

**Intergovernmental Agreement
Between
The Regional Transportation District
and
The City and County of Denver
For
The 16th Street Mall Reconstruction Project
From
Department of Transportation's Bus & Bus Facilities Grant**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made effective as of November 1, 2013 (hereinafter "Effective Date") by and between the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202, a political subdivision of the State of Colorado, (hereinafter "RTD" or the "District") and the CITY and COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado (hereinafter "CCD"). RTD and CCD may hereinafter be referred to collectively as "Parties" or individually as a "Party."

Recitals:

- A. RTD is authorized under C.R.S. §32-9-101, *et seq.*, to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the District.
- B. Pursuant to C.R.S. §32-9-119(q), RTD is authorized to accept grants from the federal government and state governments, or any political subdivision thereof.
- C. Pursuant to the Colorado Constitution, Article XIV, § 18(2)(a), and C.R.S. §29-1-203, *et seq.*, the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for sharing of costs.
- D. In 1982, RTD constructed the downtown Denver 16th Street Pedestrian Mall (the "16th Street Mall" or "Mall").
- E. The 16th Street Mall is located in and benefits the CCD.
- F. The Downtown Denver Partnership ("DDP") and the Downtown Denver Business Improvement District ("BID") (together, the "DDP/BID") are responsible, in part, for the promotion, operation and maintenance of the 16th Street Mall.

- G. RTD has performed the repair and maintenance of the transitway bus lanes of the 16th Street Mall since original Mall completion, which includes the granite curb and gutters, pavers, runnels and transition stones.
- H. The maintenance needs of the 16th Street Mall continue to escalate and the useful life of the existing mall pavers and associated amenities diminish with each passing year due to the age of the Mall infrastructure and activities on the Mall.
- I. The Parties are concerned with the need to minimize the future costs associated with the maintenance of the Mall and to conform to the current laws and codes established subsequent to the completion of the original Mall construction in 1982, including the Americans with Disabilities Act.
- J. The Parties, together with the DDP/BID, desire to continue the restoration, repair and reconstruction of portions of the 16th Street Mall between Market Street and Lawrence Street and between Court Place and Broadway for a total of 3.5 blocks as indicated in the map attached hereto as **Exhibit A**.
- K. On March 29, 2012, RTD, in conjunction with the CCD and the DDP/BID, submitted its application to the U.S. Department of Transportation (hereinafter "USDOT") requesting a funding grant under the Bus & Bus Facilities Program – Livability Initiative entitled the "Bus & Bus Facilities Livability Application – 16th Street Mall Reconstruction Project" to continue the restoration, repair and reconstruction of portions of the 16th Street Mall (hereinafter "16th Street Mall Reconstruction Project" or "Project"). The proposed improvements listed in the grant application were:
 - a. Paver rehabilitation;
 - b. Sub-base reconstruction;
 - c. Intersection bulb-outs;
 - d. Wet and dry utility upgrades;
 - e. Urban design improvements; and
 - f. Mall livability elements.
- L. As part of that grant application, RTD, CCD and DDP/BID committed to equally contribute to the twenty percent (20%) local match of any USDOT award for the Project in an amount not to exceed \$1,072,374.72 per agency.

