attorney's fees for injury or damage of any kind, arising out of Indemnities failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from the contractor's negligent acts, errors or omissions in the performance by the contractor or their subs at any tier within the scope of responsibilities of the contractor under this contract.

Federal, State, And Local Law Disclaimer The provisions of this contract shall be governed by the laws of the State of Utah. Venue for any legal proceeding regarding this contract shall be in Salt Lake County, State of Utah. The Contractor and those engaged by the Contractor shall comply with all Federal, State, and local laws, regulations and other legally binding requirements that pertain to services provided under this contract.

Sub-Contractors The Contractor shall include in all third party contracts and subcontracts entered into pursuant to this Agreement all of the above-required clauses and clauses required by Exhibit C. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement under this Agreement:

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

Legal Notification The Contractor shall attach the following statement to the deed/title of the property purchased or constructed under this contract to constitute legal notification: This vehicle/property was purchased in part with Federal funds from the Federal Transit Administration.

Project Changes Occasionally; during the course of this Project, it may become necessary to effect certain changes and/or modifications in the original application statements. All such changes in budget, time, personnel, objective and scope shall be justified by the Contractor and forwarded to the Department for approval.

Any extension in the scope of services required or increases in cost will require a fully executed supplemental agreement. The supplemental agreement will establish the extent of changes, extensions, and modifications and the compensation therefore.

Severability If any provision or part of a provision of this Agreement is held to be unconstitutional, invalid, illegal, or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore,

provided the parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited, or if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part thereof.

Status Verification System State law mandates that any Contractor physically performing services provided under this Agreement must register and participate in the Status Verification System to verify the work eligibility status of the contractor's new employees.

No Third Party Beneficiaries The parties enter in to this contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this contract. The Department and the Contractor each represent that the execution of the contract and the performance required under the contract are within their respective duly authorized powers.

Changes in Project Performance The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project in accordance with the terms of the Agreement for the Project and the most current FTA Master Agreement. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Department's or the Federal Government's interests in the Project.

Trafficking in Persons *To the extent applicable, the Contractor agrees to comply with, and assures the compliance of each third party contractor and subcontractor with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of Subsection 3.g of the FTA Master Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.*

Geographic Information and Related Spatial Data The Contractor agrees to implement the Project in accordance with of U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, so that any Project activities involving spatial data or geographic information systems activities financed directly or indirectly, in whole or in part, with Federal assistance, are or will be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Planning and Private Enterprise

(1) General The Contractor agrees to implement the Project in accordance with the following Federal planning and private enterprise provisions:

(a) U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

(b) Joint FHWA/FTA regulations, "Statewide Transportation Planning; Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments thereto.

(2) Governmental and Private Nonprofit Providers of Nonemergency Transportation In addition to providing opportunities to participate in planning described in Subsection 26.1 of this Agreement, to the extent feasible, the Contractor agrees to comply with 49 U.S.C. § 5323(k), which affords governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

(3) Infrastructure Investment During the implementation of the Project, the Contractor agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Audit and Inspection The Contractor will permit the Department, the Comptroller General of the United States, and the Secretary of the United States Department of Transportation or their authorized representatives, to inspect all vehicles, facilities and equipment purchased by the Contractor as part of the Project, all transportation planning services rendered by the Contractor by the use of such vehicles and equipment, and all relevant Project data and records. All payments made by the Contractor to the subcontractor for services required by this contract shall be subject to audit by the Department. The Contractor shall also permit the above named persons to audit the books, records and accounts of the Contractor pertaining to the Project. If the Contractor receives over \$500,000 in Federal funds from all sources, the Contractor shall submit an audit to the Department annually, following the procedures in the Single Audit Act of 1996, Circular A-133.

Access to Records and Reports

- (1) Establishment and Maintenance of Accounting Records The Contractor shall establish and maintain, in accordance with requirements established by the Department, separate accounts for the Project, either independently or within its existing accounting system, to be known as the Project Account.
- (2) Documentation of Project Costs All charges to the Project Account shall be supported by properly executed invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges, in accordance with the rules and regulations of the Department.
- (3) Method of Payment The Department, using FTA Grant Program 5304 appropriations, shall reimburse the Contractor for the Federal portions, as they are made available to the Department, of eligible expenses incurred in completing the Project. Reimbursement is contingent upon the availability of FTA appropriations to the State. In no event shall the total amount reimbursed by the Department hereunder exceed eligible available Federal funds for the Project. Payment will be made by the Department on a reimbursable basis for actual costs incurred. The Contractor shall submit an original invoice detailing and supporting the costs incurred. Payment is subject to the submission to and approval by the Department of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to the Department must include a record of the actual costs. Once the invoice has been approved by the Department, the Department shall submit the invoice for reimbursement from the FTA. Once the funds have been received from FTA and deposited with the State, the Department shall provide payment to the Contractor.

- (4) Reports The Contractor shall advise the Department regarding the progress of the Project at such times and in such manner as the Department may require including, but not limited to, meetings and interim reports. The minimum requirement for project reporting is detailed in Exhibit A.

The Contractor shall submit to the Department, at such time as may be required, such financial statements, data, records, contracts and other documents related to the Project as may be deemed necessary by the Department.

- (5) Articles of Incorporation The Contractor agrees to maintain private non-profit eligibility (where applicable), as described in application for capital assistance, by retaining valid Articles of Incorporation and adhering to all State and Federal regulations concerning this issue and will continue to do so for the Contract duration.

(6) Other Requirements

- (a) Where the Contractor is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction 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) Where the Contractor enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (c) Where any Contractor which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (d) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- (e) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (f) Proof of Contractor's compliance with licensing requirements shall be furnished to the Department upon request.

Federal Changes Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Certifications and Assurances and the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Termination (according to 49 CFR § 18 and 19)

- (a) Termination for Convenience The State may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. If this contract is terminated, the State shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- (b) Termination for Default The State may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the State or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the State, or property supplied to the Contractor by the State.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- (c) Opportunity to Cure. The State in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other conditions.

If Contractor fails to remedy to State's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from State setting forth the nature of said breach or default, State shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude State from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach No waiver by the Department or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default. In the event that State elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by State shall not limit State's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Civil Rights Act of 1964 The following requirements apply to this contract:

- (1) Nondiscrimination Notice - In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and the Title 49, Code of Federal Regulations. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contracts entered into by any contractor.

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

(a) **COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

1. **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, disability, income status, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, disability, income status, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT or the FTA to be pertinent to ascertain compliance with such Regulations,

orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the DEPARTMENT or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the DEPARTMENT or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) Equal Employment Opportunity The following equal employment opportunity requirements apply to this contract:

(a) 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, the 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 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity, as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation,

and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(c) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the 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 C.F.R. § 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The 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.

