

MAP-21 §20005(b) FTA Pilot Program for TOD Planning Grant

FAIN: 1136-202x-xx

CFDA: 20-500

**Federal Award Date: TBD**

Subrecipient DUNS: 800412533

## INTERGOVERNMENTAL AGREEMENT

by and between

### REGIONAL TRANSPORTATION DISTRICT

1660 Blake Street

Denver, Colorado 80202

and

City and County of Denver

1437 Bannock Street

Denver, Colorado 80202

This Intergovernmental Agreement (**IGA**) made between the Regional Transportation District (**RTD**), a political subdivision of the State of Colorado, and the City and County of Denver (**City** or **Subrecipient** and together, the **Parties**), to provide pass-through of Federal funding assistance for Subrecipients' Equitable TOD Implementation Plan for the Federal BRT Corridor (**TOD Plan**). Capitalized terms not defined in this IGA shall have the definitions found in the most current FTA Master Agreement (**FTA Master Agreement**).

## RECITALS

### WHEREAS:

1. The context for this IGA is established in the Federal Transit Administration's (**FTA**) Solicitation of Project Proposal for the federal fiscal year 2023 Pilot Program for Transit-Oriented Development Planning, and in the RTD Transit-Oriented Development Policy dated September 21, 2010.
2. The United States Department of Transportation (USDOT) provides funding through federal grants to local communities to integrate land use and transportation planning with a transit capital investment that is seeking or recently received funding through the Capital Investment Grant Program under the Pilot Program for TOD, Section 20005(b) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) as amended by Section 30009 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) (also called the Bipartisan Infrastructure Law (BIL)). . See generally, FTA Circular 8100.1C (effective 9/1/08, updated 3/16/16).

3. RTD is a Direct Recipient of Section 20005(b) funds from the FTA and may pass through subgrants of those Section 20005(b) funds to eligible subrecipients. The City applied for Section 20005(b) funds through RTD and, subsequently, agreed to receive Section 20005(b) for federal fiscal year 2023 to provide Section 20005(b) eligible services pursuant to this IGA. The TOD Plan is an eligible project under Section 20005(b) and FTA Circular 8100.1C.
4. As the Direct Recipient for USDOT funds, RTD is responsible for submitting a grant application to the FTA, contracting with eligible Subrecipient projects selected by FTA to receive funds through competitive selection processes, and ensuring that subrecipients comply with FTA requirements as a condition for receipt of DOT funds through oversight and monitoring of subrecipients. The City qualifies as an eligible Subrecipient.
5. RTD and the City therefore desire to enter into this IGA to allow RTD to pass through Section 20005(b) funding to the City as a Subrecipient, and for the City to use such funding in full and complete compliance with all federal requirements and the provisions of this IGA, and with full, timely and accurate accounting and reporting by the City of such use.

#### **SUBAWARD AGREEMENT**

**NOW, THEREFORE, it is hereby agreed as follows:**

#### **6. RECITALS/EXHIBITS.**

The Recitals set forth above and all exhibits attached hereto are incorporated herein by this reference.

Exhibit A	Scope of Work
Exhibit B	Federal Transit Administration (FTA) Required Provisions
Exhibit C	Federal Certifications
Exhibit C-1	Federal Certification Regarding Lobbying
Exhibit C-2	Organizational Conflicts of Interest Disclosure Requirements and Certification
Exhibit C-3	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
Exhibit C-4	Contractor's Covenant Against Contingent Fees
Exhibit D	RTD DBE Contract Requirements
Exhibit E	Template Progress Report

#### **7. DEFINITIONS.**

- a. ***TOD Plan*** means the Equitable TOD Implementation Plan for the Federal BRT Corridor, consistent with the description in **Exhibit A**.
- b. ***Procurement Documents*** means the final written request for proposals or qualifications prepared and issued by the City, together with and including all exhibits, certifications, documents, technical specifications, technical requirements, instructions, terms, procedures, commitments, reference documents, and related requirements.

- c. **RTD Award** means the federal grant received by RTD to be passed through to the City for purposes of funding the TOD Plan.
- d. **Subaward** means an award provided by a Direct Recipient to a Subrecipient for the Subrecipient to carry out part of a federal award received by the Direct Recipient.
- e. **Subrecipient** means an entity that receives a Subaward (or Sub-agreement) from a Direct Recipient to carry out part of a federal program but does not include an individual that is a beneficiary of such program or a Third Party Contractor or Third Party Subcontractor. A Subrecipient may also be a Direct Recipient of other federal awards directly from a federal awarding agency.
- f. **Third Party Contract** means a legal instrument by which RTD or the City purchases property or services needed to carry out this IGA using the RTD award.
- g. **Third Party Contractor** mean an entity that is a party to a Third Party Contract.
- h. **Third Party Participant** means each participant in the preparation and development of the TOD Plan, except for FTA and RTD, whose work in connection with the TOD Plan is supported with FTA funding, eligible non-federal share dedicated to the TOD Plan, or is dedicated as an in-kind contribution eligible for non-federal share. A Third Party Participant may be a Subrecipient or Third Party Contractor.

#### 8. **SUBRECIPIENT STATUS.**

- a. Acknowledgement of Status. The City, as a Subrecipient of Section 20005(b) funds, understands, acknowledges and expressly agrees that it must comply with all applicable Federal laws, regulations and requirements as set forth in this IGA, the FTA Master Agreement, and with any subsequent modification or amendments to applicable Federal laws, regulations and requirements as more fully set forth in Section 15 herein. Any violation of a Federal requirement by the City may result in an enforcement action, termination of this IGA, disallowance of funding or other appropriate measures.

#### 9. **TOD PLAN.**

- a. General. The City shall use the Federal funds to undertake and complete the work described in the scope of work for the TOD Plan attached hereto as **Exhibit A (Scope of Work)**. The funds to be provided under this IGA shall only be used by the City for the completion of the TOD Plan as described in Exhibit A. No changes to the Scope of Work shall be made without prior written agreement between the Parties with approval from DRCOG and, if required, the FTA.

- b. Description of TOD Plan. The TOD Plan’s Scope of Work shall include a description of the TOD Plan’s location, a detailed project description, a specific description of the TOD Plan’s budget (line items), an independent cost estimate (**ICE**) and a schedule.

## 10. FUNDING.

- a. Federal funding for the development of the TOD Plan shall be provided under the FTA’s Pilot Program for Transit-Oriented Development Planning administered by RTD (**TOD Grant**). The City shall use the funds solely for eligible purposes defined under Section 20005(b) and FTA Circular 8010.1C, as they may be amended, promulgated or updated from time to time during the term of this IGA.
- b. TOD Grant Amount. The TOD Grant 1136-202x-xx will fund eligible costs for the development and implementation of the TOD Plan. It is anticipated that the TOD Grant available to RTD for the TOD Plan will be Two Million Dollars (**\$2,000, 000.00**) (the “**TOD Grant Amount**”). The TOD Grant Amount represents the total amount of federal funding provided under this IGA to fully fund the TOD Plan. The City is responsible for providing all remaining funds above the TOD Grant Amount necessary to fund the TOD Plan.
- c. Notice to Proceed/Completion. The City may commence work on the Plan upon receipt of a notice to proceed (**NTP**) from RTD. All TOD Plan work must be completed within three (3) years from the date of the NTP unless approved in writing in advance by RTD.
- d. Overruns. In no event shall RTD be responsible for reimbursement of funds for the TOD Plan in any amount greater than the federally funded portion of the grant amount. If the amount of grant funds received by RTD is less than the TOD Grant Amount, respectively, or the cost of the TOD Plan exceeds the grant amounts, the City may, at its discretion:
- (i) pay additional funds;
  - (ii) reduce the scope of work for the development of the TOD Plan with prior written approval from RTD and DRCOG; or
  - (iii) request to terminate the TOD Plan and this IGA as set forth below in Section 15 herein.
- e. TOD Plan Funding Summary:

<b>Funding Source</b>	<b>Amount</b>
Federal Share (100%)	\$2,000,000.00
Local Match (0%)	\$0.00
Total TOD Plan Budget	\$2,000,000.00

- f. Limited Award. This is a one-time award of Federal funds by RTD to the City and does not imply or obligate RTD to any future funding commitment.
- g. No RTD Obligation. RTD is not responsible to provide any funding to substitute for grant funds in the event the grant is withdrawn, disallowed or otherwise not funded.
- h. Administrative Fee. The Parties acknowledge that RTD has elected not to charge an administrative fee to partially recover RTD's costs of administering the grants.
- i. No Research and Development. The Parties acknowledge that this award does not include research or development.
- j. No Indirect Costs. All costs charged to the TOD Plan shall be identified by the City and the City shall not charge indirect costs for work performed on the TOD Plan.

## **11. THIRD PARTY PARTICIPANT AGREEMENTS**

- a. Flow Down of Provisions to Contractors. City may issue Procurement Documents to engage Third Party Contractors in connection with the preparation and development of the TOD Plan. The City understands, acknowledges and agrees that it is the responsibility of the City to require that each contract with a Third Party Participant shall comply with all applicable federal requirements as described in Section 16(a) of this IGA in order to be eligible for reimbursement of amounts paid under such a contract. The City shall require that the performance of all Third Party Participants and the fulfillment of all Federal requirements by those Third Party Participants which are more fully described in Section 16 herein and guidance provided by FTA Circular 4220.1F, Third Party Contracting Guidance and 49 C.F.R. Part 18.37, which requires Third Party Contracts to include all federally required clauses in their contracts and that Third Party Participants be made aware of the requirements imposed on them by federal statute and regulation, including the requirements imposed by 49 C.F.R. Part 18.

In the event that a Third Party Participant contracts with a subcontractor to perform work under this IGA, the City is responsible for ensuring that any such subcontract shall comply with all the terms of this IGA and all applicable federal statutes and requirements referenced herein. Each subcontract entered into between a Third Party Participant and a subcontractor shall include the following provision or a substantially similar version thereof:

**“RTD/Denver Intergovernmental Agreement (IGA) Terms and Conditions Binding on Subcontractors:** Subcontractor has received and reviewed a copy of the IGA, including its attached FTA Terms and Conditions and the Federal Certifications and Assurances applicable to the IGA, and finds the terms and conditions stated therein to be acceptable. Subcontractor agrees to be bound to the City of Denver for all those obligations under the IGA as the Contractor is bound to the City of Denver under the IGA. All terms and provisions in the IGA, the FTA Terms and Conditions and the Federal Certifications and Assurances that are applicable to the Subcontractor and the work are incorporated by reference, in their entirety, herein. Should there be a conflict between the IGA and this contract, the terms of the IGA

shall control. Subcontractor agrees to cooperate with RTD and the City of Denver in providing any information requested by RTD or City of Denver for grant reporting purposes.”

