

**Park City Municipal Corporation**

**REQUEST FOR STATEMENTS OF QUALIFICATIONS**

**PROFESSIONAL ENGINEERING SERVICES FOR  
CONSTRUCTION MANAGEMENT OF TRANSIT SITE  
IMPROVEMENTS**

**NOTICE**  
**REQUEST FOR STATEMENTS OF QUALIFICATIONS**  
**PROFESSIONAL ENGINEERING SERVICES FOR CONSTRUCTION**  
**MANAGEMENT OF TRANSIT SITE IMPROVEMENTS**

PROPOSALS DUE: Proposal submittals must be uploaded to the Utah Public Procurement Place (SciQuest) **by 4:00 p.m. on Wednesday, March 1, 2023.**

PROJECT NAME: **Professional Engineering Services for Construction Management of Transit Site Improvements**

RSOQ AVAILABLE: **Wednesday, February 22, 2023**

PROJECT LOCATION: Along Park Avenue between SR-248 and Homestake Road, Park City, Utah

PROJECT DEADLINE: **November 30, 2023**

OWNER: Park City Municipal Corporation  
P.O. Box 1480  
Park City, UT 84060

CONTACT: *Gabriel Shields, Transportation Engineer*  
[Gabriel.shields@parkcity.org](mailto:Gabriel.shields@parkcity.org)

**All questions shall be submitted in writing to SciQuest by 4:00 p.m. on Friday, February 24, 2023.**

**Park City Municipal Corporation reserves the right to reject any or all proposals received for any reason. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.**

**In the event of difficulty submitting electronically, proposals can be dropped off to the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060. Proposals submitted through the City Recorder should be received on a zip drive or Compact Disc. No paper copies should be submitted.**

## **I. Introduction**

Park City Municipal Corporation (PCMC) is requesting statements of qualifications for vendors to provide Construction Management (CM) services for construction of Park Avenue Bus Shelter Site Improvements along Park Avenue between SR-248 and Homestake Road. Resident Engineer (RE) will be performed by PCMC (Dave Gustafson). The CM services provided by the Consultant include preconstruction activities, construction management, project administration, field inspection, material testing, and construction closeout. Public involvement is to be performed by PCMC as needed.

### **Assumptions**

- Construction duration is assumed to be 17 weeks
- Meetings will be held weekly
- Consultant will use UDOT Minimum Sampling & Testing Requirements (MS&TR)
- Consultant will be prepared to respond to three (3) Requests For Information (RFIs)
- Consultant will be prepared to work with the RE on one (1) change order

PCMC requests Statements of Qualifications (Responses) from experienced professional engineers (Respondents) interested in working with PCMC to manage construction of bus shelter site improvements (the Project) along Park Avenue between SR-248 and Homestake Road.

Note: The terms "Offeror," "Bidder," and other similar terms refer to the Respondent. The terms Consultant and Provider refer to the Respondent selected through this RSOQ process.

## **II. Scope of Work**

Respondents must be willing to complete the following work activities as part of the Project:

### **1. Preconstruction**

- a. Consultant will review the plans and specifications to become familiar with the work when a Notice To Proceed (NTP) is given.
- b. Consultant will attend the preconstruction meeting with the RE, PCMC, and the Contractor prior to construction. Consultant will prepare the agenda along with conducting and recording the meeting minutes. Consultant will distribute minutes to the project team.
- c. Initial project setup.
- d. Consultant will visit the project site to review existing conditions and take pictures to understand the project and its limits once NTP is given.

## **2. Construction Management**

- a. Weekly project meetings: Consultant will prepare agendas, schedule and conduct meetings, and take meeting minutes and distribute. Consultant will have an RE and Inspector in attendance at all meetings.
- b. Process Reviews: Consultant will perform internal process reviews as a part of the Quality Management Plan (QMP) including, but not limited to, documentation, quantities, subcontracts, material testing requirements, diaries, and material certifications.
- c. Requests for Information (RFIs): Consultant will review and respond to RFIs submitted on the project. (Three anticipated)
- d. Review of Submittals: In coordination with the RE who will review and accept all submittals on the project, Consultant will track submittals on the project including, materials certification, Traffic Control (TC), Maintenance of Traffic (MOT), detour plans, Critical Path Method (CPM) schedules, mix design and material testing source suitability and targets.
- e. Change Orders (COs): Consultant will coordinate with the RE who will review all requests for COs and determine if a CO is necessary. It is anticipated that the RE will also prepare a CO justification and cost estimate, review schedule impacts for any contract time adjustments, and prepare the CO to submit for signatures and processing.
- f. Post-construction conference and final walkthrough: The RE will schedule and conduct a final inspection and walkthrough. Consultant will develop a punch list of work items required to be completed to achieve physical completion.

## **3. Project Administration**

- a. Consultant will set up and maintain project documentation and project files. Consultant will review and accept project documentation such as material certifications, prompt payment, subcontracts, pay item documentation, etc. Also includes project billing.
- b. Consultant will ensure compliance with all Federal regulations related to EEO, DBE, Prompt Payment, Civil Rights and other Federal clauses required of CARES funded projects.
- c. Consultant will develop a Quality Management Plan (QMP) to track all material documentation that is submitted. This will reference the pay items and submittal requirements along with the MS&TR and special provisions as the standard for reference.
- d. As a part of the QMP, Consultant will review and check all quantities measured for payment on the project weekly.
- e. It is anticipated that the RE will review and process monthly partial payment requests. Consultant inspector will work with the contractor and agree on quantities for each monthly payment request.
- f. Under the direction of the RE, Consultant will track contractor workdays and schedule.

## **4. Field Inspection**

- a. Daily inspection of the work: Consultant will have a full-time inspector on site each day while the contractor is working to inspect and document the contractor's work.

- b. Daily diary entries: The Consultant inspector will enter daily diary entries for each pay item to properly document the contractors work and progress. The inspector will also document in the diary any activities or conversations that do not pertain to a pay item.
- c. TC and MOT inspection: Consultant will perform daily inspections to ensure the TC and MOT are in accordance with the approved TC and MOT plans.
- d. Sampling of soils: Consultant will sample all soils per UDOT MS&TR and test samples in a lab.
- e. Concrete Testing in the field: Consultant will test all concrete placed on the project as per UDOT MS&TR. This could be daily based on the phasing of work. Tickets: Consultant will gather all material tickets and total them for quantity and payment.
- f. Consultant will complete forms for aggregate physical properties and density as required by UDOT Manual of Instruction.
- g. Density testing in the field: Consultant inspectors will perform density testing on granular materials incorporated into the project using a Nuclear Density Gauge per UDOT MS&TR.
- h. Safety inspections: Safety of workers and the traveling public is critical to the project's success. Consultant will continually observe contractor work for safety and attend and participate in weekly safety meetings which will be a part of the weekly update meeting.