(4) Disadvantaged Business Enterprise

(a) This contract is subject to the requirements of Title 49, CFR § 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.36%. **See Attachment C for DBE Special Provisions and Assurance, Commitments, and Certifications.**

(5) Access to Services for Persons with Limited English Proficiency The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

Other Non-Discrimination Statutes The Contractor agrees to comply with any other non-discrimination statute(s) that may apply to the Project.

Breaches and Disputes Resolution Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Department's Director of Transit Plans and Programs. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit Plans and Programs. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit Plans and Programs shall be binding upon the Contractor and the Contractor shall abide by the decision. The Contractor agrees to establish a written process whereby any protests,

disputes, or conflicts arising out of the Section 5304 program will be properly heard and settled with proper notification given to the Department.

Energy Conservation Requirements Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Clean Water The Contractor agrees to comply with 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 Contractor agrees to report each violation to the Department and understands and agrees that the Department will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Clean Air Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

No Obligation by the Federal Government to Third Parties The Department and the Contractor acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole, or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government

reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5707 (n) (1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Lobbying Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the State. See Attachment B for certification.

Incorporation of FTA Terms The preceding provisions include, in part, certain Standard Terms and Conditions required by Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Department requests, which would cause the Department to be in violation of the FTA terms and conditions.

Government-Wide Debarment and Suspension This contract is a covered transaction for purposes of 2 CFR Part 180. As such the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180, or affiliates, as defined at 2 CFR 180, are excluded or disqualified as defined at 2 CFR 180. At a minimum, the Contractor must review the Excluded Parties Listing System to ensure that excluded parties do not participate in covered transactions.

The Contractor is required to comply with 2 CFR 180 and must include the requirement to comply with 2 CFR 180 in any lower tier covered transaction it enters into.

Sub-recipient will submit debarment and suspension certification.

Contract Work Hours and Safety Standards

- (1) Overtime requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics 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 (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 (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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The Department 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 Contractor 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 (2) of this section.

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

Recycled Products Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to 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.

ADA Access The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public

- Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
6. U.S. GSA regulations, “Accommodations for the Physically Handicapped” 41 C.F.R. Subpart 101-19; U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
 7. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
 8. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609;
 9. And any implementing requirements FTA may issue.

Cargo Preference - Use of United States-Flag Vessels The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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

National ITS Architecture To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5307 (c) of SAFETEA-LU, 23 U.S.C. Part 512 note, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq.; January 8, 2001, and later published policies or implementing directives FTA may issue, except to the extent FTA determines otherwise in writing.

Rights in Data This following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not

copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

- (2) The following restrictions apply to all subject data first produced in the performance of the contract:
- (a) Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (d) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Patent Rights The following requirements apply to each contract involving experimental, developmental, or research work:

- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing,

irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

ATTACHMENT A

To be completed by Contractor, third party contractors, and lower tier subcontractors.

**DEBARMENT AND SUSPENSION CERTIFICATION
(LOWER TIER COVERED TRANSACTION)**

(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs.)

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180, or affiliates, as defined at 2 CFR 180, are excluded or disqualified as defined at 2 CFR § 180.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by_____. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to _____, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR § 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Signature of Bidder or Proposer's
Authorized Official**

**Name and Title of Bidder or Proposer's
Authorized Official**

Date

ATTACHMENT B

To be completed by Contractor, third party contractors, and lower tier subcontractors should this award be over \$100,000.

LOBBYING CERTIFICATE

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 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 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.

(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 section 1352, title 31, U.S. Code. 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.

Statement for Loan Guarantees and Loan Insurance

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

If any funds have been paid or will be paid to any person 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 of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete

and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such 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 _____

ATTACHMENT C

To be completed by Contractor or third party contractor, whichever party is responsible for meeting DBE goal.

Bid Conditions **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Utah Department of Transportation (UDOT) is hereinafter referred to as "Department".

The agency receiving funds, or the subrecipient, is hereinafter referred to as "Contractor".

Note these bid conditions do not apply to Transit Vehicle Manufacturers who have submitted required DBE information to FTA and have been certified by FTA.

POLICY

"Policy Statement"

It is the policy of the DEPARTMENT to take all necessary and reasonable actions to ensure that DBEs as defined herein shall have equal opportunity to participate in the performance of contracts financed in whole or in part with US Department of Transportation (DOT) funds under this agreement as modified herein.

"Objectives"

The objectives of this policy are to:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet *49 CFR 26* eligibility standards are permitted to participate as DBEs;
5. Remove barriers to the participation of DBEs in Federal aid contracts;
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
7. Provide appropriate flexibility in establishing and providing opportunities for DBEs.

"Responsibilities"

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the DEPARTMENT in financial assistance agreements with DOT.

1. The Civil Rights Manager shall be the DBE liaison officer, who shall have direct, independent access to the Executive Director concerning DBE program matters. The Contractor is responsible for implementing all aspects of the DBE program and for supervising DBE participation. The Contractor must assign adequate staff to administer the DBE program.
2. The DEPARTMENT is responsible for oversight of the DBE program implementation and DBE participation covered by the Contract.

DBE BID AND PERFORMANCE CONDITIONS

“Obligations”

The contractor, subcontractor, service provider, or supplier at any lower tier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the DEPARTMENT deems appropriate.

“Assurances”

Each contract between the DEPARTMENT and the Contractor and each subcontract at any lower tier must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the DEPARTMENT deems appropriate.

A. CONTRACT GOAL

1. The DEPARTMENT has determined that one or more can reasonably be expected to compete for the work contained in the proposal for this project. It is, therefore, the goal of the DEPARTMENT that DBE firms shall have an affirmative action opportunity to contract for the following percentage of work under this contract:
 - a. If the indicated DBE percent of the *CONTRACT DBE GOAL* is greater than 0.0 percent, complete Part A of the DBE BID ASSURANCE AND COMMITMENT. Refer to Bidding Requirements, Section D, Subsection 1,a, of this Special Provision. (The commitment dollar amount up to the amount of the assigned goal is Race Conscious DBE participation. Any

commitment dollar amount in excess of the assigned goal is Race Neutral Participation.)

- b. If the indicated DBE percent of the *CONTRACT DBE GOAL* is 0.0 percent complete Part B of the DBE BID ASSURANCE AND COMMITMENT. Refer to Bidding Requirements, Section D, Subsection 1,b, of this Special Provision. (Any commitment to a DBE is Race Neutral Participation.)