- M. On July 18, 2012, the USDOT awarded a grant to RTD for the Project in the amount of \$7,978,998.00 (hereafter the "Grant"). The USDOT required a commitment for a twenty percent (20%) local dollar match of the Grant in the total amount of \$1,994,749.50 as a condition precedent for funding of the Grant.
- N. The total project budget for the Project is \$9,973,747.50 of which \$7,978,998 will be provided by the Grant and \$1,994,749.50 is the combined local funding match which will be provided by the Parties as required by the terms of the Grant.
- O. The 20% local match contribution for each of the three partner agencies, RTD, CCD, and the DDP/BID, amounts to \$664,916.50 per agency. CCD has agreed to pay the DDP/BID's share of the local match contribution.
- P. The anticipated scope of the Project as stated in the grant application is no longer feasible due to the significant difference between the amount of funds estimated and requested for the Project (\$16,085,620.83) and the amount of funds actually available after the USDOT award (\$9,973,747.50).
- Q. The partner agencies, RTD, CCD and the DDP/BID, wish to proceed with the reconstruction and improvements to the area of the 16th Street Mall transitway between Market Street to Lawrence Street and between Court Place and Broadway for a total of 3.5 blocks and intend to review and revise the Project limits to prioritize the elements included within the original scope of work proposed in the grant application, as well as the possible inclusion of any permissible additional elements.
- R. The partner agencies, RTD, CCD, and DDP/BID, along with some of their consultants and other stakeholders, have formed a Design Committee for the 16th Street Mall ("Design Committee"). The Parties intend to work together through the Design Committee to establish the prioritization of elements and Project limits within the original scope of work based upon cost, ability to defer elements without material disruption to construction at a future date, or segmentation of the limits of the Project utilizing the Grant and the local match funds.
- S. RTD shall serve as the lead agency for the Project and shall manage the design and construction of the Project with support from stakeholder agencies.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Project will be funded by the USDOT Grant in the amount of \$7,978,998.00 and local match funds in the total amount of \$1,994,749.50. The Parties acknowledge and agree that the Project is to be paid for, in part, by federal funding and that the costs incurred for the Project must comply with the Federal Transit Administration Full Funding Grant Agreement and any other applicable federal funding eligibility requirements as more fully set forth in Paragraph 15 below.
2. RTD shall be responsible for preparing and providing all documentation to the USDOT necessary to meet the requirements of the Grant and to complete all submittals required to draw Grant funds.
3. CCD agrees to support RTD in its efforts to receive full funding of the Grant and shall use its reasonable efforts to timely provide RTD, the USDOT, or the Federal Transit Administration (“FTA”) with any and all documentation necessary to demonstrate its compliance with any Grant or federal funding requirements. RTD agrees to support CCD in its efforts to receive local match share funding from an appropriate source.
4. The Parties agree to negotiate in good faith to implement the original Grant elements and to prioritize additional elements and project limits shown within the original scope of work for the Project based upon cost and the ability to defer elements without material disruption to construction at a future date.
5. The RTD staff shall submit to its Board of Directors a budget that includes the authorization and appropriation of funds for the RTD local match of the Grant through the 2014 fiscal year in the amount of \$664,916.50. Nothing herein obligates RTD to budget, authorize or appropriate funds for any future fiscal year.
6. CCD staff will submit to the Denver City Council (“City Council”) a budget that includes authorization and appropriation of funds for the Grant local match funds for both CCD and DDP/BID through the 2014 fiscal year in the total amount of \$1,329,833.00 (\$664,916.50 for CCD and \$664,916.50 for DDP/BID). Nothing herein obligates CCD to budget, authorize or appropriate funds for any future fiscal year.

7. Draws from the Grant and local match funds (together, "Project Funds") by either Party shall be contingent upon: (i) receipt of Grant funds by RTD from USDOT, (ii) approval of the scope of the Project by RTD and CCD, (iii) documentation of actual, eligible expenses incurred for the Project, and (iv) compliance with federal requirements for eligibility to receive Grant funds.
8. Each Party shall submit eligible invoices to RTD's project manager for review and RTD's approval requesting reimbursement from Project Funds for permissible expenses as delineated in Section 9 below for work performed on the Project subsequent to March 1, 2013.
9. Permissible expenses may include a Party's employee costs for designers, reviewers, and inspectors who perform work on the Project. In such instances, the employee's costs may include a Party's burdened staff time for an allowable employee. The Parties agree that burdened staff time shall be no more than 32% of an allowable employee's base salary. The Parties shall not be reimbursed for general operational costs, advertising, promotion, administration, office expenses, time for senior or project managers, attendance at Design Committee meetings or any item other than permissible direct costs for the design, oversight and construction of the Project. All of the allowable employee costs defined in this section, together with RTD's outside contractors including designers, suppliers, constructors, materials and all other eligible expenses and costs related to the Project, may be referred to as "Project Costs" herein. CCD agrees to the waiver of permit fees associated with permits required for the design, construction and completion of the Project and such fees shall not be considered a Project Cost eligible for reimbursement.
10. CCD shall submit CCD's internally approved and fully documented invoices for Project Costs to RTD within 45 days from the date CCD receives or creates the invoice. RTD shall complete its review and approval of CCD's submitted invoices within fifteen (15) business days of receipt of each invoice. In the event RTD disputes amounts on an invoice, it shall pay any undisputed amounts, timely notify CCD of such dispute and work with CCD to resolve such dispute.
11. RTD shall make payments to either Party for approved invoices for Project Costs by drawing from the Project Funds for work performed within the approved Project scope in percentages set forth in Section 13 below. RTD's approval of or payment of an invoice shall not be considered a review of CCD's federal funding compliance practices or an approval of such practices and shall in no way relieve CCD of its responsibility to comply with any applicable federal requirements. In the event any amount paid by RTD with

Project Funds is later determined to be ineligible for federal funding by any federal agency, the Party responsible for the ineligible payments shall reimburse the Project the full amount of those funds and any costs, interest or penalties associated with the same.