#### **5. Materials Testing**

- a. Soils/Agg Testing: Consultant will use a lab to perform materials testing on Untreated Base Course (UTBC), concrete sand and aggregates. All material testing will be completed and shared with PCMC and contractor.
- b. Concrete Strength: Consultant will test all concrete cylinders for strength acceptance testing. All material testing will be completed and shared with PCMC and contractor.
- c. Lab Documentation and Test Results: Consultant will record and distribute all test results and documentation.

#### **6. Construction Closeout**

- a. Final forms and documentation: Prepare final closeout documentation and forms.

### **III. Funding**

The Project is funded through Federal CARES funds; therefore, Consultant must agree to comply and demonstrate they can comply as stated in their response/cover letter with all FTA clauses for Professional Services, Construction and Project management as outlined in **Appendix “A”** attached hereto and incorporated herein.

### **IV. Content and Scoring Criteria**

The Response should address the Respondent’s ability to provide the services outlined in the Scope of Work. Respondents shall provide the following:

#### **1. Cover Letter:**

- a. Limit the cover letter to one (1) page. The cover letter is excluded from the Response page limit count.
- b. The cover letter must be signed by an officer of the firm binding the firm/company/corporation to all statements made in the Response. It must also include:
  - i. A primary contact person for the Response with the person’s name, contact phone number, email address, and mailing address.
  - ii. A statement that Respondent “has read and understands the Request for Statements of Qualifications and accepts the written instructions contained in the RSOQ.”

#### **2. Technical Response (100%)**

- a. **Qualifications and Experience (50%)**

Provide a description of your firm’s history, experience, and qualifications to perform the Scope of Work. Please Include:

  - Resumes and biographies of all staff assigned to the project.
  - Availability of staff including current assignments and project commitments.
  - List of capabilities corresponding to the Scope of Work.
  - Detailed description of three (3) similar/relevant projects your firm has undertaken, including results achieved.
  - Any consultation services your firm has offered for municipal governments, including results achieved.
  - Three (3) to five (5) references.
- b. **Approach to Scope of Work (20%)**

Provide a description of your ability to respond to each bullet point in the Scope of Work.
- c. **Staff Availability (15%)**

Provide a detailed and realistic overview of current commitments of key staff. List any major assignments, key roles, and approximate competing project deadlines and schedules.

d. **Requested edits to the Design Professional Services Agreement (DPSA) (15%)**

Requested edits to the DPSA shall be attached separately to the Response and excluded from the Response page limit count (see further information below in Section VII).

V. **Format of Response**

Responses will be limited to ten (10) pages measuring 8.5”x11” excluding the cover letter and requested edits to the DPSA. Respondents may substitute one (1) 11”x17” page for two (2) 8.5”x11” pages. The minimum acceptable font size will be 10 point. If the Response exceeds ten (10) pages, all subsequent pages will be removed from consideration.

**The Response must not contain any cost information.**

All submittals shall be public records in accordance with Government Records Access and Management Act (“GRAMA”) unless otherwise designated by the Respondent pursuant to Utah Code § 63G-2-309, as amended. The award of the contract is subject to approval by City Council.

VI. **Submission and Selection Timeline**

The following schedule includes the procurement timeline beginning with the RSOQ issuance through the anticipated date of City Council approval of contract negotiations with the selected Respondent.

RSOQ available	Wednesday, February 22, 2023
Response Due	By 4:00 p.m. on Wednesday, March 1, 2023
Selection Committee Meeting	Thursday, March 2, 2023
Consultant Notification	Thursday, March 2, 2023
Anticipated Date of Contract Approval	Thursday, March 9, 2023

- Responses must be uploaded to SciQuest by 4:00 p.m. on Wednesday, March 1, 2023.
- A selection committee comprised of PCMC staff from Engineering, Transportation Planning, Transit, and Executive Departments will review all Responses.
- It is anticipated that City Council will vote to approve the contract with the selected Respondent on March 9, 2023.
- **Responses shall be good for a period of sixty (60) days.**
- PCMC reserves the right to:
  - Disqualify incomplete SOQs.
  - Waive minor defects in the SOQs submitted.
  - Request additional information from respondents.
  - Change the nature or scope of the project without penalty.
  - Negotiate terms with one or more of the prequalified firms.
  - Reject any or all SOQs for any reason, without penalty.
  - Take any steps deemed necessary to act in the City’s best interest.
  - Change any dates or deadlines.

## **VII. PCMC Standard Design Professional Services Agreement**

- The successful Respondent will be required to enter into PCMC's standard Design Professional Services Agreement, in its current form, with PCMC. A draft of the agreement is attached to this RSOQ as **Appendix "B"** and incorporated herein.
- **ANY INQUIRIES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC'S STANDARD AGREEMENT MUST BE SUBMITTED TO PCMC NO LATER THAN THE RESPONSE/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.**

## **VIII. Information to be submitted**

To be considered, Responses must be uploaded to SciQuest by **4:00 p.m. on Wednesday, March 1, 2023.**

## **IX. Preparation of Responses**

- Failure to Read. Failure to Read the RSOQ and these instructions will be at the Respondent's own risk.
- Cost of Developing Responses. All costs related to the preparation of the Responses and any related activities are the sole responsibility of the Respondent. PCMC assumes no liability for any costs incurred by Respondents throughout the entire selection process.
- If Respondent utilizes third parties for completing RSOQ requirements, list what portion of the Response was completed by third parties and the name, if known, of the third party.

## **X. Response Information**

- Equal Opportunity. PCMC will make every effort to ensure that all Respondents are treated fairly and equally throughout the entire advertisement, review and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information.
- Response Ownership. All Responses, including attachments, supplementary materials, addenda, etc., shall become the property of PCMC and will not be returned to the Respondent.

- Rejection of Responses. PCMC reserves the right to cancel or modify the terms of this RSOQ 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 Responses submitted pursuant to this RSOQ. PCMC will provide Respondents written notice of any cancellation and/or modification. Furthermore, PCMC shall have the right to waive any informality or technicality in Responses received when in the best interest of PCMC.
- No Response shall be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to PCMC, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to PCMC, or that may be deemed irresponsible or unreliable by PCMC. Respondents may be required to submit satisfactory evidence that they have the necessary financial resources to perform and complete the work outlined in this RSOQ.
- PCMC's policy is, subject to Federal, State and local procurement laws, to make reasonable attempts to support Park City businesses by purchasing goods and services through local vendors and service providers.