CONTRACT DBE GOAL: 0 Percent

2. GOALS

a. GOAL FOR BID EVALUATION

The above entered DBE percentage is a goal for bid evaluation to determine responsiveness of the proposal as it relates to this specification. Percentages for bidding purposes shall be calculated using dollar values and quantities as shown in proposals received for this project. Bidders shall compute the percentage of their DBE commitment by dividing the dollar amount of subcontract work that is being committed to certified DBE firms by the total dollar amount of the proposal. This will be the percentage of their DBE commitment.

b. RACE CONSCIOUS GOAL

DBE participation on projects that are assigned a Goal for Bid Evaluation that is greater than 0.0 percent is *race conscious* and the DBE commitment becomes a contract specification upon award. The Bidder must submit with its Bid Proposal a *DBE Commitment*, included in Part A, that indicates:

- (1) Name of DBE firm
- (2) Work items to be performed
- (3) Total dollar amount of commitment

If the DBE commitment does not meet or exceed the assigned goal, the Bidder must submit with the Bid Proposal documentation of good faith efforts.

c. RACE NEUTRAL GOAL

DBE participation on projects that are assigned 0.0 percent Goal for Bid Evaluation is *race neutral* and does not become a contract specification upon award. The Bidder must take equal opportunity action to allow DBEs to compete for and perform on subcontracts. Only work classifications that the Bidder will subcontract need to be considered in evaluating equal opportunity action in the bid preparation. Contacts that have been made with DBE firms regarding potential work to be subcontracted and the results of such contacts are to be submitted with the prepared Bid Proposal and contain:

- (1) The work classifications that will be subcontracted.
- (2) DBE firms contacted.
- (3) Result of contact
- (4) Name of anticipated DBE subcontractor(s)
- (5) Anticipated work items to be performed by DBEs.
- (6) Anticipated dollar amount of subcontract(s).

The *Race Neutral DBE Documentation* is required to document equal opportunity action and to assist the DEPARTMENT with DBE reporting and DBE goal setting.

d. GOAL FOR CONTRACT PERFORMANCE

The Bidder's *DBE Commitment* becomes an attachment to the Bid Proposal and is a condition of award, and thereby becomes a contract specification. Upon award, this Race Conscious DBE Commitment also becomes the minimum goal for contract performance.

Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

It is the intent of this Special Provision that the DBE Firm(s) listed for *race conscious* participation, as a minimum level of participation, will perform to the extent indicated in the Bidder's DBE Commitment. The minimum level of DBE participation includes:

- (1) Indicated DBE firm(s),
- (2) Indicated work item(s) (bid items),
- (3) Indicated total dollar amounts.

Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment. If the DBE will perform only a part of the bid item, i.e., haul only, the Bidder must indicate what part the DBE will perform (Partial Performance). If the DBE will perform only a part of the quantity of the bid item, the Bidder must indicate the estimated quantity of the work to be performed by the DBE (Partial Quantity).

Substitutions of DBE subcontractor(s), work item(s), or decreases of total dollar amount(s) as indicated in the Bidder's DBE Commitment will not be allowed without prior submission of written justification to the DEPARTMENT and approval of the DEPARTMENT Civil Rights Manager.

After award of a contract, substitutions will not be allowed without prior submission of a written "hold harmless" statement from the DBE.

Any change by the Contractor in the DBE Commitment requires that the change is approved and documented by the DEPARTMENT Civil Rights Manager.

Substitution of race neutral participation in excess of the Goal for Bid Evaluation requires equal opportunity efforts to substitute with other DBE participation.

DEPARTMENT or Contractor generated decreases due to quantity changes in individual bid items do not require prior approval of the DEPARTMENT Civil Rights Manager—but must be fully justified by the Contractor at the conclusion of the project. The Contractor's justification shall show the total estimated quantity, the final pay quantity as shown on the final estimate invoice, the quantity of the under-run, and the percent of under-run of the individual item. The explanation for the under-run shall include the reasons for the under-run and shall include as much detail as possible.

e. GOAL FOR FINAL COMPLIANCE

Percentages for final compliance shall be based on actual payments to DBEs. Over-runs and under-runs in individual contract items may require adjustments in the predetermined DBE percentage for a project if those items were not related to DBE performance. "The predetermined percentage for a project" refers to the percentage of the Contractor's DBE Commitment that becomes a contract specification upon award.

B. DEFINITIONS

For the purpose of this Special Provision, the following terms are defined:

1. Contract means a legally binding relationship obligating a seller to furnish supplies or services including but not limited to, construction and professional services) and the buyer to pay for them.
2. Contractor means one who participates, through a contract or subcontract (at any tier).
3. Disadvantaged Business Enterprise or DBE means a for profit small business concern.

- a. That has been certified to DBE status by the UUCP.
- b. That is at least 51 per cent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 per cent of the stock of which is owned by one or more such individuals; and
- c. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- d. Whose size is limited to average annual gross receipts of \$17,425,000 over the previous three fiscal years. The Secretary of Transportation may adjust this amount from time to time for inflation.

OR

Whose size is limited to the current SBA Business size standard(s) found in 23 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

4. DBE Goals mean:

- a. The DEPARTMENT'S annual overall goal on DOT-assisted projects for Federal fiscal year

5. DBE Joint Venture means 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 to a degree commensurate with its ownership interest.

The DEPARTMENT's Civil Rights Office prior to bid opening must approve a DBE joint venture in order to be utilized for the satisfaction of contract DBE goals. A DBE Joint Venture application must be submitted allowing ample lead-time for the Civil Rights Office to review, evaluate, and verify information provided for in the application. An interview of the applicant may be necessary at the discretion of the DEPARTMENT prior to approval of the application. If an interview is deemed necessary it will be scheduled at the convenience of all parties.

6. Equal Opportunity Action requires individuals to be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

If a bidder requests or accepts bids for subcontract work, the bidder will request and accept bids from DBEs in the work classifications that potentially will be subcontracted.