- b. Procurement Documents. The City shall provide RTD with the draft Procurement Documents and form of the Third Party Contract prior to City publication and RTD shall timely consult with the City regarding any changes necessary to cause the draft Procurement Documents and Third Party Contract to comply with the RTD Award and the terms of this IGA. Compliance review shall consist of inclusion of the required contract clauses for federally assisted subcontracts and Third Party Contracts. Compliance by the City and the Third Party Contractor with FTA Required Provisions for federally assisted projects shall be a condition of RTD Award receipt. Once RTD has reviewed and approved the Procurement Documents and the Third Party Contract for compliance with requirements, the City may publish the Procurement Documents, select the Third Party Contractor, and begin contract negotiations.
- c. Prior to the execution of a Third Party Contract between the City and a Third Party Participant, the Third Party Contractor shall complete and submit all required forms found in Exhibit C to the City, and the City shall timely submit those completed forms to RTD. The City and Third Party Contractor shall be the parties to the Third Party Contract; and the City, as the contracting agency, shall have authority for administration of the Third Party Participant’s contract. RTD will not directly contact the Third Party Contractor, except as set forth in Section 12.h. below. RTD may require ten (10) business days to review these submittals. Under no circumstance shall a Third Party Participant begin work without an executed Third Party Contract. Work performed without a compliant, executed Third Party Contract, with all completed forms having previously been submitted to RTD, will not be eligible for compensation by RTD Award funds.
- d. Copies to RTD. Upon execution of the Third Party Contract between the City and the Third Party Contractor, the City shall provide a copy of the Third Party Contract to RTD Planning and the RTD Small Business Office (**RTD SBO**). The City shall require that all of its Third Party Contractors provide copies of all subcontracts to RTD SBO.
- e. Review. The City shall manage all work performed by any Third Party Participant for the development of the TOD Plan. RTD shall have the opportunity to review and comment upon all documents, drawings, proposals, exhibits, etc., produced by the Third Party Participant as part of the TOD Plan, including preliminary drafts. RTD may withhold payment of the last ten percent (10%) of the grant funding until it has had an opportunity to provide comments on the final draft of the TOD Plan. Any property or information provided by RTD for the TOD Plan remains the property of RTD and shall be returned to RTD upon completion of the development of the TOD Plan. RTD shall be entitled to receive electronic copies of all reports, drawings, data, and other material produced or collected in electronic format by the Third Party Participant at no additional cost to RTD.
- f. Meetings. RTD shall have the right to attend and shall receive notice of all formal meetings with a Third Party Participant no less than forty-eight (48) hours in advance. RTD shall not give direction to a Third Party Participant but shall submit all comments on a Third Party Participant’s work to the City.

## 12. CIVIL RIGHTS SMALL BUSINESS OFFICE.

- a. It shall be the responsibility of the Parties to ensure that the compliance and implementation of Disadvantaged Business Enterprise (**DBE**) requirements are in accordance with 49 CFR Part 26 and RTD's FTA approved DBE Plan and Program. RTD shall be responsible for administering its own DBE program to set and monitor compliance with the goals on this project.
- b. RTD SBO has established a DBE goal of eighteen percent (18%).
- c. The City is responsible for providing a DBE Liaison (**DBE Liaison**) for the RTD SBO. In addition, the appropriate Third Party Contractor will provide a DBE Liaison for the planning phase of the Project. The City must include this requirement in the related Procurement Documents. The DBE Liaison will be responsible for contact information, submittals, invoicing/payment information, federal reporting information and interfacing with the RTD SBO to address various issues or concerns related to compliance with the DBE program requirements.
- d. It shall be the responsibility of City to provide RTD SBO with a copy of all proposals received in response to the Procurement Documents at least ten (10) business days in advance of selection of the successful Third Party Participant as part of the DBE requirements.
- e. It shall be the responsibility of the City to include the DBE goal and the RTD Civil Rights/EEO/DBE Contract Requirements, **Exhibit D**, in any RFP and in all executed Third Party Contracts. In the event of a conflict between **Exhibit D** and any other part of this IGA, **Exhibit D** shall control. To provide an explanation for the DBE Enclosures and general DBE requirements, the City will allow RTD's SBO to participate in any preproposal meeting held in connection with an RFP for a Third Party Contract. Persons submitting proposals must complete and submit all necessary forms (including DBE Enclosures) for the City to return to RTD SBO. To ensure compliance with RTD's DBE Plan and Program, all forms from the DBE Contract Requirements, Exhibit D, must be submitted to RTD SBO no later than five (5) business days following the RFP due date. Failure to submit completed forms may result in a proposer being deemed non-responsive. RTD SBO will provide the City with RTD's DBE responsiveness determination for each responsive proposal received no later than ten (10) business days after RTD SBO receipt of the same. Upon RTD SBO's responsiveness evaluation and determination of compliance with DBE Contract Requirements, the City shall proceed to award and administer any Third Party Contracts.
- f. Should the prime Third Party Participant, as selected by the City, be unable to meet the DBE Goal, it must provide documented proof of good faith efforts using the RTD SBO documentation process.
- g. It shall be the responsibility of the City's DBE Liaison, as named by the City, to obtain RTD SBO's review of all amendments and change orders to any DBE-related contracts prior to their execution.
- h. The City shall require the selected Third Party Participants to submit both to the City's Liaison and to RTD SBO a copy of all DBE subcontracts and/or purchase orders within thirty (30) days

of the Notice to Proceed. Under no circumstances shall a DBE Third Party Participant, as designated by the City, begin work without an executed subcontract or purchase order.

- i. No DBE Third Party Participant shall be replaced, removed, substituted or terminated without good cause as set forth in 49 CFR Part 26.53 (f) and pre-approval by RTD SBO. This includes reductions to scopes of services and/or subcontract values.
- j. RTD SBO will directly contact a Third Party Participant and sub-consultants for compliance monitoring, reviews and/or auditing purposes. The City shall require Third Party Participants to cooperate in such RTD SBO contacts.
- k. The City shall withhold payment from a DBE Third Party Participant for non-compliance with the DBE Program requirements and the provisions of this section as directed by RTD SBO.

### 13. **REPORTING/AUDITS.**

- a. RTD shall be responsible for all grant reporting for the development of the TOD Plan to the FTA. The City shall cooperate with RTD in providing information required by RTD for grant reporting and shall also require its Third Party Participants to provide such cooperation with RTD.
- b. If applicable, the City shall be responsible for providing data to support the calculation of air quality benefits derived from the TOD Plan which is required as part of the federal CMAQ process. The methodology for the data collection on the air quality benefits will be provided by RTD in advance of the reporting deadline to allow the City to prepare the data for submission.
- c. As of the Effective Date, the City shall submit to RTD monthly reports of progress made on the TOD Plan *regardless of whether any work has actually been performed during that month*, consistent with and in reference to the TOD Plan's Scope of Work (**Progress Report**). The monthly Progress Report shall include:
  - A cover sheet to accompany the Progress Report which includes RTD's assigned purchase order number for this Grant;
  - A summary of work completed with specific references to the Grant's Scope of Work;
  - A summary of issues that may delay or impact the Grant's schedule of deliverables; and
  - A revised date of completion of the TOD Plan, if applicable.

A template Progress Report is included as **Exhibit E**.

- d. RTD may withhold reimbursements until all required reporting is submitted. In the event Progress Reports are untimely or incomplete, payments may be delayed and certain amounts may be excluded or disallowed if rendered ineligible as a result. Delinquent or incomplete reporting may be reported to DRCOG.



- e. Audits. RTD, FHWA, FTA, or any auditor or contractor acting on their behalf shall have the right to audit the City's books and records and the books and records of the Third Party Participant(s) performing the work for the TOD Plan, and the contracts awarded for the TOD Plan shall provide that RTD, FHWA and/or FTA shall have the right to audit the Third Party Participants and all of Third Party Participant's subcontractors' books and records as they pertain to the development of the TOD Plan for a period of three (3) years from the date of completion of the Third Party Participant's work on the TOD Plan. The City agrees that grant closeout does not alter the reporting and record retention requirements of this Section.
- f. Project Closeout. Completion of the TOD Plan occurs when FTA notifies RTD that FTA has closed the grants. The City agrees that grant closeout by FTA does not invalidate any continuing requirements imposed by this or any other agreement, or any unmet requirements.

#### 14. INVOICING.

- a. Monthly Invoices. With each monthly Progress Report, if costs or expenses are incurred during that period, the City must submit invoices to RTD for verified, eligible costs and expenses consistent with the Scope of Work up to a maximum amount of the grant amount (if the grant is in the amounts as anticipated; otherwise up to the actual grant amount). **The invoice shall be in a form approved by RTD and include the RTD purchase order number specifically assigned to this IGA.** Such invoices shall only be for verified, eligible expenses consistent with the grant awards. Invoices shall include any Third Party Participant's invoice and other available background information regarding the work being invoiced. RTD shall reimburse the City only for actual Third Party Participant work and other eligible expenses detailed in the Scope of Work. The City agrees to attach to the invoice all receipts and proofs of payments for expenditures and support all costs charged to the TOD Plan, including any Third Party Participant work, with properly executed payroll records, time records, invoices, contracts and other documentation required to demonstrate eligibility.

Submit invoices to:

Regional Transportation District

Attn: Accounts Payable

1660 Blake Street DO-M3

Denver, CO 80202

Or to: [AP.Department@RTD-Denver.com](mailto:AP.Department@RTD-Denver.com)

With a copy to: [alicia.leitgeb@rtd-denver.com](mailto:alicia.leitgeb@rtd-denver.com)

- b. No Staff Time. Internal City staff time shall not be included as a reimbursable expense as part of the TOD Plan.
- c. Payment by RTD. RTD shall pay all approved invoices within thirty (30) days of receipt. If RTD disputes any invoice or portion thereof, it shall provide written notice to the City of the

dispute within fourteen (14) calendar days of receipt of the invoice; otherwise the invoice is deemed to be approved by RTD. RTD shall not be liable for any financial contribution to the TOD Plan funded pursuant to this IGA other than as set forth herein, unless previously authorized in writing. RTD shall not be responsible for paying Third Party Participant bills directly. RTD's approval of or payment of an invoice shall not be considered a review of the City's federal funding compliance practices or an approval of such practices and shall in no way relieve the City of its responsibility to comply with any applicable federal requirements and the requirements of its Third Party Participants. In the event any amount paid by RTD under this IGA is later determined to be ineligible for federal funding by RTD or any federal agency, the City shall require the party responsible for the ineligible payments to reimburse RTD the full amount of those funds and any costs, interest or penalties associated with the same.

- d. **Work performed on the TOD Plan prior to the NTP is not considered eligible work.**
- e. Expenditure of funds from the grants shall be documented separately by the City and Third Party Participant to ensure dollars spent coincide with task deliverables assignable to each funding source as determined by an independent cost estimate.
- f. Compliance by the City, Third Party Participant, and any other TOD Plan contractors and subcontractors with grant requirements and other requested changes by RTD shall be a condition of receipt of grant funding through RTD for the development of the TOD Plan.

15. **TERMINATION; SUSPENSION OF WORK.** This IGA may be terminated for any of the following reasons:

- a. Funds not Available. In the event that grant funds required for funding of this IGA are not made available to RTD, this IGA shall terminate unless the City elects to pay local match funds or reduce the Scope of Work for development of the TOD Plan as set forth above. Whether or not grant funds are available, or whether or not the City's local match funds are sufficient to pay for the costs of the TOD Plan, RTD is under no obligation to provide any funds for the TOD Plan other than grant funds actually received by RTD.
- b. Termination for Mutual Convenience. The Parties may terminate this IGA and terminate the development of the TOD Plan if both Parties agree in writing that the continued development of the TOD Plan would not produce beneficial results commensurate with the further expenditure of funds.
- c. RTD's Right to Terminate Contract for Convenience or Default. RTD shall also have the right to terminate this IGA for convenience or default, and the right to suspend the work, in accordance with provision FTA 8, Termination, of the FTA contract provisions attached as Exhibit B.
- d. The City's right to Terminate. The City reserves the right to terminate this IGA for convenience or default, in accordance with provision FTA 8, Termination, of the FTA contract provisions attached as Exhibit B. In the event that the City terminates this IGA pursuant to provision FTA 8, Termination, of the FTA contract provisions attached as Exhibit B, the City shall be required

to complete any portion of the work for which RTD has made payment prior to the City providing written notice of termination to RTD. At the time of termination, to the extent that RTD has paid funds to the City in excess of the value of work performed by the City under this IGA, the City shall remit such excess funds to RTD.