**Appendix "A"**  
**FEDERAL CLAUSES**

## A.1 ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325(g)  
2 C.F.R. § 200.333  
49 C.F.R. part 633

### Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### Access to Records and Reports

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## A.2 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q  
33 U.S.C. §§ 1251-1387  
2 C.F.R. part 200, Appendix II (G)

### Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

### A.3 FEDERAL LAWS AND REGULATIONS

#### Applicability to Contracts

The following Federal laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
  - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act

(ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Flow Down**

The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

### Civil Rights and Equal Opportunity

Park City is an Equal Opportunity Employer. As such, Park City agrees to comply with all applicable Federal laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Park City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination**. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex**. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age**. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in

Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

#### A.4 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

##### Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third-party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)

[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

#### Flow Down

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

#### Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with

defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

#### Contract Assurance

The Contractor, subrecipient 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 C.F.R. 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 Park City deems appropriate.

#### DBE Participation

1. For the purpose of this Contract, Park City will accept only DBE's who are:
  - a. Certified, at the time of bid opening or proposal evaluation, by the UDOT Civil Rights Office; or
  - b. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
  - c. Certified by another agency approved by Park City.

#### DBE Participation Goal

The DBE participation goal for this Contract is set at 0%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 0%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

#### Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by Park City.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

#### Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), Park City will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that Park City will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with Park City (questions of IFB or RSOQ requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, Park City generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the

contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### Administrative Reconsideration

Within five (5) business days of being informed by Park City that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to Park City. An appropriate reconsideration official who did not play any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts will review the matter.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Park City will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate

good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without Park City's prior written consent. Park City may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify Park City in

writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

#### Continued Compliance

Park City shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to Park City that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to Park City. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

1. Park City to have access to necessary records to examine information as Park City deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
2. The authorized representative(s) of Park City, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
3. All data/record(s) pertaining to DBE shall be maintained as stated in Section A1, *Access to Records and Reports*, above.

#### Sanctions for Violations

If at any time Park City has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, Park City may, in

addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

1. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
2. Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

## DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of \_\_\_\_\_ % is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

## DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

## DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	ContactName and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

### DBE Goals

#### **Race Conscious Goal**

At the time of bid, DBE participation is considered race-conscious on projects that are assigned a Goal for Bid Evaluation. The DBE commitment becomes a contract specification upon award. The Bidder must submit with its Bid Proposal a DBE Commitment that indicates:

- Name of DBE firm

- Work items to be performed
- 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.

Race Conscious is the committed dollar amount at the time of bid focused specifically on assisting only DBEs. UDOT Civil Rights must establish contract goals to meet the race conscious portion of its overall DBE goal. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, UDOT Civil Rights may adjust the use of contract goals as follows:

- If during the course of any year it is determined the overall goal will be exceeded, UDOT Civil Rights will reduce or eliminate the use of contract goals to the extent necessary to ensure the use of contract goals does not result in exceeding the overall goal.
- If it is determined that UDOT Civil Rights 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 UDOT Civil Rights to meet the overall goal.

### **Race Neutral Goal**

At the time of bid, DBE participation is considered race-neutral on projects that are NOT assigned a Goal (0%) for Bid Evaluation. In this instance, the DBE participation 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.

Race Neutral is the dollar amount that exceeds the committed amount at the time of bid and is, or can be, used to assist all small businesses. UDOT Civil Rights must meet the maximum feasible portion of its overall DBE goal by using race-neutral means of facilitating DBE participation. Race neutral DBE participation includes:

- Awarding a subcontract on a prime contract that does not carry a DBE goal,
- Awarding a subcontract on a prime contract in which the DBE was not considered in making the award even if there is a DBE goal.
- For the purposes of this part, race neutral includes gender neutrality.

### **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.

The committed dollar amount meeting the project goal for bid evaluation will be considered race conscious participation. Any dollar amounts in excess of the project goal for bid evaluation will be considered race neutral participation.

### **Goal for Final Compliance**

Percentages for final compliance will be based on actual payments to DBEs. Over-runs and under-runs on individual contract items may require adjustments to 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.

The Continued Compliance states that the AGENCY will "monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract." This is specifically for procurement projects.

The requirement for construction projects would be:

- The Subrecipient will monitor the Contractor's DBE compliance during the life of the Contract. It is the responsibility of the Contractor to submit regular reports to

the Subrecipient that summarize the total DBE value for this Contract. The frequency and content of these reports will be designated by the Subrecipient.

### **Determination of DBE Contractor's Eligibility by UUCP**

Any Contractor may apply to the UUCP for status as a DBE. Applications will 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 subcontractors to firms that have applied for and have been granted status as a DBE by the UUCP will be considered toward contract goals as established in Subsection A.

It will 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 an application.

UDOT will 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 website when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available on the Internet at (click on this link): <https://www.udot.utah.gov/connect/business/civil-rights/>

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

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.

### **Bidding Requirements**

A DBE prime contractor's performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor will meet the DBE goal by using other DBE subcontractors or by using good faith efforts.

#### DBE Bid Assurance

##### 7. Race Conscious Goal

- a. Race conscious measure or program is focused specifically on assisting only DBEs. This goal is the amount the prime must commit to DBEs at the time of bid or a good faith effort must be documented.

#### DBE Race Conscious Commitment

8. For a bid to be considered responsive, Bidders will submit the following information regarding DBE compliance.
9. 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 will be considered committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
    - i. If mobilization is a bid item partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
    - ii. If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
    - iii. 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 is required at the time of bid.
10. The DBE Commitment is to be included in the prepared bid, and said information will be kept confidential and will be reviewed to determine the apparent low bidder has either met the DBE Contract Goal or has documented acceptable Good Faith Efforts.

#### DBE Race Neutral Participation

11. Race Neutral DBE participation includes anytime a DBE;
- a. wins a Prime Contract through customary bidding procedures,
  - b. is awarded a subcontract on a prime contract that does not carry a DBE goal (0% goal),
  - c. wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

#### DBE Written Confirmation

12. Low Bidder will submit to the Civil Rights Office within three (3) work days after the bid opening written confirmation from each DBE participating in the contract as provided in the Prime Contractor's DBE Commitment. The written confirmation will include the following information:
- a. A description of the work to be performed (list specific bid items). Listed bid items will be considered committed in their entirety unless Contractors designate otherwise in their DBE commitment.
    - iv. If mobilization is a bid item that is partially committed, confirm the dollar amount of the mobilization to be performed.
    - v. If a partial quantity is committed, confirm the quantity to be performed.
    - vi. If a partial performance of an item is committed, confirm what part of the item will be performed.
    - vii. Unit bid prices for each bid item committed to a DBE.
    - viii. Total dollar amounts (mathematical extensions) for each bid item committed to a DBE
  - b. The dollar amount of participation by each named DBE firm.