7. Good Faith Efforts means efforts to achieve a DBE goal or other requirements of this part that by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
8. Lack of Financial Fitness is a performance-based definition based solely on failure to pay promptly. There is no reference to financial status or financial capability.
9. Prompt Payment means payment made no later than thirty (30) calendar days after receipt of payment by the Contractor or Subcontractor, Service Provider or Supplier at any lower tier.
10. Race Conscious measure or program is focused specifically on assisting only DBEs, including women-owned DBEs. The DEPARTMENT must establish contract goals to meet any portion of its overall DBE goal that it does not project being able to meet using race neutral means. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, the DEPARTMENT must adjust the use of contract goals as follows:
 - a. If during the course of any year it is determined that the overall goal will be exceeded, the DEPARTMENT will reduce or eliminate the use contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal.
 - b. If it is determined that the DEPARTMENT will fall short of its overall goal, then appropriate modifications in the use of race neutral and/or race conscious measures will be made to allow the DEPARTMENT to meet the overall goal.
11. Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The DEPARTMENT must meet the maximum feasible portion if its overall DBE goal by using race -neutral means of facilitating DBE participation. Race neutral DBE participation includes:
 - a. Any time a DBE wins a prime contract through customary competitive procurement procedures,
 - b. Is awarded a subcontract on a prime contract that does not carry a DBE goal,
 - c. Is awarded a subcontract from a prime contractor that did not consider its DBE status in making the award even if there is a DBE goal.
For the purposes of this part, race-neutral includes gender-neutrality.
12. Regular Employee is a person who:
 - a. Would be working for the DBE firm on any other subcontract with any other contractor.
 - b. Is a permanent employee of the DBE firm

Or

Has been recruited through the traditional recruitment and/or employment centers

- c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
- d. Is not a member of a construction crew that regularly works for a non-DBE.
- e. Is not a licensed contractor who is at the time “unemployed” or “between jobs.”

13. Regular Equipment is owned or leased and operated on a long term agreement and not on an *ad hoc* or contract by contract agreement.

- a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.
- b. The equipment would be owned by the DBE firm.

Or

The equipment would be leased/rented from traditional equipment lease/rental sources.

- c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.
- d. The equipment cannot belong to:
 - (1.) Prime Contractor
 - (2.) Another subcontractor on the present project.
 - (3.) Supplier of materials being installed by the DBE firm.
- e. The equipment cannot come from another contractor fully operated.

14. Reasonable Bid

This is a bid the DEPARTMENT would accept if it were the only bid submitted.

15. Responsible Bidder

A responsible bidder has the apparent ability and capacity to perform the contract requirements.

In addition to normal prequalification, a responsible bidder is defined as one who has signed (manually or electronically) and submitted with the bid the DBE Bid Conditions Assurance and Commitment of good faith effort certifying the intention to meet the DBE goal of a proposed contract or to continue good faith effort to do

so. These goals may be met by subcontracting or leasing contracts with a DBE or purchasing material from a DBE insofar as the work or material becomes a part of a proposed contract.

16. Responsive Bidder

- a. A responsive bidder is a bidder who unequivocally offers to provide services or supplies in conformity with the material terms of the solicitation. In addition to normal prequalification and other bidding requirements, a responsive bidder in relationship to this Special Provision is defined as one who submits evidence of proposed subcontract performance with certified DBE firms to achieve the required dollar amount necessary to achieve the percentage goal.
- b. Bidders may be considered as presumptively responsive if they have failed to satisfy the advertised DBE goal set for the proposed contract but have certified in their bid that good faith efforts have been expended to meet the goal and that they will continue during the performance of the contract to locate, solicit, and involve DBE firms in contract performance. Documentation of the bidder's good faith efforts must be included with the bid package of the DEPARTMENT's review and assessment. Failure to do so shall render the bid non-responsive. The DEPARTMENT will reject the bid.

17. Satisfactory Completion of a subcontract occurs when:

- a. The subcontractor has satisfactorily completed in all respects the work under the Contract.
- b. The Contractor and the subcontractor have notified the DEPARTMENT in writing that the work of the subcontractor has been completed.
- c. The DEPARTMENT will be given a reasonable length of time to check quantities if necessary. Checking quantities does not guarantee the absolute correctness of quantities.
- d. The Contractor and the subcontractor have satisfactorily executed and delivered to the DEPARTMENT all documents, certificates and proofs of compliance required by the Contract. The satisfactory execution and delivery of these documents, certificates and proofs of compliance to the DEPARTMENT is a material requirement of the contract.
- e. The DEPARTMENT accepts in writing the work of the subcontract.
- f. Satisfactory Completion refers only to payment of retainage and accrued interest. A determination of Satisfactory Completion and payment in full for work performed does not relieve the contractor nor the subcontractor from any contractual obligation.

18. Satisfactory Performance means work performed and materials furnished in conformity with the plans and specifications.

19. Service Provider means a broker or a middle man. A business person who buys, sells or performs a service for another in exchange for a mark up or commission.
20. Socially and Economically Disadvantaged Individuals means any individual who is a citizen (or lawful admitted permanent resident) of the United States and who is:
- a. Any individual who the DEPARTMENT finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (1) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
 - (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
 - (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) "Asian-Pacific Americans," which includes 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 Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
 - (6) Women.
 - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

21. Subcontractor

A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present.

- a. The person or firm performing the work is particularly experienced and equipped for such work.

- b. Compensation is related to the amount of work accomplished rather than being on an hourly basis.
- c. Choice of work methods, except as restricted by the specifications, and the furnishing and controlling of labor and equipment are exercised by the subcontractor with only general supervision being executed by the prime contractor.
- d. Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.

All conditions involved shall be considered and no one condition alone will normally determine whether a subcontract actually exists. In all cases, a DBE subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The prime contractor, a subcontractor, or a supplier shall not be responsible for the various operating and management activities of a DBE firm.

22. Supplier

Provides or furnishes materials, goods or services that may be incorporated into the project. The supply transaction is to be documented by an appropriate purchase agreement that includes the required provisions for Federal-aid construction projects.

- 23. UUCP The Utah Unified Certification Program (UUCP) provides "one-stop shopping" to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that is honored by all recipients of Federal-aid Funds in the State of Utah.

C. DETERMINATION OF DBE CONTRACTOR'S ELIGIBILITY BY UUCP

- 1. Any Contractor may apply to the UUCP for status as a DBE. Applications shall be made on forms provided by the UUCP, entitled "UNIFORM CERTIFICATION APPLICATION" or "Information for Determining DBE Joint Venture Eligibility," Form No. R-817. Application need not be made in connection with a particular bid. Only work contracted to certified DBE prime contractors or subcontractor to firms that have applied for and have been granted status as a DBE by the UUCP shall be considered toward contract goals as established in Subsection A.
- 2. It shall be the Contractor's responsibility to submit a DBE application so that the UUCP has time to review it. The UUCP will review applications in a timely manner but is not committed to approve DBE status within any given period of time. The UUCP must have ample lead time to review, evaluate, and verify information provided with a application.
- 3. The DEPARTMENT shall maintain a UUCP Unified DBE Directory of DBE Contractors, vendors, service providers and suppliers that is updated as changes occur for the purpose of providing a reference source to assist any bidder in meeting the requirements of this bid condition. Bidders must use the most

current DBE information available on the web site when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available through the UDOT Civil Rights Office, and also on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

4. In meeting the requirements of this bid condition, bidders are in no way limited to the DBE Directory referred to in 3 above in seeking out and negotiating with the DBE Contractors and determining which items of work shall be subcontracted to DBE Contractors. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.