- e. The City agrees to remit to RTD any excess payments made to the City, with respect to any costs disallowed by the FTA after payment was made to the City by RTD, and any amounts recovered by the City from third parties or from other sources pursuant to this IGA, in addition to any penalties and interest assessed.
- f. In the event that either party exercises any termination rights described in this paragraph, this IGA shall cease to be of any further force and effect as of the date of termination, with the exception of all remedies which are specified herein and may otherwise be available to the Parties under the law, and with the exception of any rights or liabilities of the Parties that may survive by virtue of this IGA.

16. **COMPLIANCE WITH FEDERAL GRANT REQUIREMENTS ("FLOW DOWN OF PROVISIONS")**. As previously stated, the Parties acknowledge that development of the TOD Plan will be fully federally funded. This IGA and all subgrants, third party contracts and subcontracts are therefore subject to the FTA Master Agreement, as updated, and all other applicable federal regulations. All subgrants, Third Party Contracts, and Third Party Subcontracts must include as flow down provisions the terms of this IGA, including the FTA contract provisions attached as **Exhibit B**.

- a. The City shall at all times comply with all applicable FTA regulations, policies, procedures, reporting requirements, and directives as they may be amended, succeeded or promulgated from time to time during the term of this IGA, including without limitation those in FTA Circular 8100.1c, and those listed directly or by reference in the current FTA Master Agreement, as they may be amended, succeeded or promulgated from time to time during the term of this IGA. In addition to all such requirements imposed directly upon the City, those requirements imposed upon RTD as a grantee or recipient are also hereby imposed upon the City, and those rights reserved by DOT, FTA or any other applicable agency are hereby reserved by RTD. The City's failure to comply with any and all such requirements shall constitute a material breach of this IGA. The City may contact either RTD or FTA for a copy of the current FTA Master Agreement and certifications. FTA's Master Agreement for FY2024 can also be found at the FTA website: <http://www.transit.dot.gov>.
- b. Without limiting the foregoing, the following are specifically incorporated herein by this reference and shall govern this IGA: (i) FTA Master Agreement; (ii) US DOT Regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" 2 C.F.R. part 1201; (iii) FTA Circular 5010.1E, Grants Management – General; (iv) FTA Circular 4220.1F, "Third Party Contracting Guidance"; (v) Executive Order 12898 (Environmental Justice), and (vi) FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients." Those requirements imposed upon RTD as recipient of an FTA award are hereby imposed upon the City and its Third Party Participants to the fullest extent permitted by law, and those rights reserved by DOT, FTA or any other applicable agency are hereby reserved by RTD.

- c. All FTA-mandated terms will be deemed to control in the event of a conflict with other provisions contained in this IGA. 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.
  - d. The Federal Certifications and Assurances applicable to this IGA are attached and fully incorporated by reference herein as **Exhibit C**. A Certification Regarding Lobbying Form is included within Exhibit C-1; the form is applicable to federal awards exceeding \$100,000 and in such event must be completed by the City and returned to RTD prior to execution of this IGA by RTD. Such certifications, assurances and terms are subject to updating by FTA. The City agrees to comply with any additional FTA-required certifications and assurances during the term of this IGA for the City, and further agrees to require such compliance by any Third Party Participants for awards exceeding \$100,000 prior to entering into such contract. The City further understands and agrees that RTD shall perform System of Award Management (SAM) Checks to confirm that no federally excluded parties are participating in the contracts funded through this IGA, and that reporting of exclusion in a SAM Check shall render a party ineligible to participate until such exclusion is lifted. The City shall comply with all applicable requirements of such certifications, assurances and terms, require the City's Third Party Participants to likewise comply, and shall also require the City's Third Party Participants to extend all such requirements to each contractor, subcontractor, and any other Third Party Participant whose work is funded in whole or in part by RTD Award.
  - e. The City is required to adopt and publish its Title VI policy, providing a copy thereof to RTD, which shall include Title VI complaint procedures for investigating and tracking Title VI complaints. Title VI complaints are to be handled in compliance with federal law.
17. **TOD PLAN RECOMMENDATIONS.** The Parties acknowledge this IGA is for the development of the TOD Plan only. The Parties commit that they will make reasonable efforts to secure approvals from their respective governing bodies to implement needed infrastructure improvements within their capital improvements program; adopt appropriate zoning code, master plan and other regulatory changes; and incorporate recommendations into local ordinances, regulations or requirements governing development of the area. Nothing herein commits either governing body to grant such approvals, and nothing herein commits either party to fund any improvements identified in the TOD Plan or any other adopted plans.
18. **Third Parties.** No person or entity not a party to this IGA shall have rights hereunder, except the Federal Government.
19. **Conflicts.** No officer, member, or employee of RTD or the City, no members of the respective governing bodies of RTD or the City, and no other public officials or employees of RTD or the City during his or her tenure, or for one year thereafter, shall have any personal interest, direct or indirect, in any solicitation for services made pursuant to this IGA or the proceeds thereof.
20. **Merger.** This IGA represents the entire agreement between the Parties and may be amended only in writing, signed by the Parties.

21. Disputes. Disputes shall initially be resolved by the Party Liaisons defined as RTD’s Assistant General Manager for Planning and Development and City’s Director of Planning Services. If the Party Liaisons are unable to resolve the dispute, they shall escalate the dispute to RTD’s General Manager and the Mayor of Denver.

22. Notices. All contacts, communications, and data required to be performed or exchanged pursuant to this IGA will be sent to the following persons or their successors designated in writing:

For RTD:

Bill Sirois  
Sr. Manager of Transit-Oriented Communities  
Regional Transportation District

1560 Broadway, Suite 700  
Denver, Colorado 80202

For City:

Jonathan Webster  
Senior City Planner  
Community Planning & Development

201 W. Colfax, Dept. 205  
Denver, CO 80202

23. Term. This IGA shall become effective upon the date of execution by both Parties (**Effective Date**) and will terminate upon termination of the grant, unless sooner terminated as provided in Section 15 or extended in writing by both Parties. Certain provisions shall logically survive termination of this IGA.

24. Indemnification. The City shall require its Third Party Contractor to defend and indemnify, save, and hold harmless RTD, its employees and agents, against any and all claims, damages, liability, penalties, and awards including costs, expenses and attorney fees and related costs, incurred as a result of any negligent or reckless act or omission by Third Party Contractor, or its employees, agents, subcontractors, or assignees arising out of the preparation and development of the TOD Plan.

25. Insurance. The City shall require its Third Party Contractor to include RTD as a named insured on any policies issued in connection with the TOD Plan.

26. Successors and Assignment. The terms of the IGA shall be binding on the successors and assigns of each of the Parties. The City shall not assign this IGA, or any part thereof, without the prior written consent of RTD, and any assignment without such consent shall be void and unenforceable.

27. Captions. The captions and headings in this IGA are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

28. Further Cooperation. The Parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of this IGA, and will execute such additional documents as necessary to effectuate the same.

29. No Joint Venture. Nothing contained in this IGA is intended to create a partnership, joint venture or joint enterprise between the Parties, and any implication to the contrary is hereby disavowed. This IGA does not authorize any party hereto to act as an agent of the other party hereto for any purpose.

30. Appropriation. Any payment obligation by the City, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this IGA. The City does not by this IGA irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this IGA does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. All payments under this IGA shall be paid from funds of the City that have been duly appropriated and encumbered for the purposes hereof. The City has no obligation to make payments from other sources to satisfy such payments. The City is not under any obligation to make any future encumbrances or appropriations for this IGA.
31. Applicable Law and Venue. This IGA shall be given effect and construed by application of the law of the State of Colorado, and any action or proceeding arising hereunder shall be brought in the District Court for the City and County of Denver, State of Colorado; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the District of Colorado, applicable Division or any successor federal court having original jurisdiction.
32. Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this IGA or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.
33. Authority of the Parties. The Parties represent that each possesses the legal authority to enter into this IGA and that each Party has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this IGA and to bind the Parties to its terms. The person executing this IGA on behalf of the Parties warrant(s) that such person has full authorization to execute this IGA.
34. Execution in Counterparts. This IGA (and each amendment, modification and waiver in respect of this IGA) may be executed and delivered in counterparts (including by facsimile or email transmission), each of which will be deemed an original, but all of which when taken together shall constitute a single contract. This IGA shall become effective when it shall have been executed by each Party and when each Party shall have received counterparts hereof, which, when taken together, bear the signatures of the other Party hereto, and thereafter shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this IGA (including by facsimile or email) shall be effective as delivery of a manually executed counterpart of this IGA.
35. Electronic Signatures and Electronic Records. RTD consents to the use of electronic signatures. The IGA, and any other documents requiring a signature under the IGA, may be signed electronically in the manner specified by the City. 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 an electronic document, or a paper copy of a document bearing an electronic signature, 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.

*[Signatures on followings pages]*

IN WITNESS WHEREOF, the Parties hereto have executed this IGA on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**REGIONAL TRANSPORTATION DISTRICT**


**CITY of DENVER**

Signed by:  
  
By: 6D0BE27723044E0...  
Debra A. Johnson  
General Manager and CEO  
DATE: 1/21/2025 | 6:05 PM MST

By: \_\_\_\_\_  
Michael C. Johnston  
Mayor  
DATE: \_\_\_\_\_

Approved as to legal form for the Regional  
Transportation District:

Approved as to legal form for City:

Signed by:  
  
EDD766B270414A3...  
Nick Limberopoulos  
Associate General Counsel

\_\_\_\_\_  
Nathan Lucero  
Assistant City Attorney



**Contract Control Number:**  
**Contractor Name:**

CPLAN-202477587-00  
Regional Transportation District

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:**  
  
Attorney for the City and County of Denver  
  
By: \_\_\_\_\_

**REGISTERED AND COUNTERSIGNED:**  
  
By: \_\_\_\_\_  
  
By: \_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

CPLAN-202477587-00  
Regional Transportation District

By:

Signed by:

Debra A. Johnson

6D0BE27723944E0...

Name:

Debra A. Johnson

(please print)

Title:

GM/CEO

(please print)

ATTEST: [if required]

By:

Signed by:

Nick Limberopoulos

EDD755B279414A3...

Name:

Nick Limberopoulos

(please print)

Title:

Associate General Counsel

(please print)

## Exhibit A - Scope of Work

### Equitable TOD Implementation Plan for the Federal BRT Corridor

#### Overview

The City and County of Denver is seeking proposals from qualified firms to develop an equitable transit-oriented development (ETOD) implementation plan for the Federal Boulevard bus rapid transit (BRT) corridor. The purpose of this solicitation is to complete deliverables funded through the Federal Transit Administration's (FTA's) Transit-Oriented Development Pilot Program Grant. Given the combination of technical qualifications, situational understanding, and various skillsets required to deliver different aspects of this solicitation the City and County of Denver is focused on selecting the right combination of skills and experience for this important project.