#### **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 will 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 UDOT Civil Rights and must be covered by a Change Order. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to meet the Goal for Performance established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the subrecipient and Civil Rights Office, will result in the imposition of sanctions.

13. The subrecipient will recognize and grant DBE credit for work performed by DBE contractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary all Bidders refer to the UUCP DBE Directory for direction and guidance.
14. Contractors may count 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.
15. 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.
16. 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 subrecipient will 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 subrecipient 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 workforce, 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.
17. The subrecipient will 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 it 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 as long as the DBE provides the employees for the leased trucks.
  - f. A lease must indicate 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.

18. 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.
  - b. 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.
  - c. 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.
  - d. 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.
    - ix. 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.
    - x. 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 will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
    - xi. Packagers, brokers, manufacturers' representatives, or other persons or firms who arrange, or expedite transactions are not regular dealers.
    - xii. 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.
19. 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. 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.
    - xiii. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The subrecipient must determine the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
    - xiv. 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., will be submitted to the subrecipient prior to work beginning. The agreement will 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.

20. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. Direct these good faith efforts at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the project. Document the good faith efforts. If the subrecipient requests documentation under this provision, submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the subrecipient will provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.
  - a. Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

### **Prompt Payment**

Prompt payment for the work accomplished is an integral part of the concept of a commercially useful function but is a requirement on all FTA projects for DBE and non-DBE companies.

- Prompt payment means that the prime contractor is to pay each subcontractor, and each subcontractor is to pay any lower tier subcontractor, within 30 days of being paid by the Subrecipient.
- Prompt payment entries are to be entered for each subcontractor in the method approved so that it can be monitored and verified for compliance.

### **Americans with Disabilities Act of 1990**

To provide additional information about ADA to that of the Civil Rights Laws and Regulations clause in the FTA Best Practices Manual, Appendix A, see the link below to the FTA C 4710.1 Circular.

- [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final\\_FTA\\_ADA\\_Circular\\_C\\_4710.1.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf)

### **Title VI Attachments A and E**

#### **Title VI of the Civil Rights Act of 1964 – Non – Discrimination Notice; Attachment A**

#### **NON-DISCRIMINATION 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. The text below, in its entirety, is in all contracts entered into by the Department. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contract entered into by any the Department 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**

21. 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.
22. 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.

23. 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.
24. 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 (Recipient) or the (Name of Appropriate Administration) 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 (Recipient), or the (Name of Appropriate Administration) as appropriate, and shall set forth what efforts it has made to obtain the information.
25. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Recipient) shall impose such contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate, including, but not limited to:
26. Withholding of payments to the contractor under the contract until the contractor complies, and/or
27. Cancellation, termination or suspension of the contract, in whole or in part.
28. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the (Recipient) or the (Name of Appropriate Administration) 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 (Recipient) to enter into such litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Title VI of the Civil Rights Act of 1964 – Non – Discrimination Notice; Attachment E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 460 I ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 610 et seq.), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 47 I, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **EMPLOYEE PROTECTIONS**

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

40 U.S.C. §§3701-3708

29 C.F.R. part 1926

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

### **Prevailing Wage Requirements**

- Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
- The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

### **“Anti-Kickback” Prohibitions**

- Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

### **Contract Work Hours and Safety Standards**

- Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
- U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

The AGENCY must place a copy of the current prevailing wage determination issued by the UDOT Civil Right Office in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

### **Prevailing Wage and Anti-Kickback**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

**Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

**COMPLIANCE CERTIFICATION WITH CIVIL RIGHTS REQUIREMENTS**

The bidder/contractor hereby certifies that it will comply with all Civil Rights requirements listed herein.

Company: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## A.6 ENERGY CONSERVATION

42 U.S.C. 6321 *et seq.*  
49 C.F.R. part 622, subpart C

### Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

## Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### A.7 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. part 180  
2 C.F.R. part 1200  
2 C.F.R. § 200.213  
2 C.F.R. part 200 Appendix II (I) Executive Order 12549  
Executive Order 12689

## Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

## Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the

- U. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount),

and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

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 Park City. If it is later determined by Park City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Park City, 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 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

#### A.8 LOBBYING RESTRICTIONS

31 U.S.C. § 1352  
2 C.F.R. § 200.450  
2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

#### Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

#### Lobbying Restrictions

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 sub-awards at all tiers (including subcontracts, sub-grants, 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.

	<u>Signature of Contractor's Authorized Official</u>
	<u>Name and Title of Contractor's Authorized Official</u>
	<u>Date</u>

**A.9 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts**

The No Obligation clause applies to all third party contracts that are federally funded.

**No Federal Government Obligation to Third Parties.**

The Recipient and 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 Recipient, 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 clause in each subcontract financed in

whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### A.10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1)  
31 U.S.C. §§ 3801-3812  
18 U.S.C. § 1001  
49 C.F.R. part 31

##### Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

##### Program Fraud and False or Fraudulent Statements or Related Acts

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 C.F.R. 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

## A.11 RECYCLED PRODUCTS

42 U.S.C. § 6962  
40 C.F.R. part 247  
2 C.F.R. part § 200.322

### Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

### Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## A.12 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402  
Executive Order No. 13043 Executive Order No. 13513  
U.S. DOT Order No. 3902.10

### Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that

operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

### [Safe Operation of Motor Vehicles](#)

#### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Park City Municipal Corporation.

#### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

### **A.13      TERMINATION**

2 C.F.R. § 200.339  
2 C.F.R. part 200, Appendix II (B)

#### **Applicability to Contracts**

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

#### **Termination for Convenience (General Provision)**

Park City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in Park City’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Park City to be paid the Contractor. If the Contractor has any

property in its possession belonging to Park City , the Contractor will account for the same, and dispose of it in the manner Park City directs.

#### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Park City may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Park City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Park City , after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### Opportunity to Cure (General Provision)

Park City , in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 45 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 appropriate conditions

If Contractor fails to remedy to Park City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 45 days after receipt by Contractor of written notice from Park City setting forth the nature of said breach or default, Park City 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 Park City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

In the event that Park City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Park City shall not limit Park City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

Park City, by written notice, may terminate this contract, in whole or in part, when it is in Park City's interest. If this contract is terminated, Park City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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 Park City .

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Park City goods, the Contractor shall, upon direction of Park City , protect and preserve the goods until surrendered to Park City or its agent. The Contractor and Park City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 Park City.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Park City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Park City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Park City in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Park City, acts of another contractor in the performance of a contract with Park City, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Park City and in writing of the causes of delay. If, in the judgment of Park City, the delay is excusable, the time for completing the work shall be extended. The judgment of Park City shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Park City.

#### Termination for Convenience or Default (Architect and Engineering)

Park City may terminate this contract in whole or in part, for Park City's convenience or because of the failure of the Contractor to fulfill the contract obligations. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Park City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Park City has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of Park City, Park City shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Park City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by Park City.