The UUCP prior to bid opening must grant DBE status to any DBE Contractor or DBE Joint Ventures. DBE credit will not be allowed toward *race conscious* goals for a firm or joint venture that has not been DBE certified by the UUCP.

D. BIDDING REQUIREMENTS

All bidders must satisfy the bidding requirements of this part. A DBE prime contractor's performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor shall meet the DBE goal by using DBE subcontractors or by using good faith efforts.

1. DBE Bid Assurance
 - a. Race Conscious Goal

For a bid with a DBE goal greater than 0.0 percent to be considered responsive, *Part A* of the DBE Bid Assurance and Commitment must be completed and included in the BID PROPOSAL, certifying that they will meet or exceed the Goal for Bid Evaluation established in Subsection A, or that they fail to meet the goal but have and will put forth good faith effort to meet or exceed the goal of the DBE program. In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.
 - b. Race Neutral Goal

For a bid with a DBE goal of 0.0 percent to be considered responsive, *Part B* of the DBE Bid Assurance must be included in the BID PROPOSAL certifying that the Bidder has utilized equal opportunity action to allow DBE's to compete for and perform on subcontracts. *Part B* of the DBE Bid Assurance will be completed based upon the following information :

 - (1) Bids with no subcontracting opportunities

Bidders who intend to do all the work with their own organization will indicate this in Part B of the DBE Assurance and Commitment.

After the award of the bid, in the event that a Contractor indicates that he does not intend to sublet any work and subsequently determines to sublet a portion of the work, the Contractor:

- (a) must justify why subcontract quotes were not a part of the Bid Proposal,
- (b) must utilize equal opportunity action to allow DBEs to compete for and perform on the work to be sublet,
- (c.) must submit the required Race Neutral Documentation with the proposed subcontract.

NOTE: The Contractor may use the 'DBE Contact Log' and 'Quote Comparison' forms to develop the above requirements for documentation.

- (2.) Bids with subcontracting opportunities
Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The DEPARTMENT must meet the maximum feasible portion of its overall DBE goal by using race - neutral means of facilitating DBE participation.

Bidders who solicit non-DBE subcontract quotes will utilize equal opportunity action to allow DBEs to compete for and perform on subcontracts. Bidders who intend to sublet work must indicate this in Part B of the DBE Assurance and Commitment.

The results of the equal opportunity actions will be included with the prepared Bid Proposal as *Race Neutral Documentation*. Part B of the Bid Assurance and Commitment Form will indicate the existence of any of the following types of Race Neutral Documentation that the Bidder has included:

- (a) DBE Commitment
- (b) DBE Contact Log
- (c) Quote Comparison

In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.

2. DBE Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding DBE compliance with the prepared Bid Proposal:

Submit a DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in the UUCP's Directory or DBE firms that have been approved by the UUCP prior to bid opening.

- a. The names of DBE firms that will participate in the contract;
- b. A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
 - (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
 - (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
 - (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;
- c. The dollar amount of participation by each named DBE firm;
- d. If the contract goal is not met, evidence of good faith efforts.

The DBE Commitment is to be included in the bid prepared within, and said information will be kept confidential and will not be reviewed unless the Contractor is otherwise determined to be the low Bidder or the DEPARTMENT elects to review said information in making its determination as to award of the contract.

3. Race Neutral Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding equal opportunity compliance with their prepared Bid Proposal:

Submit a Race Neutral DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in UUCP DBE_Directory or DBE firms that have been approved by the DEPARTMENT prior to bid opening. The DBE Commitment will include:

- a. The bid item(s) or work classification(s) that will be subcontracted;
- b. The DBE firms that have been contacted. A reasonable number of DBEs available to perform the anticipated subcontract work must be contacted. The DBE firms must be given a reasonable amount of time to develop subcontract quotes.
- c. The results of the contacts with the DBE firms
- d. Name(s) of anticipated DBE subcontractor(s)
- e. Anticipated work items to be performed by DBE(s)

- f. Anticipated dollar amount of subcontract(s).

A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.

- (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
- (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
- (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;

The *Race Neutral Documentation* submitted in the prepared bid will be kept confidential and not reviewed unless the Contractor is otherwise determined to be the low Bidder or the DEPARTMENT elects to review said information in making their determination as to award of the contract.

4. DBE Written Confirmation

Low Bidder shall submit to the DEPARTMENT Civil Rights Manager within three (3) work days after the bid opening written confirmation from each DBE that it is participating in the contract as provided in the Prime Contractor's DBE Commitment or Race Neutral Documentation. The written confirmation shall include the following information:

- a. A description of the work that will be performed (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.
 - (1) If mobilization is a bid item that is partially committed, please confirm the dollar amount of the mobilization to be performed.
 - (2) If a partial quantity is committed, confirm the quantity to be performed.
 - (3) If a partial performance of an item is committed, confirm what part of the item will be performed.
 - (4) Unit bid prices for each bid item that is committed to a DBE.
 - (5) Total dollar amounts (mathematical extensions) for each bid item that is committed to a DBE
- b. The dollar amount of participation by each named DBE firm.

5. Good Faith Efforts

Bidders who fail to meet the DBE goal for bid evaluation must demonstrate with documentary evidence that they made good faith efforts to do so. Bidders are required to include the Good Faith Efforts Documentation with the prepared Bid Proposal. The said information will be kept confidential and not reviewed unless the Bidder is otherwise determined to be the low Bidder or the DEPARTMENT and authorized representatives elect to review said information in making their determination as to award of the contract. For the bid to be considered responsive, Bidders shall include with the BID PROPOSAL specific documentary evidence that good faith efforts have been made to meet the goal.

Attached hereto and marked Exhibit 1, and by this reference made a part hereof, is a list of actions that may be used to prove the kinds of efforts prospective Bidders should consider in their attempts to demonstrate good faith efforts. The list of actions, as contained in Exhibit 1, is not intended to be an exclusive list of efforts that a prospective Bidder may wish to consider in demonstrating good faith efforts to satisfy DBE participation requirements. The determination of good faith efforts shall be based upon the information and documentation of the actions supplied by the Bidder with the bid proposal. The DEPARTMENT reserves the right to investigate and verify such information or to request the low dollar Bidder to clarify information submitted at the time of bid.

6. Award of the Contract

The award of the contract, if awarded, will be made to the apparent successful responsive, responsible Bidder who submitted a reasonable bid for the contract and has complied with this Subsection D.