The Colorado Department of Transportation (CDOT) is sponsoring the Federal Boulevard Bus Rapid Transit project and has entered the project into FTA's Small Starts project development. To support the planned BRT system this project will focus on the implementation of ETOD within a half-mile of Federal Boulevard along the 9-mile corridor within the City and County of Denver. The project will encompass a variety of technical planning tasks including affordable housing strategy, small-business retention, opportunity site planning, first-mile/last-mile connections, implementation planning, and better aligning zoning regulations to support transit service.

#### Scope of Work

*When a vendor is selected the City and vendor will agree upon any changes to the following scope of work deemed necessary to provide greater detail, clarity, and correctness. The outlined tasks below are not intended to be developed in a strictly linear sequence. Instead, they should be strategically coordinated to account for the interconnected elements and mutual influences between tasks.*

#### Project Tasks

##### **Task 0: Project Management (On-going)**

*Objective: Provide a comprehensive management strategy for the project to ensure the successful completion of an ETOD implementation plan for the Federal Boulevard corridor.*

**0.1 Finalize Scope, Budget, and Schedule.** The Consultant Team (CT) will work with the Project Management Team (PMT) to refine the preliminary scope of work, schedule, and budget. A final scope of work and budget (Deliverable D.0.1) and Project Management Plan will memorialize these discussions. This task will likely include:

- Identification of information needs and method for data transfer
- Discussion of initial public engagement strategy
- Discussion of initial public and media communications strategy
- Discussion about future meeting agendas and future meeting dates
- Steering Committee meetings coordination and organization
- Identification of roles and responsibilities (CPD staff, Steering Committee, technical group(s), Planning Board, etc.)

- Preliminary identification of additional stakeholders
- Decision-making authority and process

- 0.2 Kick-off Workshop.** Within the first 30 days, the Consultant Team will convene a PMT preplanning workshop to formulate the foundation for the process, and to discuss the context, key issues, outline public outreach goals and strategies, and confirm staff leadership, technical group(s), and Steering Committee. The Consultant Team will prepare a draft Project Management Plan (PMP) for discussion at this required kickoff meeting. At this session the CT and PMT will collectively discuss the vision for Federal Boulevard corridor and define the goals and desired outcomes.
- 0.3 Project Management Plan.** The Consultant Team will manage its subconsultants assembled for this project, including providing direction to subconsultants, QA/QC of draft products and final work products. It will also include processing subconsultant invoices and preparing monthly invoices for CCD. This task will include developing tools and protocols for ongoing coordination with CCD throughout the project. The Consultant Team will participate in regularly scheduled PMT meetings throughout the entire project (see Task 0.4 below). The Consultant Team will prepare a memo summarizing roles, meeting frequency, meeting objectives, etc.
- 0.4 Project Management Team Meetings.** The Consultant Team will participate in regularly scheduled bi-weekly meetings with the PMT throughout the entire project. The meetings may be in-person or via Microsoft Teams. Subconsultants will participate in bi-weekly coordination meetings and calls when necessary and when schedules permit.
- 0.5 Coordination with Concurrent Planning Efforts.** The Consultant Team will participate in coordination meetings with concurrent planning efforts, which may include CCD Neighborhood Planning Initiatives (Southwest Area Plan, Far Southwest Area Plan) and Colorado Department of Transportation (CDOT) BRT planning teams when necessary, among other active planning projects in the study corridor.
- 0.6 Technical Advisory Committee (TAC). (Optional)** The city will appoint representatives of each relevant agency that will participate in early discussions and review of planning concepts as part of a Technical Advisory Committee. Participants would be expected to include, at minimum, City and County of Denver staff, RTD, CDOT, and other agencies. The Consultant Team will attend and assist in facilitating Technical Advisory Committee meetings.
- 0.7 Monthly Invoice and Progress Reports.** The Consultant Team will prepare monthly invoices and progress reports for review and approval by the CCD PM. The invoices will include all staff time and direct expenses including those for the Consultant Team and its subconsultants. The monthly progress reports will identify tasks completed during the previous month and identify upcoming tasks, events, and deliverables for the upcoming month. Progress reports will be formatted as simple memorandum and attached to monthly invoices.

## **Task 0 Deliverables**

- D.0.1** *Draft and Final Scope, Budget, and Process Schedule*
- D.0.2** *Project Management Plan Memo*
- D.0.3** *Monthly Invoices and Progress Reports*

### **Task 0 Consultant Team Responsibilities**

- Develop final scope, budget, and schedule
- Facilitate Kickoff Workshop and bi-weekly PMT meetings
- Produce Project Management Plan
- Provide monthly invoices and progress reports

### **Task 0 Staff Responsibilities**

- Collaborate and approve final scope, budget and schedule
- Participate in Kickoff Workshop and bi-weekly PMT meetings
- Review and approve the Project Management Plan
- Review and approve monthly invoices and progress reports

### **Task 1: Community Engagement (Ongoing)**

*Objective: Engage the community in targeted, meaningful, and strategic ways. Effectively leverage established community engagement groups, organizations, methods, and channels that have been successfully utilized in past and on-going planning efforts within the study corridor. The Consultant Team should solicit input from the PMT, stakeholders, community, staff, and decision-makers to determine the overall public outreach strategy, major issues of concern and priorities for land use and policies.*

- 1.1 Engagement Kick-off Meeting.** Discuss ideas and aspirations for the project and understand the breadth and level of engagement needed to have a successful plan process.
- 1.2 Community Engagement Plan Refinement.** Based on initial meetings with the PMT, the Consultant Team will draft a public outreach strategy (i.e. community outreach plan, public involvement plan, etc.) that outlines all public meetings, notices, charrettes, and other outreach tools for the plan, including but not limited to the specific outreach tools described below. The strategy should emphasize reaching all relevant stakeholder populations, including hard-to-reach populations like low-income, youth, renter, and non-English speakers (i.e., Language Access Plan) as well as landowners and businesses, established RNOs and advocacy and community organizations, and the development community using both high tech and high touch methods. Earlier community efforts will be recognized and incorporated to maintain continuity and build upon momentum gained from previous successes. The Consultant Team will need to ensure that community engagement efforts are coordinated and align with the NEPA process being undertaken by CDOT for the Federal BRT Project and Colfax Cloverleaf, CCD NPI Plans, and other active planning projects.
- 1.3 Language Access, Title VI, ADA and Section 508 Compliance.** The Language Access program under the Denver Office of Immigration and Refugee Affairs provides guidance and subject matter expertise on language access compliance and overall programming. Based on City requirements, the consultant will develop a language access plan to meet the needs of Limited English Proficient (LEP) Denver residents in compliance with Title VI. To meet requirements of Federal processes such as the National Environmental Protection Act (NEPA), the City and Consultant will determine what documents are subject to the final rule updating accessibility requirements for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act and Section 255 of the Communications Act. This task includes the implementation of the public involvement plan for the various events including stakeholder and public meetings in a manner that promotes inclusion and diversity of individuals participating in

the planning process and meets federal and city guidelines, such as providing language interpretation for public events and translation of documents. The processes and deliverables are to be determined on this task based on regulated analysis to determine frequency of contact, translation services, and other activities to remain in compliance with LEP, ADA, and Section 508.

- 1.4 Stakeholder Interviews.** The Consultant Team will interview city staff and key stakeholders (CDOT, RTD, City Council members, RNOs/nearby community organizations and leaders, DHA, neighbor property owners, etc.) early in the process. Stakeholder input will be gathered through one-on-one interviews, small focus group meetings, design charrettes (for ETOD opportunity sites) or similar methods.
- 1.5 Steering Committee. (Optional).** A Steering Committee may be warranted to guide the planning process and would be comprised of community members, neighborhood organization representatives, landowners in the planning area, businesses, and advocacy groups.
- 1.6 Community Navigator Program.** The Consultant Team will implement and administer a community navigator program to engage residents who are typically under-represented in the planning process. This will likely include a focus on residents of who are traditionally hard to reach in city-led processes, including but not limited to youth, lower-income households, renters, people who do not speak English as a first language, and communities of color. Other hard to reach communities should be identified throughout the plan process. The number of navigators to be deployed will be determined as part of the Community Outreach Plan refinement.
- 1.7 Surveys.** Online surveys and/or hard copy surveys are an expected engagement tool. The Consultant Team will provide software applications for online surveys (unless agreed upon otherwise) with the Consultant Team also expected to develop survey content. Mailed survey(s) that conforms with national best practice (including the potential for being statistically valid) may be required if need arises.
- 1.8 Community Engagement Windows.** A series of community engagement windows should be crafted that uses multiple outreach tools including public workshops, navigators, and online surveys. Up to three engagement windows are anticipated.
- 1.9 Project Messaging and Branding.** Clear, concise messaging about the project, the community planning process, and how these pieces relate, should be developed at the beginning of the project to help inform all communications shared during community engagement activities. Messaging should include key messages categorized by audience as well as answers to common questions. It is anticipated that the messaging/FAQs will be updated periodically as the project advances. The Consultant Team will collaborate with City communications staff to develop a branding approach including style guides, visuals, voice, and color palette to ensure consistency across all engagement and outreach efforts. The Consultant Team will develop a set of brand templates for meeting materials to ensure consistency and promote efficiency.

## **Task 1 Deliverables**

- D.1.1** *Community Engagement Plan*
- D.1.2** *Project Surveys (up to 3)*
- D.1.3** *Promotional and presentation materials associated with community engagement and public communications activities, including PowerPoints or presentation materials, promotional flyers, hand-outs, fact sheets, or mailers*

**D.1.3** *Project messaging, FAQs, and branding materials (on-going)*

**D.1.5** *Community engagement summaries (summarizes all engagement efforts at each major plan milestone, including demographic data on participation, survey, and navigator findings, etc.)*

### **Task 1 Consultant Team Responsibilities**

- *Produce Community Engagement Plan*
- *Produce project messaging and branding*
- *Produce meeting materials as needed*
- *Provide survey platform and produce survey content*
- *Establish or facilitate a Community Navigator Program*
- *Develop, coordinate, and promote all Community Engagement Windows*
- *Produce community engagement summaries*

### **Task 1 Staff Responsibilities**

- *Participate in engagement kickoff, stakeholder, Steering Committee and TAC meetings as needed*
- *Collaborate on refining of Community Outreach Strategy with special emphasis on city process, city council strategy, managing interdepartmental relationships, etc.*
- *Collaborate on refining and review project messaging and branding*
- *Review and contribute to materials for all meetings as needed*
- *Review and approve survey content*
- *Collaborate on standing up the Community Navigator Program*
- *Collaborate on the development, coordination, and promotion of all Community Engagement Windows*
- *Review and approve community engagement summaries*

### **Task 2: Existing Conditions (3 months)**

*Objective: Achieve a comprehensive understanding of existing and projected study area conditions.*

*Collect the detailed information required to identify and analyze potential ETOD opportunity sites.*

*Summarize previous and on-going planning efforts relevant to ETOD planning within the study corridor.*

*Build upon and refine findings from recent existing conditions studies commissioned by CCD.*

- 2.1 Field Visit.** The project will begin with an organized field visit of the study corridor. This will allow for the PMT and Consultant Team to observe the physical, social, economic, and cultural aspects of the planning area first-hand and establish a dialogue surrounding the key planning conditions and considerations to be addressed within the study.
- 2.2 Map Existing and Baseline Conditions.** Map existing and projected conditions within the study area including land use, demographic, economic, mobility, open space, and infrastructure conditions. Prepare an Inventory of Existing Conditions Map Book that will provide the background data and mapping needed to inform subsequent technical planning tasks.
- 2.3 Review of Previous Studies.** Conduct a review of previous studies and on-going planning efforts relevant to ETOD planning within the study area. Summarize the key findings of previous studies in a concise memorandum.