12. After RTD approves invoices for Project Costs to be paid from Project funds, RTD shall bill CCD in accordance with this section for CCD's local match contribution for both CCD and the DDP/BID. RTD shall deliver to CCD a Pay Application with Expenditure Certification in a form to be agreed upon by RTD and CCD substantially similar to that attached hereto as **Exhibit B** signed by an authorized representative of RTD, provided that such certifications shall not be required to be delivered more than once per month. CCD shall review each Pay Application with Expenditure Certification promptly upon receipt and will notify RTD of any issues concerning the applicable Pay Application with Expenditure Certification within ten (10) business days of its receipt. If CCD does not notify RTD of any issues concerning the Pay Application with Expenditure Certification within such time period, the Pay Application with Expenditure Certification shall be deemed approved for payment by CCD. CCD shall reimburse RTD within 45 days after CCD's receipt of the Pay Application with Expenditure Certification for the CCD and DDP/BID local match shares.

13. When RTD has approved Project Costs as set forth in Section 12 above, such Project Costs shall be paid as follows:

- a. Grant Funds 80 percent
- b. Local Match Funds 20 percent

Local match funds shall be paid by the Parties as follows:

- a. RTD one-third
- b. CCD two-thirds (which includes the match share of DDP/BID.)

14. CCD shall provide to RTD a quarterly report consisting of a brief narrative about the current status of the Project, specifically advising of any change in milestone dates from the previous reporting period, and advising of the status of achievement of the following milestones for its contract(s), if any:

- a. bid date or estimated date;
- b. contractor on board date;
- c. final design completion date;

- d. construction completion date;
 - e. contract completion date; and
 - f. major milestone completion dates.
15. This IGA is subject to, and CCD shall comply with, the terms and conditions set forth in **Exhibit C**, Federal Requirements, which includes FTA Circular 4220.1F. However, Sections 1.1, 1.5, 2.1 and 3 of **Exhibit C** do not apply to work self-performed by CCD.
16. If any portion of the Grant funds or local match funds is not received from any of the anticipated sources of funds, RTD reserves the right to accordingly reduce the scope of the Project in coordination with the Design Committee, which approval shall not be unreasonably withheld. In the event the full amount of anticipated Grant funds is not received, the Parties may reduce their local match funds to be a total of twenty percent (20%) of the revised amount of Grant funds.
17. RTD shall keep a separate accounting for the combined local match contributions and the Grant funds received for the Project and shall make such accounting available to CCD upon request.
18. In addition to their monetary contributions for the local matches, CCD and RTD commit to provide agency personnel to the extent possible to complete the design and construction management, which hours may be billed against the Project Costs and shall be a direct cost to the Project as set forth in Section 9 above.
19. Disputes shall be initially resolved between the Project managers. If the respective Project managers are unable to resolve the dispute, they shall document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process: (i) RTD Chief Engineer and CCD City Engineer; (ii) RTD Assistant General Manager, Capital Programs and CCD Manager of Public Works; and (iii) RTD General Manager and CCD Mayor's Chief Projects Officer.
20. APPROVAL BY CITY COUNCIL AND THE RTD BOARD. This IGA is expressly subject to, and shall not be or become effective or binding upon the CCD or RTD until approved by the City Council and the RTD General Manager acting under delegation of authority from the

RTD Board of Directors (“Board”), respectively. In addition, the Parties expressly acknowledge and agree that this IGA is contingent upon federal funding of the Grant.