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 Park City.

#### Termination for Convenience or Default (Cost-Type Contracts)

Park City 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 Park City 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 Park City, or property supplied to the Contractor by Park City. If the termination is for default, Park City may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Park City and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Park City, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, Park City determines that the Contractor has an excusable reason for not performing, Park City, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### A.14 VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326  
2 C.F.R. part 200, Appendix II (A)

##### Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

##### Rights and Remedies of Park City

Park City shall have the following rights in the event that Park City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as Park City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

##### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Park City, the Contractor expressly agrees that no default, act or omission of Park City shall constitute a material breach of this Contract, entitling Contractor to

cancel or rescind the Contract (unless Park City directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, Park City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before Park City takes action contemplated herein, Park City will provide the Contractor with sixty (60) days written notice that Park City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Park City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. 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 [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
- **Example 2:** Park City and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within Park City and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with Park City's direction or decisions made thereof.

#### Performance during Dispute

Unless otherwise directed by Park City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Park City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which Park City is located.

#### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Park City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance

of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles.**

(a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

**FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving.**

The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**FTA Master Agreement (28) Section 39(b). Fraud, Waste and Abuse.**

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered

transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

## **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

29. It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
30. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    - xv. Debarred,
    - xvi. Suspended,
    - xvii. Proposed for debarment,
    - xviii. Declared ineligible,
    - xix. Voluntarily excluded, or
    - xx. Disqualified,
  - b. Its management has not within a three -year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    - xxi. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    - xxii. Violation of any Federal or State antitrust statute, or,
    - xxiii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three- year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    - xxiv. Equals or exceeds \$25,000,
    - xxv. Is for audit services, or,
    - xxvi. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    - xxvii. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
    - xxviii. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      1. Debarred from participation in its federally funded Project,

2. Suspended from participation in its federally funded Project,
  3. Proposed for debarment from participation in its federally funded Project,
  4. Declared ineligible to participate in its federally funded Project,
  5. Voluntarily excluded from participation in its federally funded Project, or
  6. Disqualified from participation in its federally funded Project, and
31. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

### **Certification**

Contractor Name: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

## CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_ hereby certify (Name and title of official)

On behalf of \_\_\_\_\_ that: (Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

### Certification

Name of Bidder/Company Name: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Signature of Authorized representative: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of notary and SEAL: \_\_\_\_\_

## Appendix "B"

### PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT

This Design 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"), ("Design Professional"), collectively, the City and the Design Professional 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 Design Professional represents that the Design Professional 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 Design Professional 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 Design Professional 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 Design Professional except for services identified and set forth in this Agreement.
- C. For all “extra” work the City requires, the City shall pay the Design Professional 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 Design Professional 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 Design Professional 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 Design Professional reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.
- F. Design Professional 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 Design Professional 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.

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

- B. The Design Professional 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 Design Professional 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 Design Professional 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 Design Professional'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 Design Professional 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 Design Professional. Any materials for which Design Professional claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Design Professional 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 Design Professional of any requests made for disclosure of documents submitted under a claim of confidentiality. Design Professional 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 Design Professional/City relationship will be created by this Agreement. No agent, employee, or representative of the Design Professional shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Design Professional are not entitled to any of the benefits the City provides for its employees. The Design Professional will be solely and entirely responsible for its acts and for the acts of its agents,

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

employees, subcontractors or representatives during the performance of this Agreement.

- B. In the performance of the services herein contemplated the Design Professional 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. DESIGN PROFESSIONAL EMPLOYEE/AGENTS.**

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

## **7. HOLD HARMLESS INDEMNIFICATION AND ATTORNEY FEES.**

- A. The Design Professional shall indemnify and hold the City and its agents, employees, and officers, harmless from any and all liability for damages, including 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 (1) the Design Professional's breach of contract, negligence, recklessness, or intentional misconduct; or (2) the Design Professional's subconsultant's or subcontractor's negligence.
- B. The Design Professional shall also reimburse the City, including its agents, employees, and officers, and any other person for attorney fees or other costs incurred by the person in defending against a claim alleging liability for damages to the extent the attorney fees or costs were incurred due to (1) the Design Professional's breach of contract, negligence, recklessness, or intentional misconduct; or (2) the Design Professional's subconsultant's or subcontractor's negligence.
- C. 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 to the extent of the Design Professional's breach of contract, negligence, recklessness, or intentional misconduct; or the Design Professional's subconsultant's or subcontractor's negligence.
- D. The Design Professional expressly agrees that the indemnification provided herein constitutes the Design Professional's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

waiver shall apply only to the extent an employee of Design Professional claims or recovers compensation from the City for a loss or injury that Design Professional 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.

- E. Further, nothing herein shall require the Design Professional to hold harmless, defend, or reimburse 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.
- F. The Design Professional is required to maintain and to provide a standard of care consistent with other design professionals with the same or similar professional license, who normally provide projects, work, and/or services as is established in this Agreement in Park City, Utah. Accordingly, if the nature of the project, work, and/or services established in this Agreement requires specialized design expertise, the Design Professional is required to provide services consistent with the specialized design expertise established in this Agreement.
- G. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.
- H. The provisions of this section shall survive the expiration or termination of this Agreement.

## **8. INSURANCE**

The Design Professional 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 Design Professional, their agents, representatives, employees, or subcontractors. The Design Professional 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 Design Professional 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.

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

- 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. Design Professional 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 Design Professional 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 Design Professional, 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 Design Professional 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 Design Professional and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. Should

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

any of the above described policies be cancelled before the expiration date thereof, Design Professional 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.

- F. The Design Professional'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.
- G. For any claims related to this Design Professional Services Agreement, the Design Professional'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 Design Professional'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 Design Professional pursuant to this Agreement (contingent on City's performance hereunder).

## **10. COMPLIANCE WITH LAWS AND WARRANTIES.**

- A. The Design Professional, 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 Design Professional is required to have a valid Park City business license.
- C. The Design Professional 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 Design Professional shall register and participate in E-Verify, or an equivalent program. The Design Professional agrees to verify employment eligibility through E-Verify, or an equivalent program, for each

# PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT

new employee that is employed within Utah, unless exempted by Utah Code Ann. § 63G-12-302.

- E. Design Professional shall be solely responsible to the City for the quality of all services performed by its employees or sub-contractors under this Agreement. Design Professional 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.**

Any Design Professional that enters into an agreement for goods or services with Park City Municipal Corporation or any of its boards, agencies, or departments shall:

- A. Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment- related decision or benefit against a person otherwise qualified, because of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy- related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.
- B. In the performance of this Agreement, Design Professional shall not discriminate on account of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.