## Task 2 Deliverables

**D.2.1** *Inventory of Existing Conditions Map Book*

**D.2.2** *Review of Previous Studies Memorandum*

## Task 2 Consultant Team Responsibilities

- *Produce Existing Conditions Mapping Template*
- *Produce Inventory of Existing Conditions Map Book*
- *Produce a Summary of Previous Studies Memorandum*

## Task 2 Staff Responsibilities

- *Participate in field visits*
- *Provide data, maps, and subject matter expertise on city data sources*
- *Review, comment, and approve the draft and final Inventory of Existing Conditions Map Book and Previous Studies Memorandum*

## Task 3: ETOD Policy and Strategy (8 months)

*Objective: Establish ETOD goals, policy, and strategy. Identify ETOD best practices and methods from peer city research for applicability to the Federal Boulevard corridor. Develop data informed tools to assess the risk for displacement and identify appropriate mitigation strategies. Assess affordable housing needs and identify strategies to provide equitable housing options to historically disadvantaged populations. Develop a strategy to preserve and support small-businesses within the study corridor.*

**3.1 ETOD Best Practices Guidebook.** Conduct research on ETOD best practices and methods employed by peer cities. Summarize ETOD best practices and relevant case studies in a guidebook document. Expand the city’s understanding of the likely impacts of BRT investments and the tactics needed to stabilize residents and businesses. Review best practices for programs and services utilized or considered in the United States to address involuntary displacement, specifically stemming from large public investments and projects, and that support equity building opportunities for residents and business owners. Research should also focus on identifying funding programs and mechanisms utilized and required to combat involuntary displacement and support neighborhood stabilization.

**3.2 ETOD Policy.** Establish ETOD policy, goals, and strategy.

**3.3 Displacement Threat Assessment Tool.** Update CCD’s investment impact change model to examine the displacement threats of major transit investments on existing local businesses. Develop a new change model to assess the displacement threats of land use regulatory and zoning changes to facilitate transit-oriented development and subsequent private investments within the corridor. Create a system to understand and respond to the relationship between land use decisions and displacement pressures, aiming for equitable development outcomes.

Develop a neighborhood typology framework for understanding the different stages of neighborhood change. Create a maximum of four neighborhood typologies informed by neighborhood dashboard data and research identifying the characteristics and conditions necessary to group neighborhoods by threat or phase (preconstruction, construction, post construction). Update CCD’s Policy Playbook to incorporate a new neighborhood typology framework and describe best practices in community engagement to identify and deploy neighborhood stabilization programs and resources.



**3.4 Affordable Housing Strategy.** Conduct a comprehensive housing assessment within the corridor to assess housing affordability challenges, needs, and availability. This should include an inventory of existing deed-restricted affordable housing units and covenants, naturally occurring affordable housing, and opportunity sites for new affordable units in proximity to transit stations. Identify and advance programs and tools to preserve naturally occurring affordable housing and provide equitable housing options to historically disadvantaged populations.

**3.5 Small-Business Retention Strategy.** This strategy should identify the mechanisms and tools needed to preserve and support existing small businesses within the study area. This may include businesses that are impacted directly by the construction and implementation of BRT service and/or indirectly through increasing redevelopment pressures. Research should identify the appropriate measures required to mitigate any negative financial impacts that may stem from reduced access and decreased sales volume. Where commercial displacement is possible resulting from anticipated redevelopment ‘right-of-return’ policies should be examined for temporarily displaced commercial tenants.

### **Task 3 Deliverables**

**D.3.1** *ETOD Best Practices Guidebook*

**D.3.2** *ETOD Policy Plan*

- *ETOD Policy and Goals*
- *Displacement Threat Assessment Tool*
- *Affordable Housing Strategy*
- *Small-Business Retention Strategy*

### **Task 3 Consultant Team Responsibilities**

- *Produce ETOD Best Practices Guidebook*
- *Produce ETOD Policy Plan*

### **Task 3 Staff Responsibilities**

- *Review and approve ETOD Best Practices Guidebook*
- *Review and approve ETOD Policy Plan*

### **Task 4: Opportunity Site and Infrastructure Planning**

*Objective: The objective of this task is to identify key ETOD opportunity sites within the study corridor and conduct site-specific master-planning and infrastructure needs identification. Planning efforts will focus on activities that facilitate the future development of ETOD sites. Activities may include environmental constraint analysis, conceptual site planning, infrastructure needs and project identification, infrastructure project prioritization, infrastructure feasibility analysis, conceptual design, and cost estimating. Achieve an understanding of the financial feasibility of building equitable ETOD to support Federal Boulevard BRT*

**4.1 Opportunity Site Analysis/Identification.** Opportunity sites will be identified based upon site selection criteria that will include large underdeveloped properties, ease of parcel assemblage, fragmented ownership, proximity to planned BRT stations, land utilization, topography, environmental constraints, and interested planning partners.

- 4.2 Opportunity Site Master-Planning.** This will include conceptual site development plans, infrastructure master plans, and potential development agreements that will include affordable housing, community serving uses, and other equitable TOD requirements. This may incorporate an economic impact analysis of public and private investment at opportunity sites.
- 4.3 Infrastructure Gap Analysis and Identification.** This task will include an inventory of site-specific existing infrastructure conditions and capacity and identify investments needed to accommodate ETOD opportunity site development. The infrastructure assessment will include sustainable and climate-resilient infrastructure, roadway connections, stormwater, sanitary, public safety, trails, bike/ped connections, and utilities.
- 4.4 Feasibility Analysis.** Conduct feasibility analysis to confirm the infrastructure improvement is feasible given site constraints.
- 4.5 Conceptual Design and Cost Estimating.** Perform conceptual design of priority infrastructure projects and develop detailed cost estimates.
- 4.6 Infrastructure Project Prioritization.** A prioritization methodology will be developed and applied to infrastructure projects that support the development of opportunity sites.
- 4.7 ETOD Financing Strategy.** Identify innovative financing and funding opportunities for ETOD supportive infrastructure and site development. This may include an areawide tax increment financing district, urban renewal areas, local improvement/local maintenance district, business improvement districts, metropolitan districts cost recovery districts, infrastructure grant awards and project specific gap financing solutions.

#### **Task 4 Deliverables**

##### ***D.4.1 ETOD Opportunity Site and Infrastructure Needs Report***

- *Conceptual Master-Planning*
- *Infrastructure Gap Analysis*
- *Infrastructure Project Identification and Prioritization*
- *ETOD Financing Strategy*

#### **Task 4 Consultant Team Responsibilities**

- *Produce ETOD Opportunity Site and Infrastructure Needs Report*

#### **Task 4 Staff Responsibilities**

- *Review and approve ETOD Opportunity Site and Infrastructure Needs Report*

#### **Task 5: Regulatory Framework Assessment (36 months)**

*Objective: This task will conduct a comprehensive review of the regulatory framework of land use and development within the corridor to assess existing alignment with ETOD. The assessment will include recommendations to reduce barriers to transit-supportive development, identify needed changes to existing zoning and regulatory tools, and develop a scope of work to advance regulatory changes through implementation. It is anticipated that city staff would then advance specific text and map amendments to implement the identified changes.*

- 5.1 Framework Assessment.** Conduct a comprehensive analysis of existing zoning regulations within the corridor. Develop a matrix that classifies land use regulations as being supportive, not supportive, or neutral to ETOD.
- 5.2 Concept Plan.** Create a preliminary concept plan for an ETOD opportunity site identified within Task 4.1, that advances one or more plan priorities. Submit the concept plan through the development review process to better understand and identify challenges to ETOD presented by existing regulations and the development review process.
- 5.3 Strategy Report.** Building upon the findings of the previous subtasks and policy recommendations of Task 3 – ETOD Policy and Strategy, develop a Regulatory Framework Assessment and Strategy Report, identifying the regulatory changes needed to further plan priorities and better support ETOD. The strategy report will be informed by stakeholder outreach conducted by CCD and the Consultant Team.
- 5.4 Regulatory Scope of Work.** Develop a scope of work to advance the recommendations of the ETOD Strategy Report through to regulatory implementation. This could include an annotated outline of needed regulatory changes, community outreach plan, drafting schedule, and legislative schedule.
- 5.5 Parking Maximum Study.** Conduct a parking maximum study that will identify the best practices of peer cities, assess development financing impacts, and utilize travel demand modeling to inform potential parking maximum guidance in transit corridors. This will examine parking maximum ratios that are appropriate for various land uses and how they may differ by neighborhood context. The study will analyze how parking maximums could be adjusted in BRT corridors relative to areas not supported by high-capacity frequent transit. This should also include an analysis of Denver’s TDM ordinance and rules & regulations to identify opportunities for greater synergy between parking management tools.
- 5.6 Regulatory Package.** City staff will advance the Regulatory Scope of Work concluding with the implementation of a Regulatory Package which may include specific map and text amendments, subject to adoption by City Council.
- 5.7 Regulatory Package Tracking Memorandum.** The Consultant Team will develop a memorandum that will suggest measures of success and identify the data needed for staff to effectively monitor the performance of the Regulatory Package over time.

#### **Task 5 Deliverables**

- D.5.1** *Regulatory Framework Assessment and Strategy Report*
- D.5.2** *Regulatory Scope of Work*
- D.5.3** *Parking Maximum Study Report*
- D.5.4** *Regulatory Package*
- D.5.5** *Regulatory Package Tracking Memorandum*

#### **Task 5 Consultant Team Responsibilities**

- *Conduct regulatory assessment*
- *Develop matrix and concept plan*
- *Produce Regulatory Framework Assessment and Strategy Report*
- *Produce Regulatory Scope of Work*

- *Produce Parking Maximum Study Report*
- *Produce Regulatory Package Tracking Memorandum*
- *Participate in engagement activities as needed*

#### **Task 5 Staff Responsibilities**

- *Assist with regulatory assessment and concept plan review*
- *Review and approve Regulatory Framework Assessment and Strategy Report*
- *Review and approve Regulatory Scope of Work*
- *Review and approve Parking Maximum Study Report*
- *Advance a Regulatory Package through implementation*
- *Participate in all engagement activities*

#### **Task 6: First-Mile/Last-Mile Study (7 months)**

*Objective: Advance Federal BRT-supportive first-mile/last-mile projects and recommendations through targeted implementation activities. This task will identify and prioritize first-mile/last-mile projects and complete the next step efforts required to move these projects towards implementation.*

- 6.1 Needs Assessment.** Conduct a corridor-wide assessment to identify the first-mile/last-mile projects needed to support the Federal BRT project. Project identification should consider bicycle and pedestrian facilities, safety improvements, transportation demand management (TDM) strategies, new or improved transit connections, improvements to existing infrastructure, station amenities, and shared mobility options.
- 6.2 Project Identification and Prioritization.** Develop a project list, which may include building upon prior CCD efforts, and create a methodology to prioritize projects, based on station use, need, and other potential criteria.
- 6.3 Cost Estimation and Conceptual Design.** Advance priority projects through targeted next step efforts which may include detailed cost estimates and conceptual design, among other needed activities on no more than 10 projects.