7. Administrative Reconsideration

Good faith efforts as used herein shall be determined on a case by case basis. If it is determined that the apparent low Bidder has failed to meet the requirements of Exhibit 1, the bidder will be provided an opportunity for administrative reconsideration.

- a. Official(s) who did not take part in the original determination will perform the administrative reconsideration.
- b. The Bidder will have the opportunity to provide to written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- c. The Bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- d. The Bidder will be notified in writing of the decision and the basis for the decision.
- e. The reconsideration decision is administratively final and is not appealable to FTA nor to the DOT.

E. COUNTING DBE PARTICIPATION TOWARD GOALS FOR BID EVALUATION

1. The DEPARTMENT will recognize and grant DBE credit toward the goal for bid evaluation (*race conscious* goals) for work committed to DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all bidders refer to the UUCP DBE Directory for direction and guidance. A current copy of the DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

2. The DEPARTMENT will grant DBE credit toward *race neutral* goals for work performed by firms who are not DBE certified prior to bid opening or who bid types of work for which DBE certification has not been granted by the DEPARTMENT prior to bid opening but subsequently are granted DBE certification.
3. Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

F. COUNTING DBE PARTICIPATION TOWARD GOALS FOR PERFORMANCE

Subcontracts to DBEs that exceed the *Goal For Bid Evaluation* will be considered in part as race conscious participation and in part as race neutral participation. Any dollar amounts in excess of the *Goal For Bid Evaluation* will be considered as race neutral participation.

It is intended that the Contractor shall utilize the subcontractors designated in the DBE Commitment in the performance of the contract. Any changes in the Contractor's DBE Commitment, such as substitution of a DBE subcontractor, substitution of contract items, or decrease in total dollar amount must be approved by the DEPARTMENT and must be documented. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to meet the Goal for Performance, that is established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the DEPARTMENT Civil Rights Manager, shall result in the imposition of sanctions as provided in Part I of this Special Provision.

1. Only the value of the work actually performed by the DBE will count toward DBE goals.
2. Contractors may count toward their contract goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this bid condition equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
3. The DEPARTMENT will recognize and grant DBE credit for work subcontracted and performed by DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary

that all Bidders refer to the UUCP'DBE Directory for direction and guidance. A current copy of the UUCP DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

4. Contractors may count toward their goals only the value of the work actually performed by the DBE toward the DBE goals.
 - a. Work performed by the DBE's own forces using "regular employees" and "regular equipment."
 - b. The cost of supplies and materials obtained and purchased by the DBE and equipment leased for the work of the contract.
 - c. Work that a DBE subcontracts to a lower tier DBE firm.
5. Contractors may not count toward the DBE goals:
 - a. Supplies and material purchased and equipment leased by the DBE from the prime Contractor or its affiliates or another subcontractor on the project.
 - b. Work that a DBE subcontracts to a lower tier non-DBE firm.
6. Contractors may count toward their goals only expenditures to a DBE that performs a commercially useful function in the work of the contract.
 - a. A DBE performs a "commercially useful function" when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - b. The DEPARTMENT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - c. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DEPARTMENT must examine similar transactions, particularly those in which DBEs do not participate.

- d. A DBE does not perform a commercially useful function if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
7. The DEPARTMENT shall use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- a. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - b. The DBE must be responsible for the management and supervision of the entire trucking arrangement for the purpose of meeting DBE goals.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example: Leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- f. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
8. Contractors may count expenditures with DBEs for materials or supplies as provided in the following:
- a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts toward DBE goals.
- For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies counts toward DBE goals.
- For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- (1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (2) A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.
- (3) Packagers, brokers, manufacturers representatives, or other persons or firms who arrange, or expedite, transactions are not regular dealers.
- (4) A DBE trucking company that picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor performs a delivery service. Credit will not be given based on a percentage of the cost of the product; credit will be allowed only for the cost of the transportation service.

9. If the materials or supplies are purchased from a service provider, the fees or commission charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, count toward the DBE goals.

A Service Provider is a business that is neither a manufacturer nor a regular dealer but simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery. A service provider charges a fee or a commission for assistance in the procurement of the materials and supplies, or fees or transportation for the delivery of materials or supplies required on a job site.

- a. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The DEPARTMENT must determine that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. No portion of the cost of the materials and supplies count toward the DBE goals. Documentary evidence of the supply agreements, i.e., sales contract, purchase order, etc., shall be submitted to the DEPARTMENT prior to credit. The agreement shall set forth the estimated quantities, unit prices, total dollar amounts, material guarantees, delivery, and payment requirements including the requirements listed part E, 4, e, of this DBE Special Provision.
10. Prompt payment for the work accomplished is an integral part of the concept of commercially useful function.

See Section F, Subsection 6,a for a definition of "commercially useful function."

G. CONTRACTOR'S RESPONSIBILITY

1. It is the Contractor's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The Contractor shall ascertain that the proposed DBE subcontractor is particularly experienced and equipped for the work of the subcontract.
2. It is the Contractor's responsibilities to monitor and assure that DBE's listed to fulfill DBE goals perform a commercially useful function.

H. DBE SUBCONTRACTOR'S FAILURE TO PERFORM SUCCESSFULLY

If, during the performance of the contract, the Prime Contractor determines that a DBE subcontractor is unable to perform successfully, the Contractor shall make good faith efforts to replace the DBE subcontractor with another DBE to fulfill the Goal for Bid Evaluation. For Race Conscious DBE participation, the Contractor shall consider the uncompleted DBE committed work items as well as other work items as a part of the good faith efforts. All substitutions of DBE subcontractors shall receive prior approval by the DEPARTMENT.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment without prior submission of written justification to the DEPARTMENT and without prior approval of the DEPARTMENT Civil Rights Manager.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment Substitutions without prior submission of a written statement from the DBE consenting to the substitution or decrease and holding the DEPARTMENT harmless for approving the substitution.

Unauthorized substitutions of the DBE(s), underruns of work item(s), or decreases in dollar amount(s) may result in the imposition of sanctions as allowed under Section I.

The DEPARTMENT reserves the right to authorize completion of the work that was subcontracted to a DBE who is unable to perform successfully by either of the following methods:

1. Approve, at no additional cost to the DEPARTMENT, a replacement DBE subcontractor and, when appropriate, modify the contract to provide for reasonable extra time necessary to obtain a DBE replacement at no additional cost to the DEPARTMENT.
2. Direct the Contractor to perform at unit bid prices. In the event this option is selected, the percentage DBE goal will be adjusted as may be appropriate.

I. SANCTIONS

1. The Contractor's DBE Commitment becomes a 3-part commitment comprised of the DBE Contractor(s), work item(s) and dollar amount(s). The Commitment becomes a contract specification upon award of the contract and becomes the minimum goal for contract performance.