# **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

- C. Incorporate the foregoing provisions in all subcontracts or assignments hereunder and take such actions as may be required to ensure full compliance with the provisions of this policy.

## **12. ASSIGNMENTS/SUBCONTRACTING.**

- A. The Design Professional 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 Design Professional 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 Design Professional 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.

## **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

- 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 Design Professional 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 Design Professional shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Design Professional shall promptly submit a termination claim to the City. If the Design Professional has any property in its possession belonging to the City, the Design Professional will account for the same, and dispose of it in a manner directed by the City.
- B. If the Design Professional fails to perform in the manner called for in this Agreement, or if the Design Professional 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 Design Professional setting forth the manner in which the Design Professional is in default. The Design Professional 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

## **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

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.

## **PARK CITY MUNICIPAL CORPORATION DESIGN PROFESSIONAL SERVICES AGREEMENT**

**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.

**PARK CITY MUNICIPAL CORPORATION  
DESIGN PROFESSIONAL SERVICES AGREEMENT**

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

**DESIGN PROFESSIONAL NAME**

Address:

Address:

City, State, Zip:

Tax ID#: \_\_\_\_\_

PC Business License# BL \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

**THE CITY REQUIRES THE DESIGN PROFESSIONAL TO COMPLETE EITHER THE NOTARY BLOCK OR THE UNSWORN DECLARATION, WHICH ARE BELOW.**

**PARK CITY MUNICIPAL CORPORATION  
DESIGN PROFESSIONAL SERVICES AGREEMENT**

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 \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (insert State and County here).

Printed name \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT “A”**

**SCOPE OF SERVICES**

**EXHIBIT “B”**

PAYMENT SCHEDULE FOR “EXTRA” WORK

**EXHIBIT "C"**  
**FEDERAL CLAUSES**

## A.1 ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325(g)  
2 C.F.R. § 200.333  
49 C.F.R. part 633

### Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### Access to Records and Reports

- e. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- f. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- g. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- h. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## A.2 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q  
33 U.S.C. §§ 1251-1387  
2 C.F.R. part 200, Appendix II (G)

### Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Contractor agrees:

5. It will not use any violating facilities;
6. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
7. It will report violations of use of prohibited facilities to FTA; and
8. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

## A.3 FEDERAL LAWS AND REGULATIONS

### Applicability to Contracts

The following Federal laws and regulations apply to all contracts.

5. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
  - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
6. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
7. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial

Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

8. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Flow Down**

The Civil Rights requirements flow down to all third-party contractors and their contracts at every tier.

### Civil Rights and Equal Opportunity

Park City is an Equal Opportunity Employer. As such, Park City agrees to comply with all applicable Federal laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Park City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

5. **Nondiscrimination**. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
6. **Race, Color, Religion, National Origin, Sex**. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay

or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, 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.
8. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

#### A.4 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

##### Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA

recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third-party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)

[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

### Flow Down

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

### Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

5. Withholding monthly progress payments;
6. Assessing sanctions;
7. Liquidated damages; and/or

8. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

#### Contract Assurance

The Contractor, subrecipient 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 C.F.R. 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 Park City deems appropriate.

#### DBE Participation

1. For the purpose of this Contract, Park City will accept only DBE's who are:
  - a. Certified, at the time of bid opening or proposal evaluation, by the UDOT Civil Rights Office; or
  - b. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
  - c. Certified by another agency approved by Park City.

#### DBE Participation Goal

The DBE participation goal for this Contract is set at 0%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 0%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

### Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

5. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
6. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by Park City.
7. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
8. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

### Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), Park City will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that Park City will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

6. Documented communication with Park City (questions of IFB or RSOQ requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
7. Pre-bid meeting attendance. At the pre-bid meeting, Park City generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
8. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
9. Written notification to DBE's encouraging participation in the proposed Contract; and
10. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

4. The names, addresses, and telephone numbers of DBE's that were contacted;
5. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
6. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### Administrative Reconsideration

Within five (5) business days of being informed by Park City that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to Park City. An appropriate reconsideration official who did not play any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts will review the matter.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Park City will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate

good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without Park City's prior written consent. Park City may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify Park City in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

#### Continued Compliance

Park City shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to Park City that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to Park City. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

4. Park City to have access to necessary records to examine information as Park City deems appropriate for the purpose of investigating and determining compliance with this provision,

including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

5. The authorized representative(s) of Park City, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
6. All data/record(s) pertaining to DBE shall be maintained as stated in Section A1, *Access to Records and Reports*, above.

#### Sanctions for Violations

If at any time Park City has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, Park City may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

3. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
4. Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

**DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of \_\_\_\_\_ % is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

**DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBE’s participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

**DBE IDENTIFICATION AND INFORMATION FORM**

Name and Address	ContactName and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

## DBE Goals

### **Race Conscious Goal**

At the time of bid, DBE participation is considered race-conscious on projects that are assigned a Goal for Bid Evaluation. The DBE commitment becomes a contract specification upon award. The Bidder must submit with its Bid Proposal a DBE Commitment that indicates:

- Name of DBE firm
- Work items to be performed
- 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.

Race Conscious is the committed dollar amount at the time of bid focused specifically on assisting only DBEs. UDOT Civil Rights must establish contract goals to meet the race conscious portion of its overall DBE goal. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, UDOT Civil Rights may adjust the use of contract goals as follows:

- If during the course of any year it is determined the overall goal will be exceeded, UDOT Civil Rights will reduce or eliminate the use of contract goals to the extent necessary to ensure the use of contract goals does not result in exceeding the overall goal.
- If it is determined that UDOT Civil Rights 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 UDOT Civil Rights to meet the overall goal.

### **Race Neutral Goal**

At the time of bid, DBE participation is considered race-neutral on projects that are NOT assigned a Goal (0%) for Bid Evaluation. In this instance, the DBE participation 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. Race Neutral is the dollar amount that exceeds the committed amount at the time of bid and is, or can be, used to assist all small businesses. UDOT Civil Rights must meet the maximum feasible portion of its overall DBE goal by using race-neutral means of facilitating DBE participation. Race neutral DBE participation includes:

- Awarding a subcontract on a prime contract that does not carry a DBE goal,
- Awarding a subcontract on a prime contract in which the DBE was not considered in making the award even if there is a DBE goal.
- For the purposes of this part, race neutral includes gender neutrality.

### **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.

The committed dollar amount meeting the project goal for bid evaluation will be considered race conscious participation. Any dollar amounts in excess of the project goal for bid evaluation will be considered race neutral participation.

### **Goal for Final Compliance**

Percentages for final compliance will be based on actual payments to DBEs. Over-runs and under-runs on individual contract items may require adjustments to 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.