21. **APPROPRIATION BY CITY COUNCIL AND THE BOARD.** While implementation of this IGA may imply future financial commitments by both Parties, all implied commitments are subject to approval by the Board and the City Council in accordance with each entity’s legally required budgeting, authorization and appropriation process. Any and all obligations of the CCD and RTD under and pursuant to this IGA which require funding are subject to prior annual appropriations of funds expressly made by the City Council and the Board, respectively, for the purposes of this IGA. No penalties shall inure to either party for failure to budget or appropriate funding. Nothing herein shall be construed by either Party as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

22. MISCELLANEOUS

22.1. IGA as Complete Integration; Amendments. This IGA is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing in the same formality as this IGA. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this IGA.

22.2. Additional Agreements. CCD, DDP/BID and RTD may enter into subsequent intergovernmental agreements for the funding, design, construction and maintenance responsibilities related to the Project.

22.3. No Effect on RTD Service. Nothing in this Agreement shall be construed to limit RTD’s right to establish routes, frequencies or services or perform any functions authorized by C.R.S. § 32-9-101 *et seq.*

22.4. Assignment. The Parties agree that they will not assign or transfer any of their rights or obligations under this Agreement without first obtaining the written consent of the other Party. This shall not preclude the intention of the Parties to hire independent contractors to perform much of the work contemplated by this IGA.

22.5 No Third-Party Beneficiary. The Parties expressly agree that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in the IGA shall give or allow any

such claim or right of action by any other or third person under this IGA. The Parties expressly intend that any person other than the Parties to this IGA shall be deemed to be an incidental beneficiary only.

22.6 Authority. The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.

22.7 Severability. To the extent that this IGA may be executed and performance of the obligations of the Parties may be accomplished within the intent of the IGA, the terms of the IGA are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

22.8 Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

22.9 Venue. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

22.10 Changes in Law. This IGA is subject to such modifications as may be required by changes in city, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and become part of this IGA on the effective date of such changes as if fully set forth herein.

22.11 Conflict of Interest by CCD or RTD Officers. RTD and CCD each represent that to the best of its information and belief no officer or employee of RTD or CCD nor any member of its Board or City Council, is either directly or indirectly a party to or in any manner interested in this IGA except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee during his or her tenure, or for one (1) year thereafter.

22.12 Effective Date, Term and Termination. This IGA shall commence on the Effective Date and shall remain in full force and effect until the earliest of: (i) full performance by the Parties, (ii) termination in writing by the Parties, or (iii) by court order. All provisions of this IGA that provide rights or create responsibilities for the Parties after termination shall survive termination of this IGA.

22.13 Notices. Except as may be otherwise specifically required herein, all communications required by this IGA shall be made in writing, via US first Class Post, transmittal to the following individuals (or their delegates), who shall be the project liaisons for their respective organizations:

To CCD: Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

Manager of Public Works
201 W. Colfax Avenue, Dept. 608
Denver, Colorado 80202

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

To RTD: Philip A. Washington
General Manager
Regional Transportation District
1600 Blake Street
Denver, CO 80202

Henry J. Stopplecamp, P. E.
Senior Manager, Engineering/Chief Engineer
Regional Transportation District
1560 Broadway, Suite 700
Denver, CO 80202

Marla Lien
General Counsel
Regional Transportation District
1600 Blake Street
Denver, CO 80202

Project liaisons may be changed or additions made at the discretion of each Party by written notice to the other Party.

22.14 Compliance with Laws. The Parties shall each be responsible for complying with all applicable laws, regulations and ordinances in their construction of any improvements or provision of any services or work performed in fulfillment of the Parties' obligations

hereunder. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto.

22.15 Examination of Records. The Parties agree that any duly authorized representative of the RTD or CCD shall, until the expiration of three (3) years after final payment under this IGA, have access to and the right to examine any directly pertinent books, documents, and records of the other Party involving matters directly related to this IGA.

22.16 Electronic Signatures and Electronic Records. RTD consents to the use of electronic signatures by the City. The IGA, and any other documents requiring a signature hereunder, may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the IGA solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the IGA in the form of an electronic record, or a paper copy of the IGA containing electronic signatures, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The Parties have executed, through their respective lawfully empowered representatives, this IGA as of the day and year above written.