#### **Task 6 Deliverables**

**D.6.1** *First-Mile/Last-Mile Study Report*

#### **Task 6 Consultant Team Responsibilities**

- *Produce First-Mile/Last-Mile Study Report*

#### **Task 6 Staff Responsibilities**

- *Review and approve First-Mile/Last-Mile Study Report*

#### **Task 7: Implementation Plans (18 months)**

*Objective: To advance the transit-supportive recommendations identified within recent Neighborhood Planning Initiative (NPI) plans towards implementation. Implementation planning efforts will be limited to priority recommendations located within the geography of the ETOD study boundary and/or to area-*

*wide recommendations that will have a tangible impact on facilitating ETOD within the study area or supporting future BRT ridership. The plans will examine each priority recommendations in detail and identify the next steps needed to advance the project, service, or program to completion. The planning work in this task will be focused on conducting, completing, and documenting the next step activities for each priority project recommendation. Next step activities will be variable dependent upon project needs but may include conceptual design, feasibility studies, developing scopes of work and project management plans, and cost estimating.*

- 7.1 Near Northwest Area ETOD Implementation Plan.** The Near Northwest Area Plan was adopted in January of 2024 and includes implementation guidance for plan recommendations within an Implementation Matrix appendix. The matrix classifies recommendations by type and identifies suggested timeframes, plan priorities, and partner agencies. Building upon this effort the Consultant Team will conduct a detailed analysis of priority recommendations and identify the key next steps required to advance the project, program, or service. The Implementation Plan will describe the next step planning activities required for each recommendation and document those efforts. Where appropriate GIS shapefiles for recommendations should be created and mapped by the Consultant Team, if not previously available from CCD sources.
- 7.2 West Area ETOD Implementation Plan.** The West Area Plan was adopted in March of 2023 and the plan document concludes with a chapter on implementation guidance. The chapter classifies recommendations by type and identifies suggested timeframes and partner agencies. Building upon this effort the Consultant Team will conduct a detailed analysis of priority ETOD recommendations and identify the key next steps required to advance the project, program, or service. The Implementation Plan will describe the next step planning activities required for each recommendation and document those efforts. Where appropriate GIS shapefiles for recommendations should be created and mapped by the Consultant Team, if not previously available from CCD sources.
- 7.3 Southwest Area ETOD Implementation Plan.** Beginning with previously identified implementation next steps identified in the Southwest Area Plan Implementation Appendix, available in March 2025, the Consultant Team will conduct, complete, and document the next step activities for each priority recommendation. Where appropriate GIS shapefiles for recommendations should be created and mapped by the Consultant Team, if not previously available from CCD sources.
- 7.4 Far Southwest Area ETOD Implementation Plan.** Beginning with previously identified implementation next steps identified in the Far Southwest Area Plan Implementation Appendix, available in March 2025, the Consultant Team will conduct, complete, and document the next step activities for each priority recommendation. Where appropriate GIS shapefiles for recommendations should be created and mapped by the Consultant Team, if not previously available from CCD sources.

## **Task 7 Deliverables**

- D.7.1** Near Northwest Area ETOD Implementation Plan
- D.7.2** West Area ETOD Implementation Plan
- D.7.3** Southwest Area ETOD Implementation Plan

#### **D.7.4** *Far Southwest Area ETOD Implementation Plan*

##### **Task 7 Consultant Team Responsibilities**

- *Produce Near Northwest Area ETOD Implementation Plan*
- *Produce West Area ETOD Implementation Plan*
- *Produce Southwest Area ETOD Implementation Plan*
- *Produce Far Southwest Area ETOD Implementation Plan*
- *Conduct, complete, and document the next step activities for each project included within the implementation plans*
- *Create GIS shapefiles of recommended projects, where previously unavailable*

##### **Task 7 Staff Responsibilities**

- *Identification of TOD-supportive recommendations in each NPI plan*
- *Prioritization of plan recommendations and identification of the top tier to be included within each implementation plan*
- *Identification of projects for each priority recommendation to be advanced within the implementation plans*
- *Provide Consultant Team with GIS shapefiles of recommendations, where previously available*

Exhibit B - FTA Required Provisions

FEDERALLY REQUIRED TERMS AND CONDITIONS

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**I. DEFINITIONS**

All capitalized terms used in this Section (Federally Required Terms and Conditions) and not otherwise defined in this Section (Federally Required Terms and Conditions) have the meanings assigned to them in the FTA Master Agreement and the General Terms and Conditions attached to this Contract. The following definitions shall apply to this Section (Federally Required Terms and Conditions):

- A. **Contract** means the IGA or Third Party Contracts, as applicable.
- B. **[Contractor]** means the City or Third Party Participants, as applicable.
- C. **Flow-Down Clause** means a section of this Section (Federally Required Terms and Conditions), including all subsections, that Contractor must include, unmodified (except to identify the appropriate parties), in each Third Party Agreement funded under this Contract.
- D. **FTA Master Agreement** means the Master Agreement for Federal Transit Administration Agreements by and between the Federal Transportation Administration (FTA) and RTD, as updated from time to time.

**II. ALL FEDERALLY-FUNDED CONTRACTS**

- 1. APPLICATION OF FEDERAL REQUIREMENTS
  - A. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current FTA Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure



to so comply shall constitute a material breach of this Contract. Contractor may contact either RTD or FTA for a copy of the current FTA Master Agreement. 49 C.F.R. Part 18.

- B. The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract and subcontracts at all tiers.

## 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTY PARTICIPANTS

- A. RTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 RTD, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract.
- B. This section is a Flow-Down Clause.

## 3. STANDARDS OF CONDUCT

- A. Contractor agrees to establish and maintain written Standards of Conduct covering conflicts of interest that:
  - 1. Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a Third Party Contract or subcontract:
    - a. officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement ("Involved Parties");
    - b. The immediate family members or partners of the Involved Parties; and
    - c. An entity or organization that employs or is about to employ any Involved Parties;
  - 2. Prohibit any Involved Part above from:
    - a. Engaging in any activities involving RTD's or Contractor's present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and
    - b. Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Contract, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
  - 3. Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above and Third Party Participants.

- B. Contractor affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Contract.
- C. This section is a Flow-Down Clause.

4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. 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 Contract. Upon execution of the 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 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.
- B. 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(I) on the Contractor, to the extent the Federal Government deems appropriate.
- C. This section is a Flow-Down Clause.

5. TRAFFICKING IN PERSONS

The Contractor agrees that the Contractor and its employees shall not, at any time during the performance of this Contract, do any of the following:

- A. Engage in severe forms of trafficking in persons, as defined Section 103 of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended, 22 U.S.C. § 7102;
- B. Procure a commercial sex act, as defined Section 103 of the TVPA, as amended, 22 U.S.C. § 7102; or
- C. Use forced labor, defined as labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, in the performance of the Contract or permit the use of forced labor in the performance of any subcontract hereunder.

6. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

- A. Contractor agrees that, prior to entering into any subcontract, Contractor will require the subcontractor to provide a certification on Federal Tax Liability and Recent Felony Convictions, which should be identical to the certification that Contractor provided by RTD. If the prospective subcontractor cannot certify as to the statements, Contractor shall not enter into the subcontract absent RTD and FTA approval.
- B. This section is a Flow-Down Clause.

7. ACCESS TO RECORDS AND REPORTS

- A. Contractor will retain and will require its Third Party Participants 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. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the Contractor may regard as confidential or proprietary, related to performance of this Contract as reasonably may be required. The Contractor shall maintain complete and readily accessible records, and shall permit RTD, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions. Such access requires the Contractor to provide timely and reasonable access for the purpose of interview and discussion related to such documents. The rights of access in this clause are not limited to the required retention period(s) but last as long as the records are retained. Contractor agrees to otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- D. Contractor agrees to permit FTA and its contractors' access to the sites of performance under this Contract as may be reasonably required.
- E. This section is a Flow-Down Clause.

8. CIVIL RIGHTS AND EQUAL OPPORTUNITY LAWS AND REGULATIONS

- A. Contractor shall at all times comply with applicable federal civil rights laws, regulations, and requirements, including the laws set forth below, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing.
- B. Nondiscrimination in Federal Public Transportation Programs. Contractor agrees to, and assures that it and each Third Party Participant will:
  - 1. Prohibit discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age.
  - 2. Prohibit the:
    - a. exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. 5332;
    - b. denial of program benefits in employment or a business opportunity identified in 49 U.S.C. 5332; or
    - c. discrimination identified in 49 U.S.C. 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. 5332.
  - 3. Follow:
    - a. The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
    - b. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- C. Nondiscrimination – Title VI of the Civil Rights Act. Contractor agrees to, and assures that it and each Third Party Participant will:
  - 1. Prohibit discrimination based on race, color, or national origin;
  - 2. Comply with:
    - a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.;
    - b. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and
    - c. Federal transit law, specifically 49 U.S.C. § 5332; and
  - 3. Follow:
    - a. The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
    - b. U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and

c. All other applicable federal guidance that may be issued.

D. Equal Employment Opportunity.

1. Contractor agrees to, and assures that it and each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
  - a. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;
  - b. Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
  - c. Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
  - d. Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of the FTA Master Agreement;
  - e. Comply with FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;" and
  - f. Follow other federal guidance pertaining to EEO laws, regulations, and requirements.
2. Contractor agrees to, and assures that it and each Third Party Participant will:
  - a. If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
    - i. Recruitment advertising, recruitment, and employment;
    - ii. Rates of pay and other forms of compensation;
    - iii. Selection for training, including apprenticeship, and upgrading; and
    - iv. Transfers, demotions, layoffs, and terminations; but
  - b. Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer;" and
3. Nondiscrimination on the Basis of Sex. Contractor agrees to comply with federal prohibitions against discrimination based on sex, including:
  - a. 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; and
  - b. Federal transit law, specifically 49 U.S.C. § 5332.

4. Nondiscrimination on the Basis of Age. Contractor agrees to comply with federal prohibitions against discrimination based on age, including:
  - a. 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, which prohibits discrimination by participants in federally assisted programs against individuals on the basis of age;
  - b. 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, which prohibits employment discrimination against individuals aged 40 and over on the basis of age; and
  - c. Federal transit law, specifically 49 U.S.C. § 5332.
5. Federal Protections for Individuals with Disabilities. Contractor agrees to comply with federal prohibitions against discrimination based on disability, including:
  - a. Federal laws, including:
    - i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
    - ii. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
      - A. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
      - B. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
    - iii. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
    - iv. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
    - v. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
  - b. Federal regulations and guidance, including:

- i. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- ii. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- iii. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- iv. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR Part 39;
- v. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- vi. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- vii. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- viii. U.S. Federal Communications Commission regulations,
- ix. "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, subpart F;
- x. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
- xi. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
- xii. FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
- xiii. Other applicable federal civil rights and nondiscrimination regulations and guidance.

E. This section is a Flow-Down Clause.

9. DISADVANTAGED BUSINESS ENTERPRISE AND PROMPT PAYMENT OF SUBCONTRACTORS

- A. This Contract and all subcontracts awarded under this Contract are subject to 49 C.F.R. Part 26, as applicable, Section 11101(e) of the Infrastructure Investment and Jobs Act of 2021, and 49 U.S.C. 5332. Therefore, Contractor must satisfy any and all requirements for Disadvantaged Business Enterprise ("DBE") participation as set forth in this Contract and with the terms of RTD's DBE program requirements, including the DBE Contract Requirements accessible at [https://cdn.rtd-denver.com/image/upload/v1702655148/DBE Program Contract Requirements fbof](https://cdn.rtd-denver.com/image/upload/v1702655148/DBE%20Program%20Contract%20Requirements%20fbof)

[5z.pdf](#)) (the "RTD DBE Contract Requirements") and the provisions in DBE Contract Requirements section of this Contract. These requirements are in addition to all other equal opportunity employment requirements of this Contract.