The Continued Compliance states that the AGENCY will “monitor the Contractor’s DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract.” This is specifically for procurement projects. The requirement for construction projects would be:

- The Subrecipient will monitor the Contractor’s DBE compliance during the life of the Contract. It is the responsibility of the Contractor to submit regular reports to the Subrecipient that summarize the total DBE value for this Contract. The frequency and content of these reports will be designated by the Subrecipient.

### **Determination of DBE Contractor’s Eligibility by UUCP**

Any Contractor may apply to the UUCP for status as a DBE. Applications will 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 subcontractors to firms that have applied for and have been granted status as a DBE by the UUCP will be considered toward contract goals as established in Subsection A.

It will 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 an application.

UDOT will 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 website when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available on the Internet at (click on this link): <https://www.udot.utah.gov/connect/business/civil-rights/>

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

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.

### **Bidding Requirements**

A DBE prime contractor’s performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor will meet the DBE goal by using other DBE subcontractors or by using good faith efforts.

#### DBE Bid Assurance

##### 32. Race Conscious Goal

- a. Race conscious measure or program is focused specifically on assisting only DBEs. This goal is the amount the prime must commit to DBEs at the time of bid or a good faith effort must be documented.

#### DBE Race Conscious Commitment

- 33. For a bid to be considered responsive, Bidders will submit the following information regarding DBE compliance.
- 34. 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 will be considered committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
    - xxix. If mobilization is a bid item partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
    - xxx. If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
    - xxxi. 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 is required at the time of bid.
35. The DBE Commitment is to be included in the prepared bid, and said information will be kept confidential and will be reviewed to determine the apparent low bidder has either met the DBE Contract Goal or has documented acceptable Good Faith Efforts.

DBE Race Neutral Participation

36. Race Neutral DBE participation includes anytime a DBE;
- a. wins a Prime Contract through customary bidding procedures,
  - b. is awarded a subcontract on a prime contract that does not carry a DBE goal (0% goal),
  - c. wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

DBE Written Confirmation

37. Low Bidder will submit to the Civil Rights Office within three (3) work days after the bid opening written confirmation from each DBE participating in the contract as provided in the Prime Contractor's DBE Commitment. The written confirmation will include the following information:
- a. A description of the work to be performed (list specific bid items). Listed bid items will be considered committed in their entirety unless Contractors designate otherwise in their DBE commitment.
    - xxxii. If mobilization is a bid item that is partially committed, confirm the dollar amount of the mobilization to be performed.
    - xxxiii. If a partial quantity is committed, confirm the quantity to be performed.
    - xxxiv. If a partial performance of an item is committed, confirm what part of the item will be performed.
    - xxxv. Unit bid prices for each bid item committed to a DBE.
    - xxxvi. Total dollar amounts (mathematical extensions) for each bid item committed to a DBE
  - b. The dollar amount of participation by each named DBE firm.

**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 will 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 UDOT Civil Rights and must be covered by a Change Order. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to

meet the Goal for Performance established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the subrecipient and Civil Rights Office, will result in the imposition of sanctions.

38. The subrecipient will recognize and grant DBE credit for work performed by DBE contractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary all Bidders refer to the UUCP DBE Directory for direction and guidance.
39. Contractors may count 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.
40. 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.
41. 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 subrecipient will 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 subrecipient 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 workforce, 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.
42. The subrecipient will 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 it 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 as long as the DBE provides the employees for the leased trucks.
  - f. A lease must indicate 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.
43. 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.
  - b. 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.
  - c. 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.
  - d. 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.
    - xxxvii. 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.
    - xxxviii. 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 will be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
    - xxxix. Packagers, brokers, manufacturers' representatives, or other persons or firms who arrange, or expedite transactions are not regular dealers.
    - xl. 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.
44. 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. 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.

- xli. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The subrecipient must determine the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

- xlii. 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., will be submitted to the subrecipient prior to work beginning. The agreement will 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.

45. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. Direct these good faith efforts at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the project. Document the good faith efforts. If the subrecipient requests documentation under this provision, submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the subrecipient will provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

- a. Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

### **Prompt Payment**

Prompt payment for the work accomplished is an integral part of the concept of a commercially useful function but is a requirement on all FTA projects for DBE and non-DBE companies.

- Prompt payment means that the prime contractor is to pay each subcontractor, and each subcontractor is to pay any lower tier subcontractor, within 30 days of being paid by the Subrecipient.
- Prompt payment entries are to be entered for each subcontractor in the method approved so that it can be monitored and verified for compliance.

### **Americans with Disabilities Act of 1990**

To provide additional information about ADA to that of the Civil Rights Laws and Regulations clause in the FTA Best Practices Manual, Appendix A, see the link below to the FTA C 4710.1 Circular.

- [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final\\_FTA\\_ADA\\_Circular\\_C\\_4710.1.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf)

## **Title VI Attachments A and E**

**Title VI of the Civil Rights Act of 1964 – Non – Discrimination Notice; Attachment  
A**

**NON-DISCRIMINATION 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. The text below, in its entirety, is in all contracts entered into by the Department. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contract entered into by any the Department contractor. During the performance of this contract, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**B. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

46. 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.
47. 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.
48. 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.
49. 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 (Recipient) or the (Name of Appropriate Administration) 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 (Recipient), or the (Name of Appropriate Administration) as appropriate, and shall set forth what efforts it has made to obtain the information.
50. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Recipient) shall impose such contract sanctions as it or the (Name of Appropriate Administration) may determine to be appropriate, including, but not limited to:
51. Withholding of payments to the contractor under the contract until the contractor complies, and/or
52. Cancellation, termination or suspension of the contract, in whole or in part.
53. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the (Recipient) or the (Name of Appropriate Administration) 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 (Recipient) to enter into such litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Title VI of the Civil Rights Act of 1964 – Non – Discrimination Notice; Attachment  
E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 460 I ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 610 et seq.), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 47 I, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **EMPLOYEE PROTECTIONS**

49 U.S.C. § 5333(a)  
40 U.S.C. §§ 3141 – 3148  
29 C.F.R. part 5  
18 U.S.C. § 874  
29 C.F.R. part 3  
40 U.S.C. §§3701-3708  
29 C.F.R. part 1926

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

### **Prevailing Wage Requirements**

- Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
- The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

### **“Anti-Kickback” Prohibitions**

- Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

### **Contract Work Hours and Safety Standards**

- Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
- U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

The AGENCY must place a copy of the current prevailing wage determination issued by the UDOT Civil Right Office in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

### **Prevailing Wage and Anti-Kickback**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under

49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### **Contract Work Hours and Safety Standards**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

**Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

**COMPLIANCE CERTIFICATION WITH CIVIL RIGHTS REQUIREMENTS**

The bidder/contractor hereby certifies that it will comply with all Civil Rights requirements listed herein.