REGIONAL TRANSPORTATION DISTRICT

By: _____
Philip Washington
General Manager

Approved as to legal form for RTD:

By: _____
Associate General Counsel

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201414870-00

Contractor Name: Regional Transportation District

By: RTD will sign last

Name: _____
(please print)

Title: _____
(please print)

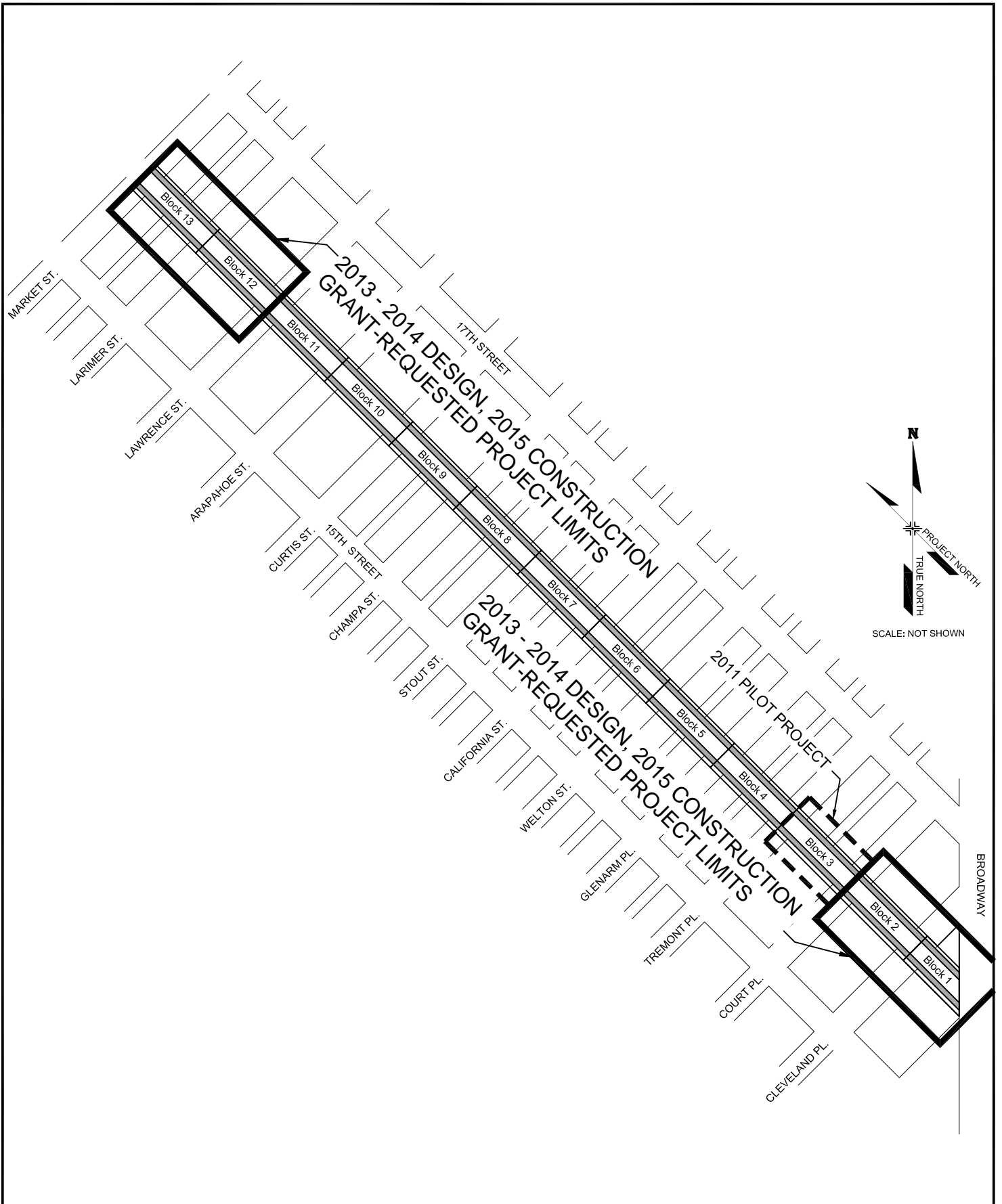
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)





16TH STREET MALL RECONSTRUCTION PROJECT



REGIONAL TRANSPORTATION DISTRICT
 1600 BLAKE STREET
 DENVER, COLORADO 80202
 (303) 628-9000

02-28-14

EXHIBIT A

PROJECT SITE PLAN

EXHIBIT B

**EXPENDITURE CERTIFICATION
16TH STREET MALL PAVER RECONSTRUCTION PROJECT**

Date:

Project:

16th Street Mall Paver Reconstruction Project
("Project")

Payment Request No:

Amount Requested:

\$ _____

The following documents are attached to this certification;

1. Project Schedule of Total Costs for Expenditure Certification.
2. Itemized bill or statement of account for each itemized cost as listed on the Schedule of Total Costs for Payment.
3. Partial and/or Final Lien Waivers from each Contractor and/or Sub-Contractor for the previous expenditure certification showing payments made per the previously approved Schedule of Total Costs for Payment.