If the Contractor fails to achieve the minimum goal, established in the contract at the time of the award of the contract or later modified, the contract payments shall be reduced as a liquidated damage and not as a penalty by an amount equal to the dollar amount of work not performed by the DBE. The dollar amount of any sanction will be computed using the unit prices indicated in the DBE subcontract

Exceptions:

- a. Any authorized adjustment in the DBE Commitment that has been approved by the DEPARTMENT Civil Rights Manager.
- b. Race neutral participation.

J. RECORD KEEPING

1. The DEPARTMENT must create and maintain a Bidders list consisting of all firms bidding on prime contracts and bidding or quoting subcontractors on DOT-assisted projects. For every firm, the following information must be submitted annually:
 - a. Firm name
 - b. Firm address
 - c. Firm's status as a DBE or non-DBE
 - d. Age of firm
 - e. Annual gross receipts of the firm.

Every firm bidding or quoting as a prime or subcontractor at any level on DOT-assisted projects must register annually with the DEPARTMENT.

2. With the bid or no later than 10 work days after bid opening date, each and every prime bidder must submit to The DEPARTMENT a list of all firms bidding and/or quoting as subcontractors, service providers or suppliers.* The Prime Bidder must also submit for each and every firm sub-quoting the following information:
 - a. Firm Name
 - b. Firm address
 - c. Work classification(s) bid by subcontractor, service provider or supplier:
 - (1) Building
 - (2) Concrete: Curb & gutter, Flatwork, Inlet Boxes, etc.
 - (3) Concrete: Structural
 - (4) Consulting firms
 - (5) Demolition
 - (6) Electrical: Hwy lighting, signals & fiber optics
 - (7) Equipment rentals and sales
 - (8) Excavation
 - (9) Fencing
 - (10) Grading
 - (11) Guardrail
 - (12) Landscaping & erosion control
 - (13) Miscellaneous
 - (14) Painting: Highway structures
 - (15) Painting: Highway striping & painted messages
 - (16) Paving: Asphalt highway & runway, etc.
 - (17) Paving: Concrete
 - (18) Paving: Miscellaneous
 - (19) Pipe Culverts, drainage, sewer & water
 - (20) Reconstruction : Manholes, etc.
 - (21) Rotomilling

- (22) Sawing & sealing
- (23) Signs permanent
- (24) Steel reinforcing
- (25) Steel structural
- (26) Surveying
- (27) Traffic Control: Flagging
- (28) Traffic Control: Temp. Signs and Devices
- (29) Trucking
- (30) Supplier: Manufacturer
- (31) Supplier: Regular Dealer
- (32) Supplier: Service Provider

Exhibit 1

Suggested Actions and Required Documentation to Demonstrate **Good Faith Efforts to Comply With DBE Requirements**

A Bidder must show that it took necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness, can reasonably be expected to fulfill the program requirement. The efforts employed should be those that would be taken if a Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract. Goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

Documentary evidence of each action taken must be submitted with the Bid Proposal.

The following is taken, with some modification, from CFR 49 Part 26, Appendix A. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When the DEPARTMENT establishes a contract goal on a Federal aid contract, a Bidder must, in order to be responsive, make good faith efforts to meet the goal. The Bidder can meet this requirement in either of two ways:
 - A. The Bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
 - B. If it doesn't meet the goal, the Bidder can document adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which the DEPARTMENT has established a contract goal, CFR 49, Part 26 requires the DEPARTMENT to use the good faith efforts mechanism of this part. It is up to the DEPARTMENT to make a fair and reasonable judgment whether a Bidder that did not meet the goal made adequate good faith efforts. It is important for the DEPARTMENT to consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The efforts employed by the Bidder should be those that one could reasonably expect a Bidder to take if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The DEPARTMENT emphasizes, however, that its determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The U. S. Department of Transportation also strongly cautions the DEPARTMENT against requiring that a Bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the Bidder makes an adequate good faith efforts showing. This rule specifically prohibits the DEPARTMENT from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions that the DEPARTMENT should consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. Soliciting 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.
 - B. Selecting 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.

- C. Providing 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.
- D. Negotiating in good faith with interested DBEs.
 - (1) 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. 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.
 - (2) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
 - (a) The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.
 - (b) No specific price differential has been established by 49 CFR 26. This approach allows flexibility.
 - (c) Along with the reasonableness of the cost necessarily comes the fact that prime Contractors are not expected to bear unreasonable costs.
 - (d) Any burden that a non-DBE subcontractor might face is also limited by the reasonableness of competing bids.
 - (3) The ability or desire of a prime Contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - (4) The ability or desire of a prime Contractor to bundle the work of a subcontractor who wishes to perform all the work of the subcontract with its own organization does not relieve the Bidder of the responsibility to require a subcontractor to make good faith efforts. Subcontractors are not required to accept higher quotes from lower tier DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

NOTE: The DBE 'Contact Log' can be used to document the following efforts:

- IV. A.
- IV. C.
- IV. D. (1)

The 'Quote Comparison' can be used to document the following efforts:

- IV. B.
- IV. D. (3)

- V. In determining whether a Bidder has made good faith efforts, the DEPARTMENT may take into account the performance of other Bidders in meeting the contract. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the DEPARTMENT may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

Submit with the Bid Proposal documentary evidence to prove that good faith efforts were accomplished:

1. Submit copies of all solicitations: correspondence, faxes, advertisements, telephone logs with dates, times, names of persons contacted, nature of conversation, DBEs' responses, and etc.
2. If DBEs submitted quotes that were not used because the range of additional costs was determined to be excessive or unreasonable, submit the range that has been determined by the Bidder to be a reasonable range of additional costs and explain how that range was determined.
3. As a part of demonstrating a reasonable range of additional costs, submit copies of all subcontractor quotes, copies of spread sheet(s) which compare all DBE quotes with non-DBE quotes and which include bid item(s) quoted, work classifications, quantities, prices, and dollar amounts.
4. Submit a narrative of specific names and types of information, assistance, considerations given, and efforts to assist DBEs under Item IV, subparts C through F.

**DBE BID ASSURANCE AND COMMITMENT
COMPLETE ONLY PART A. OR PART B.**

**PART A. RACE CONSCIOUS DBE PARTICIPATION
SPECIFIC ASSIGNED CONTRACT DBE GOAL FOR BID
EVALUATION _____ PERCENT**

If the DBE goal which is indicated in Section A, CONTRACT GOAL, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is greater than 0.0 percent, complete only Part A, and submit *DBE Commitment*, and if applicable, *Documentation of Good Faith Efforts*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that good faith efforts have been utilized to meet or exceed the goal of the DBE Program as established by the DBE Special Provision.