Company: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## A.6 ENERGY CONSERVATION

42 U.S.C. 6321 *et seq.*  
49 C.F.R. part 622, subpart C

### Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

## Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### A.7 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. part 180  
2 C.F.R. part 1200  
2 C.F.R. § 200.213  
2 C.F.R. part 200 Appendix II (I) Executive Order 12549  
Executive Order 12689

## Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

## Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the

- V. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180.

These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

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 Park City. If it is later determined by Park City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Park City, 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 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

#### A.8 LOBBYING RESTRICTIONS

31 U.S.C. § 1352  
2 C.F.R. § 200.450  
2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

##### Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## Lobbying Restrictions

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

4. 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.
5. 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.
6. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, 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.

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Name and Title of Contractor's Authorized Official

\_\_\_\_\_

Date

### A.9 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

#### **Applicability to Contracts**

The No Obligation clause applies to all third party contracts that are federally funded.

No Federal Government Obligation to Third Parties.

The Recipient and 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 Recipient, 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 clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### A.10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1)  
31 U.S.C. §§ 3801-3812  
18 U.S.C. § 1001  
49 C.F.R. part 31

##### Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

##### Program Fraud and False or Fraudulent Statements or Related Acts

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 C.F.R. 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.

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. chapter 53, the Government reserves the right to impose the

penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

#### A.11 RECYCLED PRODUCTS

42 U.S.C. § 6962  
40 C.F.R. part 247  
2 C.F.R. part § 200.322

##### Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

##### Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

#### A.12 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402

### Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

### Safe Operation of Motor Vehicles

#### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Park City Municipal Corporation.

### Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## A.13 TERMINATION

2 C.F.R. § 200.339  
2 C.F.R. part 200, Appendix II (B)

### Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

### Termination for Convenience (General Provision)

Park City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in Park City's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Park City to be paid the Contractor. If the Contractor has any property in its possession belonging to Park City, the Contractor will account for the same, and dispose of it in the manner Park City directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Park City may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Park City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Park City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

Park City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 45 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 appropriate conditions

If Contractor fails to remedy to Park City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 45 days after receipt by Contractor of written notice from Park City setting forth the nature of said breach or default, Park City 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 Park City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

In the event that Park City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Park City shall not limit Park City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

Park City, by written notice, may terminate this contract, in whole or in part, when it is in Park City's interest. If this contract is terminated, Park City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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 Park City .

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Park City goods, the Contractor shall, upon direction of Park City, protect and preserve the goods until surrendered to Park City or its agent. The Contractor and Park City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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 Park City.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Park City may terminate this contract for default. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Park City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Park City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Park City in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

3. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Park City, acts of another contractor in the performance of a contract with Park City, epidemics, quarantine restrictions, strikes, freight embargoes; and
4. The Contractor, within [10] days from the beginning of any delay, notifies Park City and in writing of the causes of delay. If, in the judgment of Park City, the delay is excusable, the time for completing the work shall be extended. The judgment of Park City shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Park City.

#### Termination for Convenience or Default (Architect and Engineering)

Park City may terminate this contract in whole or in part, for Park City's convenience or because of the failure of the Contractor to fulfill the contract obligations. Park City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Park City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Park City has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of Park City, Park City shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Park City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by Park City.

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 Park City.

### Termination for Convenience or Default (Cost-Type Contracts)

Park City 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 Park City 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 Park City, or property supplied to the Contractor by Park City. If the termination is for default, Park City may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Park City and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Park City, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, Park City determines that the Contractor has an excusable reason for not performing, Park City, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### A.14 VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326  
2 C.F.R. part 200, Appendix II (A)

### Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

### Rights and Remedies of Park City

Park City shall have the following rights in the event that Park City deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as Park City for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Park City, the Contractor expressly agrees that no default, act or omission of Park City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless Park City directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, Park City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before Park City takes action contemplated herein, Park City will provide the Contractor with sixty (60) days written notice that Park City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Park City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its

copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. 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 [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

- **Example 2:** Park City and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within Park City and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with Park City's direction or decisions made thereof.

#### Performance during Dispute

Unless otherwise directed by Park City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Park City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which Park City is located.

#### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Park City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **200.216 Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;  
(2) Extend or renew a contract to procure or obtain; or  
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

#### **FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles.**

(a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

**FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving.**

The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**FTA Master Agreement (28) Section 39(b). Fraud, Waste and Abuse.**

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee,

agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

## **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

54. It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
55. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    - xlili. Debarred,
    - xliv. Suspended,
    - xlv. Proposed for debarment,
    - xlvi. Declared ineligible,
    - xlvii. Voluntarily excluded, or
    - xlviii. Disqualified,
  - b. Its management has not within a three -year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    - xliv. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    - i. Violation of any Federal or State antitrust statute, or,
    - li. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three- year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
  - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    - lii. Equals or exceeds \$25,000,
    - liii. Is for audit services, or,
    - liv. Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    - lv. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and

lvi. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

1. Debarred from participation in its federally funded Project,
2. Suspended from participation in its federally funded Project,
3. Proposed for debarment from participation in its federally funded Project,
4. Declared ineligible to participate in its federally funded Project,
5. Voluntarily excluded from participation in its federally funded Project, or
6. Disqualified from participation in its federally funded Project, and

56. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

### **Certification**

Contractor Name: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

## CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_ hereby certify (Name and title of official)

On behalf of \_\_\_\_\_ that: (Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

### Certification

Name of Bidder/Company Name: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Signature of Authorized representative: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of notary and SEAL: \_\_\_\_\_

**Exhibit "D"**

**UDOT Civil Rights Memorandum**

# Memorandum

**DATE:** February 14, 2023

**TO:** Park City Municipal Corporation

**FROM:** Tori Berry  
Civil Rights Manager

**SUBJECT:** Transit Site Improvements Program Management Services  
Consultant

DBE GOAL: N/A

DAVIS BACON WAGE RATES **“ARE NOT”** REQUIRED

Your attention to the DBE goal is appreciated. This memo is valid for 6 months or if changes are made to scope of work, it will need to be resubmitted to Civil Rights for revision.

**Appendix "C"**

**UDOT Civil Rights Memorandum**

# Memorandum

**DATE:** February 14, 2023

**TO:** Park City Municipal Corporation

**FROM:** Tori Berry  
Civil Rights Manager

**SUBJECT:** Transit Site Improvements Program Management Services  
Consultant

DBE GOAL: N/A

DAVIS BACON WAGE RATES **“ARE NOT”** REQUIRED

Your attention to the DBE goal is appreciated. This memo is valid for 6 months or if changes are made to scope of work, it will need to be resubmitted to Civil Rights for revision.