The items of costs for which payment is certified herein (i) are or were necessary in connection with, and are reasonably attributable to, the above referenced Project and (ii) have not formed the basis for any previous payment to the person receiving payment as described herein.

The Project Costs certified herein represent the City and County of Denver ("City") and the Downtown Denver Business Improvement District/Downtown Denver Partnership shares of Project Costs which were incurred pursuant to the 16th Street Mall Reconstruction Project Intergovernmental Agreement between the City and the Regional Transportation District ("IGA").

Dated: _____ 20__

Regional Transportation District

By: _____

Name: _____ Title: _____

Further, the City certifies that no event has occurred and is continuing which constitutes an Event of Default of the City, as defined in the Project Funding Agreement or the IGA, or would constitute an Event of Default but for the requirement that notice be given or time elapsed or both.

Dated: _____ 20__

City and County of Denver

By: _____

Name: _____ Title: _____

Exhibit C
FEDERAL REQUIREMENTS

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

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

1.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

1.2 Incorporation of FTA Terms

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

1.3 Federal Changes

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

1.4 No Government Obligation to Third Parties

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

1.5 Selection of Architects and Engineers (Brooks Act)

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

1.6 Debarment

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

1.7 Lobbying

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

1.8 Program Fraud and False or Fraudulent Statements and Related Acts

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

1.9 Civil Rights

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

amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e, and also with any Federal laws, regulations, and directives that may in the future affect construction undertaken as part of the project.

1.10 Fly America Requirements

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

1.11 Access Requirements For Persons With Disabilities

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

1.12 Energy Conservation Requirements

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

1.13 Clean Water Requirements

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

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

1.14 Clean Air Requirements

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

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

1.15 Access to Records and Reports.

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

2. FEDERAL REQUIREMENTS APPLICABLE TO CONSTRUCTION CONTRACTS AND SUBCONTRACTS

2.1 Disadvantaged Business Enterprises Requirements

In accordance with Section 3 of this Exhibit.

2.2 Incorporation of FTA Terms

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

2.3 FTA regulations and policies

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

2.4 No Government Obligation to Third Parties

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

2.5 Debarment

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

2.6 Lobbying

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

2.7 Program Fraud and False or Fraudulent Statements and Related Acts

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

2.8 Civil Rights

- (a) 49 U.S.C. § 5332 (Nondiscrimination in Federal Public Transportation Programs);
- (b) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21;
- (c) All applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and any Federal regulations that prohibit discrimination on the basis of sex that may be applicable;
- (d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and any U.S. Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance", 45 CFR Part 90;
- (e) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634 and any U.S. Equal Employment Opportunity Commission implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625;
- (f) All equal employment opportunity provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal

implementing regulations and any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, and any applicable Federal equal employment opportunity directives that may be issued from time to time; and

- (g) All applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 CFR Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e, and also with any Federal laws, regulations, and directives that may in the future affect construction undertaken as part of the project.

2.9 Fly America Requirements

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

2.10 Access Requirements For Persons With Disabilities

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

2.11 Energy Conservation Requirements

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

2.12 Clean Water Requirements

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

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

2.13 Clean Air Requirements

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

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

2.14 Contract Work Hours and Safety Standards Act

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

2.15 Seismic Safety Requirements

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

2.16 Recycled Products

All requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended by 42 U.S.C. 6962, including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

2.17 Buy America

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

2.18 Cargo Preference Requirements

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

2.19 Access to Records and Reports.

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

negotiated and invoiced in performance of this work. This right of examination shall include inspection at all reasonable times of the City's offices engaged in performing the work.

- (c) If this Contract is completely or partially terminated, the City shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The City shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to work until such appeals, litigation, or claims are finally resolved.

2.20 Davis-Bacon and Copeland Anti-Kickback Acts

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

(a) Davis-Bacon –

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics,

including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

obligations under the plan or program.