Indicate intended DBE commitment.

_____ We intend to meet or exceed the contract goals as per the DBE Commitment which is submitted with the Bid Proposal.

RACE CONSCIOUS AND RACE NEUTRAL COMMITMENT _____ PERCENT

_____ We fail to meet the advertised goal. This firm commits to DBE participation as per the DBE Commitment that is submitted with the Bid Proposal and to continue Good Faith Efforts throughout the performance of the project. Documentation of Good Faith Efforts is submitted with the Bid Proposal, including:

1. DBE Contact Log Report
2. Quote Comparison Report

**PART B. RACE NEUTRAL DBE PARTICIPATION
ASSIGNED CONTRACT DBE GOAL FOR BID EVALUATION _____
PERCENT**

If the DBE goal, which is indicated in Section A, CONTRACT GOAL, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is 0.0 percent, complete only Part B and submit *Race Neutral DBE Information*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that equal opportunity action has been utilized to allow DBEs to compete for and perform on subcontracts.

_____ We do not intend to sublet a portion of the contract work.

_____ We intend to sublet a portion of the contract work. Our firm has taken equal opportunity action to allow DBEs to compete for and perform on subcontracts. Documentation of Race Neutral efforts is submitted with the Bid Proposal, including:

- _____ 1. RACE NEUTRAL DBE COMMITMENT _____ PERCENT
- _____ 2. DBE Contact Log Report
- _____ 3. Quote Comparison Report

DBE BID ASSURANCE AND COMMITMENT

Please complete the following form detailing DBE participation with this Bid Proposal. Please complete one form for each DBE subcontractor.

Name and address of DBE firm:

Specific description of work to be performed, including quantities. Include bid items, if applicable. Note whether partial or complete performance is included. If partial performance is included, list specific work items the DBE firm is to perform:

Dollar amount of the work the DBE is to perform:

Bidder's Commitment

Bidder's Name & Title:

Signature:

Date:

Participating DBE Commitment Confirmation

DBE's Name & Title:

Signature:

Date:

Federal Transit Administration

CONTRACT CLAUSE MATRIX

		TYPE OF PROCUREMENT***				
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Access to Records and Reports	Applicability	All	All	All	All	All
	Flow Down*	Recipients and subrecipient				
	Language**	Not mandated				
Federal Changes	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Termination	Applicability	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies
	Flow Down*	All exceeding \$10,000 except contracts with non-profit orgs and institutions of higher learning				
	Language**	Not mandated				
Civil Rights	Applicability	All	All	>\$10,000	All	All
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Disadvantaged Business Enterprise (DBE)	Applicability	All	All	All	All	All
	Flow Down*	A formal clause flows down to all contracts and subcontracts above the micro-purchase level				
	Language**	Not mandated				
Breaches and Dispute Resolution	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Not mandated; language depends on contract type and counsel should be consulted				
Energy Conservation	Applicability	All	All	All	All	All
	Flow Down*	All				

	Language**	Not mandated; state dependent				
Clean Water	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Not mandated but must include minimum mandatory requirements				
Clean Air	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All exceeding \$100,000				
	Language**	Not mandated				
No Government Obligations to Third Parties	Applicability	All	All	All	All	All
	Flow Down*	Not required to flow down, but is recommended to clarify that the Federal Government is not a party to the contract				
	Language**	Not mandated				
Program Fraud and False or Fraudulent Statements and Related Acts	Applicability	All	All	All	All	All
	Flow Down*	All who will make, present, or submit covered claims and statements				
	Language**	Not mandated				
Lobbying	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Mandated by 49 CFR 20				
Incorporation of FTA Terms	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Government-Wide Debarment and Suspension	Applicability	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
	Flow Down*	All exceeding \$25,000 or any contract or subcontract for Federally required auditing services				
	Language**	Not mandated				
Bus Testing	Applicability			Rolling stock/turnkey		
	Flow Down*	Turnkey contractor				
	Language**	Not mandated				
Buy America	Applicability			>\$100,000	>\$100,000	>\$100,000
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				

	Language**	Not mandated				
		TYPE OF PROCUREMENT***				
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Contract Work Hours and Safety Standards Act	Applicability		>\$100,000 (transp services excepted)	>\$100,000	>\$100,000 (also ferries)	
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Recycled Products	Applicability		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
	Flow Down*	All				
	Language**	Not mandated				
ADA Access	Applicability	A & E	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Cargo Preference	Applicability			Transported by ocean vessel	Transported by ocean vessel	Transported by ocean vessel
	Flow Down*	All when contract or subcontract may be involved with transport by ocean vessel				
	Language**	Not mandated				
Fly America	Applicability	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated				
National ITS Architecture	Applicability	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
	Flow Down*	All				
	Language**	Not mandated				
Privacy Act	Applicability	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained
	Flow Down*	All				
	Language**	Not mandated				

Transit Employee Protective Agreements	Applicability		Transit Operations			
	Flow Down*	All				
	Language**	Not mandated				
Drug and Alcohol Testing	Applicability		Transit Operations			
	Flow Down*	All performing safety-sensitive functions with few exceptions				
	Language**	Not mandated				
Charter Bus and School Bus	Applicability		All			
	Flow Down*	Recipients, subrecipients, and 1 st tier service contractors				
	Language**	Not mandated				
Davis-Bacon & Copeland Anti-Kickback Acts	Applicability				All >\$2,000 (also ferries)	
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Seismic Safety	Applicability	A & E for new buildings & additions			New buildings & additions	
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated				
Bonding	Applicability				>\$100,000	
	Flow Down*	Recipients, subrecipients, and 1 st tier contractors				
	Language**	Not mandated; percentages are minimum requirements				
Patent and Rights in Data	Applicability	R & D				
	Flow Down*	All				
	Language**	Not mandated				

(2) *Flow down – Federally required clauses and requirements, as a general rule, are required to be in each third party contract at every tier and in each subrecipient agreement at every tier. When clauses are required to flow down, the clauses and requirements flow down to all levels of the Federal funding change beginning with the grantee. The matrix indicates to what level clauses must flow down.

(3) **Language – This row will indicate whether language is mandatory or suggested. FTA's Best Practices Procurement Manual and UDOT PTT Procurement Guide contain suggested language. FTA Master Agreement and the CFR provide additional language requirements and language.

- (4) ***This exhibit is provided as a guide and is not considered exhaustive. Contractors should refer to FTA Circular 4220.1F, the FTA Master Agreement, FTA's Best Practices Procurement Manual, and the UDOT PTT Procurement Guide for additional information on required Federal contract clauses and applicability.