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

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

(ii)(A) The City shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form

desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The City is responsible for the submission of copies of payrolls by all subcontractors. The City and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the City will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration, the City, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

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

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

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

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

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

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

guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

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

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

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

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

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

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

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

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

(10) *Certification of eligibility.* (i) The City certifies that neither it (nor he or she) nor any person or firm who has an interest in the City's firm is a person or firm ineligible to be

awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(b) Contract Work Hours and Safety Act Provisions –

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

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

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

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

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

3. DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS

(a) The City shall comply with all requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises (“DBEs”) in Department of Transportation Financial Assistance Programs in the performance of the work. The goal for participation of DBEs is 25%.

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

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

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

(e) Prompt Payment of DBE Subcontractors

The City shall ensure that:

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

(f) Defaulting DBE Subcontractors/Termination of Subcontracts

- (i) The City shall not terminate a DBE subcontractor performing work related to this IGA without RTD's prior written consent, which RTD is prohibited from providing unless the City has shown good cause, as that term is described in 49 C.F.R. 26.53(f)(3), to terminate the DBE subcontractor.
- (ii) The City shall require that its contractors not terminate a DBE subcontractor performing work related to this IGA without RTD's prior written consent, which RTD is prohibited from providing unless the City has shown good cause, as that term is described in 49 C.F.R. 26.53(f)(3), to terminate the DBE subcontractor.
- (iii) The City will follow the notice and opportunity for response identified in 49 C.F.R. 26.53(f)(4) and (5). The City shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work.

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

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

Annex 1

Wage Determinations Applicable to the Work

Element of the Work	Wage Determination to be Applied
[Roadway, Heavy, Building, etc]	City – General Decision Number: _____ ¹ <i>(see attached)</i>

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

Annex 2 – DBE Forms

DENVER REGIONAL TRANSPORTATION DISTRICT PRIME CONTRACTOR MONTHLY REPORT OF DBE/SBE PARTICIPATION Form E Report



CONTRACT INFORMATION:

Original Contract Value: _____
 Change Orders Values: _____
 Final Contract Value: _____
 Total Payments Received To Date: _____
 Payments Received This Month: _____
 Start Date: _____
 Completion Date: _____

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

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

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

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

COMMENTS: _____

Prime Contractor
 Compliance Officer: _____
 Signature: _____

Telephone: _____
 Date: _____

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

SEHD COMPLETED FORM TO:
 Regional Transportation District - 1600 Blake Street, Denver, Colorado 80202
 If You Need Assistance In Filling Out This Form, Please Contact Kenn Hardin at (303) 299-2111

Annex 2 – DBE Forms

SOLICITATION STATISTICS

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

Firm Name: _____

Firm Address (Office Reporting): _____

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

DBE _____ Non-DBE _____

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

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

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

Age of the firm: _____

Signature: _____

Name:

Title:

Date: _____

Annex 2 – DBE Forms

EMPLOYER CERTIFICATION OF WORKFORCE

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

Firm Name:

Signature: _____

Name:

Title:

Date of Execution: _____

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

Annex 2 – DBE Forms

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

Annex 2 – DBE Forms

DESCRIPTION OF JOB CATEGORIES

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

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

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

Sales – Occupations engaging wholly or primarily in selling.

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

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

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

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

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

RACE/ETHNIC IDENTIFICATION

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

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

Hispanic Americans – All persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or

Annex 2 – DBE Forms

Portuguese culture or origin, regardless of race

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

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

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

Annex 2 – DBE Forms

DBE UNAVAILABILITY CERTIFICATION

I, _____, _____,
 Name Title

of _____ (**Contractor**), certify that Contractor made the following efforts to meet the DBE goal on the [*]:

[please attach any additional efforts that do not fit on this form]

- A Contractor representative attended the pre-bid meeting. Yes _____ No _____

- Newspaper Advertisement Log: (attach copies of ads)

Newspaper/Publication	Type of Publication Minority/General/Trade	Dates of Advertisement

- Selected portions of the work to be performed by DBEs

Work Categories	Type of Bid (Subcontractor or Supplier)	Contractor's Estimated Budget	Additional Comments

- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.
- *[List any specific offers made]*

Annex 2 – DBE Forms

- Solicited the following DBEs

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

- Followed up with initial contacts

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

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

Date	Organization	Phone #

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

Signature: _____

Date: _____