- B. Contractor agrees to the following assurance and assures that it will include the following assurance in each subagreement and Third Party Contract it signs with a Subrecipient or Third Party Contractor or Third Party Subcontractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and Third Party Contract it signs:
  - 1. The Contractor, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, Third Party Contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
  - 2. The Contractor, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, Third Party Contracts, and third party subcontracts, as applicable;
  - 3. Failure by the Subrecipient Contractor and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subsection of this Section (Federally Required Terms and Conditions) is a material breach of this contract, subagreement, Third Party Contract, or third party subcontract, as applicable, which may result in termination of the applicable contract or such other remedy as RTD deems appropriate; and
  - 4. The following remedies, or such other remedy as RTD deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- C. In addition to the above requirements, Contractor shall comply with, and insert into each Subcontract regardless of the tier, any and all DBE-related flow-down clauses in the RTD DBE Contract Requirements and the DBE Contract Requirements section of this Contract, including, but are not limited to, clauses related to prompt payment to subcontractors as well as the termination and modification of subcontracts
- D. If subcontracts will be let, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- E. This section is a Flow-Down Clause.

#### 10. INCORPORATION OF FEDERAL PROCUREMENT TERMS AND CONDITIONS

- A. The provisions of this Contract include, in part, certain standard terms and conditions required by the United States Department of Transportation (U.S. DOT), whether or not expressly set forth in the Contract. All contractual provisions required by U.S. DOT,



as set forth in FTA Circular 4220.1F, dated November 1, 2008, as may be amended, the FTA Master Agreement, 49 U.S.C. 53, and the U.S. DOT Common Rules, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor 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.

B. This section is a Flow-Down Clause.

#### 11. AWARDS INVOLVING COMMERCE

A. Contractor agrees to comply and assures that each Third Party Participant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, and as the Federal Government otherwise determines applicable.

B. This section is a Flow-Down Clause.

#### 12. CERTAIN ENVIRONMENTAL PROTECTIONS, INCLUDING ENERGY CONSERVATION

A. Contractor agrees to, and assures that its Third Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

B. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, Contractor agrees to, and assures that its Third Party Participants will:

1. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:

- a. Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
- b. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;
- c. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622;
- d. Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and

- e. Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
2. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
  - a. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013;
  - b. Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and
  - c. Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
3. Environmental Justice. Contractor agrees to, and assures that its Third Party Participants will, promote environmental justice by following:
  - a. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp.,p. 859) as well as facilitating compliance with that Executive Order;
  - b. U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, May 10, 2012; and
  - c. The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
4. Other Environmental Federal Laws. Contractor agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act (42 U.S.C. § 7401 et seq.), Clean Water Act (33 U.S.C. § 1251 et seq), Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management." Contractor agrees:
  - a. that no portion of the work required by the Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the Environmental Protection Agency eliminates the name of the facility from the listing;

- b. that it will report all violations to FTA and the Regional Office of the Environmental Protection Agency;
  - c. to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and
  - d. to insert the substance of this clause into any nonexempt subcontract.
- 5. Corridor Preservation. Contractor agrees that:
  - a. It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
  - b. It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- 6. Use of Certain Public Lands. Contractor agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 774, and referenced in 49 CFR Part 622.
- 7. Historic Preservation. Contractor agrees to, and assures that its Third Party Participants will:
  - a. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
  - b. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
  - c. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
  - d. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.
  - e. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- 8. Indian Sacred Sites. Contractor agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- 9. Mitigation of Adverse Environmental Effects.

- a. Contractor agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
- b. Contractor agrees that:
  - i. Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
  - ii. Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
  - iii. Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

10. Energy Conservation. Contractor agrees to 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. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.

C. This section is a Flow-Down Clause.

### 13. SEAT BELT USE

- A. 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-leased vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or RTD.
- B. This section is a Flow-Down Clause.

### 14. DISTRACTED DRIVING

- A. 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 Contract.
- B. This section is a Flow-Down Clause.

15. CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- A. The Contractor shall not procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use 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:
  - 1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - 2. 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).
  - 3. Telecommunications or video surveillance services provided by such entities or using such equipment; and
  - 4. 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.** Contractor shall notify RTD immediately if Contractor or any of its subcontractors cannot comply with this provision during the performance of this Contract.
- C. This section is a Flow-Down Clause.

16. ADA ACCESS

- A. Contractor must comply with 49 U.S.C. § 5332, which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities; all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act of 1990 (ADA), as amended; 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

- B. All deliverable items provided by the Contractor for RTD under this Contract shall comply with the above-referenced laws as well as all other applicable federal, state and local regulations and directives and any subsequent amendments thereto.

17. ASSIGNABILITY CLAUSE

Neither RTD nor Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.

18. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

- A. All Third Party Contracts entered into by Contractor for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- B. This section is a Flow-Down Clause.

**III. CONTRACTS EXCEEDING \$10,000**

1. TERMINATION

- A. Termination for Convenience. RTD may terminate this Contract, in whole or in part, at any time for RTD's convenience when it is in RTD's best interest by giving at least 14 days' written notice to Contractor. Contractor shall be paid its costs, including contract close-out costs, for work performed up to the time of termination. If Contractor has any property in its possession belonging to RTD, Contractor will account for the RTD property and dispose of it in the manner RTD directs.
- B. Termination for Cause. If Contractor fails to perform in the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, RTD may terminate this Contract for default. Any termination for default shall not in any way operate to preclude RTD from also pursuing all available remedies against Contractor and its sureties for breach or default. Termination shall be effected by serving a Notice of Termination on Contractor setting forth the manner in which Contractor is in default. Contractor will be paid only the Contract price for supplies delivered and accepted or services performed prior to termination in accordance with the manner of performance set forth in the Contract. RTD, in its sole discretion, may allow Contractor time 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, after termination for failure to fulfill Contract obligations, it is determined that 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 RTD.

- C. Suspension. RTD may suspend the performance of the Contractor by giving the Contractor seven days' written notice. Upon Contractor's receipt of notice of suspension of work, the Contractor shall perform no further work, and RTD will not be required to reimburse the Contractor for any costs incurred subsequent to Contractor's receipt of notice of suspension and prior to notice to resume work, if any. Suspension of work may be in whole or in part, as specified by RTD. The Contractor shall continue to submit invoices for work performed. If after six months of suspension, RTD has not given the Contractor notice to resume work, the Contractor is entitled to request in writing that RTD either (1) amend the Statement of Contract Cost or (2) terminate the Contract for RTD's convenience. If suspension for more than six months is not due in any part to the fault of the Contractor, RTD shall be required to amend or terminate the Contract. No amendment to the Statement of Contract Cost shall be made if suspension, delay, or interruption is due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

#### **IV. CONTRACTS EXCEEDING \$25,000**

##### **1. DEBARMENT AND SUSPENSION**

- A. Contractor agrees to comply, and assures the compliance of each Third Party Contractor at any tier, with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. 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 C.F.R. Part 180, subpart C.
- B. Contractor agrees to and assures that its will review the US. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Non-procurement Programs," before entering into any Third Party Contracts and verify that its principals, affiliates, and Third Party Contractors are eligible to participate in this Federally funded Contract and are not presently declared by any Federal department or agency to be:
1. Debarred from participation in any Federally assisted Award;
  2. Suspended from participation in any Federally assisted Award;
  3. Proposed for debarment from participation in any Federally assisted Award;
  4. Declared ineligible to participate in any Federally assisted Award;
  5. Voluntarily excluded from participation in any Federally assisted Award; or
  6. Disqualified from participation in any Federally assisted Award.
- C. The accompanying certification is a material representation of fact. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the RTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. This section is a Flow-Down Clause.

## 2. NOTIFICATION OF DISPUTES, BREACHES, DEFAULTS OR OTHER LITIGATION

- A. For any contract that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220:
  1. If a current or prospective legal matter that may affect the Federal Government emerges, including, but 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, Contractor and its subcontractors at every tier must promptly notify FTA Chief Counsel and FTA Regional Counsel for Region 8. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Contract and any amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
  2. In addition, if Contractor has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA, Contractor must promptly notify the U.S. DOT Inspector General. This notification 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 Contract or another agreement involving a principal, officer, employee, or agent of Contractor. 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 Contractor. In this paragraph, “promptly” means to refer information without delay and without change.
- B. This section is a Flow-Down Clause.

## **V. CONTRACTS EXCEEDING \$100,000**

### 1. LOBBYING RESTRICTIONS

- A. Contractor agrees that neither it nor any Third Party Participant will use federal assistance to influence or attempt to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
  1. Laws, Regulations, Requirements, and Guidance. This includes:
    - a. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;



- b. U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
    - c. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
  - 2. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through RTD's or Contractor's proper official channels.
- B. This section is a Flow-Down Clause.

## **VI. CONTRACTS WITH SPECIAL TERMS AND CONDITIONS**

### **1. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – NON-CONSTRUCTION**

- A. Contractor agrees to comply and assures that each Third Party Participant will comply with all other federal laws, regulations and requirements providing wage and hour protections for non-construction employees, including, as applicable, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, 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 Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5, which requires that:
  - 1. Wage and Hour Requirements. Contractor will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Act, 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.
  - 2. Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of this clause, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, 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 work week of 40 hours without payment of the overtime wages required by this clause.

3. Withholding for Unpaid and Liquidated Damages. RTD or 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 Contractor or Third Party Participant 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.
4. Payroll and Basic Records. Contractor 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. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.

B. This section is a Flow-Down Clause.

## 2. BUY AMERICA REQUIREMENTS

- A. The Contractor will comply with the domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR Part 661, and 2 CFR part 200 which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by U.S. Department of Transportation (DOT) or FTA or the product is subject to a general waiver to the extent consistent with 49 U.S.C. § 5323(j). The provisions of 49 U.S.C. § 5323(j) and its implementing regulations are hereby incorporated by reference into this Contract. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. If applicable, the Contractor also agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663.

B. This section is a Flow-Down Clause.

## 3. BUILD AMERICA, BUY AMERICA ACT

- A. "Construction materials" used in connection with the Contract are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-

58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. "Construction materials" has the meaning given in the Build America, Buy America Act and associated regulations and guidelines. In accordance with 2 CFR § 184.2(a), Contractor shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

B. This section is a Flow-Down Clause.

#### 4. CARGO PREFERENCE – USE OF UNITED STATES-FLAG VESSELS

A. The Contractor will comply with shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381. This clause only applies to contracts in which materials, equipment, or commodities may be transported by ocean vessel in carrying out the terms of the contract. As required by 46 C.F.R. Part 381, the Contractor agrees:

1. to utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and
2. to furnish within twenty (20) days following the date of loading for shipments originating with the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to RTD, (through the prime Contractor in the case of a Subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the project; and
3. to insert the substance of the provisions of this clause in all Subcontracts issued pursuant to this Contract.

B. This section is a Flow-Down Clause.

#### 5. FLY AMERICA

A. The Contractor will comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143, which requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available.

B. This section is a Flow-Down Clause.

6. PROCUREMENT OF RECOVERED MATERIALS/RECYCLED PRODUCTS (SOLID WASTES)

- A. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. § 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.
- B. This section is a Flow-Down Clause.

7. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- A. Contractors agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.
- B. This section is a Flow-Down Clause.

8. SEISMIC SAFETY.

- A. Contractor agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, *et seq.*, and agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.
- B. This section is a Flow-Down Clause.

9. PRIVACY ACT

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a, as applicable. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the Contract.
- B. This section is a Flow-Down Clause.



**BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION**

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Company] \_\_\_\_\_ certifies, to the best of his or her knowledge, 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 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 Contractor, [Company] \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Please check the appropriate box:

\_\_\_\_\_ No non-federal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

**or**

\_\_\_\_\_ Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of non-federal funds for lobbying in connection with this application/award/contract.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By: \_\_\_\_\_

(Type or Print Name) (Title of Executing Official)

\_\_\_\_\_  
(Signature of Executing Official) (Name of Organization/Applicant)

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year <input type="text"/> quarter <input type="text"/> date of last report <input type="text"/>	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier <input type="text"/> , if known: <input type="text"/> <b>Congressional District, if known:</b>			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  <b>Congressional District, if known:</b>		
<b>6. Federal Department/Agency:</b> <input type="text"/>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: <input type="text"/>		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$ <input type="text"/>		
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI): <input type="text"/>			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI): <input type="text"/>		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: <input type="text"/> Print Name: <input type="text"/> Title: <input type="text"/> Telephone No.: <input type="text"/> Date: <input type="text"/>		
<b>Federal Use Only:</b>				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

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

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

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

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



## **Exhibit C-2**

### **ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE REQUIREMENTS**

(a) Organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to RTD, or the person's objectivity in performing the Work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) Each firm responding to the RFP shall provide the statement described in paragraph (c). This requirement will apply individually to any of the firm's consultants or lower-tier subcontractors that also furnish Work in performance of the Contract to be awarded.

(c) The statement must contain the following:

(1) Name of the firm and the number of the RFP in question.

(2) The name, address, telephone number, and federal taxpayer identification number, if applicable, of the firm.

(3) A description of the nature of the Work rendered by or to be rendered on the Contract or related to the Contract.

(4) A statement of any past (within the past 12 months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the Contract. For contractual interests, such statement must include the name, address, and telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the firm who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to RTD or any other client respecting the same subject matter of the RFP or directly relating to such subject matter. The client and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests, enough information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the Contract.

(5) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the Work to be provided in connection with the Contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the Contract or related to the Contract has been communicated as part of the statement required by section (c).

(d) Failure of a firm to provide the required statement may result in the firm being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

**ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION**

The proposer ☐ is ☐ is not aware of any information bearing on the existence of any potential organizational conflict of interest as described in the Disclosure Requirements on the previous page.

If the proposer is aware of information bearing on whether a potential conflict may exist, the proposer shall provide a disclosure statement describing this information as described in the Disclosure Requirements on the previous page.

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

Date \_\_\_\_\_

**Exhibit C-3**

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

- A. The proposer certifies to the best of its knowledge and belief that the proposer and each of its principals:
1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
  2. Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
  3. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph A.2. of this certification; and
  4. Has not within the preceding three years, this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Proposer Name \_\_\_\_\_

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

By: \_\_\_\_\_

Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

**EXHIBIT C-4**

**CONTRACTOR'S COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, RTD or the Federal government shall have the right to annul this Contract without liability or, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

As used in this covenant:

*Bona fide agency* means an established commercial or selling agency, maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain RTD contracts nor holds itself out as being able to obtain any RTD contract or contracts through improper influence.

*Bona fide employee* means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain RTD contracts nor holds out as being able to obtain any RTD contract or contracts through improper influence.

*Contingent fee* means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing an RTD contract.

*Improper influence* means any influence that induces or tends to induce an RTD employee or officer to give consideration or to act regarding an RTD contract on any basis other than the merits of the matter.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit D**

# **DBE Contract Requirements**

## **Civil Rights: Equal Employment Opportunity and DBE Program Requirements**

### **RFP/IFB**

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## **APPENDICES**

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## PART A

### SPECIFIED FEDERAL REQUIREMENTS

The Contractor/Consultant shall perform its obligations and shall require each Subcontractor regardless of the tier to perform its respective obligations under the Contract and the Subcontract(s) in accordance with the following requirements. The Contractor shall insert this Part A, DBE Contract Requirements and all flow-down provisions as detailed in these DBE Contract Requirements into each Subcontract regardless of the tier.

#### 1. APPLICABLE CIVIL RIGHTS REQUIREMENTS

##### 1.1 CIVIL RIGHTS - EMPLOYMENT

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

Equal Employment Opportunity – RTD is an equal opportunity employer. The following equal employment opportunity requirements apply to the underlying Contract:

Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, Or National Origin - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"

41 CFR Parts 60 *et seq.*, (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

**During the Performance of the Contract, the Contractor or Subcontractor:**

(i) Will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, disability or age. The Contractor will ensure that equal employment opportunity is afforded to all applicants in recruitment and employment, and that employees are treated fairly, during employment, without regard to their race, color, religion, national origin, sex, disability or age. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to setting forth provisions of this nondiscrimination clause.

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

**1.2 CIVIL RIGHTS IN FEDERAL CONTRACTING**

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the Contract. The Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of the Contract. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as RTD 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.

## PART B

### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

#### 1. DEFINITIONS

Unless the context requires otherwise, capitalized terms used in these DBE Contract Requirements shall have the meanings given to them in the Instructions to Proposers. However, if there is a conflict, the definitions in this section shall prevail. In addition, the following capitalized terms shall have the meanings set out below:

***Bidder/Proposer*** means a firm or a person submitting a bid or proposal in response to a solicitation by RTD.

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

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

***Commercially Useful Function (CUF)*** occurs when a DBE firm is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved in substance as contemplated by the federal regulations codified at 49 CFR Part 26. The DBE firm must also be responsible for materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the materials itself. Additionally, for a DBE to be considered as performing a commercially useful function, a DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.

***Disadvantaged Business Enterprise (DBE)*** means an entity that meets each of the following criteria:

- (a) A firm that is at least 51% owned and controlled by one or more Socially and Economically Disadvantaged individuals or, in the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding; In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals; In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individual(s);
  - (i) Whose personal net worth does not exceed \$2,047,000. The personal net worth excludes the equity of the eligible principal's primary residence and the equity of the eligible principal's applicant firm,
  - (ii) Whose average annual gross receipts over the previous 3 fiscal years cannot exceed \$30.72million (the cap on statutory gross receipts),
  - (iii) Who meets the ownership and control criteria as set forth under 49 CFR Part 26.

- (iv) Who meets the group membership criteria as defined under 49 CFR Part 26 or is able to prove social disadvantage,
- (v) Whose firm is certified as a "Disadvantaged Business Enterprise" in the state's Unified Certification Program.

**DBE Enclosures** means the certificates and forms provided in the enclosures included in the DBE Contract Requirements.

**DBE Liaison** means a representative of the Contractor with direct and independent access to the Contractor's project manager and/or chief operating officer. This can be a collateral duty. The DBE Liaison has management responsibility for implementing, managing and reporting on achievement of the DBE Goals, ensuring compliance with 49 CFR Part 26, communicating to subcontracting businesses and developing supportive services activities at all tiers. The DBE Liaison is also responsible for serving as the point of contact with RTD's Small Business Opportunity Office for all reporting, submission of properly completed forms/documents, and for responding to any compliance related issues/matters.

**DBE Plan** means a required plan, prepared by or on behalf of the Contractor as required by RTD in the procurement documents that describes how the Contractor plans to satisfy requirements set forth in this Part B of the DBE Contract Requirements.

**Small Business Opportunity Office** or **SBO** means the RTD business unit responsible for administering the DBE and SBE Programs.

We make lives better  
through connections.



## DBE PROGRAM POLICY STATEMENT

### Section 26.1, 26.23 Objectives/Policy Statement

The Regional Transportation District (RTD) established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. RTD receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, RTD signed assurances that it will comply with 49 CFR Part 26.

It is the policy of RTD to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT assisted contracts. It is also RTD's policy:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Alexis Serrano Castro, Manager, Small Business Opportunity Office within the RTD's Civil Rights Division, is delegated the responsibility and designated as the RTD DBE Liaison Officer. In that capacity, **Alexis Serrano Castro is responsible for implementing and overseeing all aspects of RTD's DBE Program.** Implementation of RTD's DBE Program is accorded the same priority as compliance with all other legal obligations incurred by RTD in its financial assistance agreements with the DOT.

The Policy Statement is posted on the RTD website and included in its outside procurements/solicitations (i.e., Invitation for Bids and Requests for Quotes). RTD distributed this Policy Statement to DBE and non-DBE business communities that perform work pertaining to RTD's DOT-assisted contracts. The Policy Statement was faxed/mailed/e-mailed to all known DBE stakeholder organizations and associations who do or attempt to do business with RTD. A current list of recipients can be obtained by contacting the Civil Rights Division. All questions or related correspondence shall be directed to Alexis Serrano Castro, Small Business Opportunity Office Manager at 303.299.2072 or Carl Green Jr., Director, Civil Rights Division at 303.299.2370 or via mail at RTD Civil Rights Division, 1660 Blake Street, Blk-31 Denver, CO 80202.

  
Debra A. Johnson, General Manager and CEO

  
Date

Regional Transportation District  
1660 Blake Street, Denver CO 80202

rtd-denver.com 

## 2. OVERVIEW OF RTD'S DBE PROGRAM POLICY

RTD's policy is to ensure nondiscrimination in the award and administration of RTD's construction contracts, professional services contracts, and in the procurement of common goods and services. The Contractor shall comply with and implement requirements of RTD's DBE Program and 49 CFR Part 26 in the award and administration of contracts under this Agreement. Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the administration and performance of the Contract. The Contractor shall ensure that the nondiscrimination clause(s) found in Part A of this document as well as the flow-down provisions found in Section 4 of these DBE Contract Requirements are incorporated in all DBE subcontract agreements regardless of tier. It is RTD's intention to create a level playing field on which DBEs can compete fairly for federally funded contracts. Failure by the Contractor to comply with or implement these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as RTD deems necessary. These legal remedies may include but are not limited to: withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor from future bidding as non-responsible (see 49 CFR Part 26.13). RTD's commitment to DBE Goals is not intended to and shall not be used as a justification to discriminate against any qualified company or group of companies.

### **Additionally, it is important to note and restate applicable requirements of DBE firms:**

- A. DBE size standards: The cap on statutory gross receipts of DBE firms eligible to participate in the program over the previous 3 fiscal years cannot exceed \$30.72 million. This amount includes any affiliate businesses owned in whole or part by any applicant owner or stockholder regardless of their ownership interest.
- B. The personal net worth of the eligible principal(s) must be less than \$2,047,000 (on an individual basis) - excluding the equity of the eligible principal(s) primary residence and the equity of the eligible principal's firm. At least 51% of the owners/stockholders must meet the personal net worth criteria for the business to be eligible. Applicants cannot transfer ownership solely for the purpose of qualifying for the DBE Program. If it comes to RTD's attention, that there has been a transfer of an owner's assets, RTD may request the certifying authority under the Colorado UCP to evaluate transfers of ownership within the past two years to determine compliance with the personal net worth requirements. Additionally, the socially disadvantaged owner may be disqualified if there is evidence that he or she is not economically disadvantaged due to assets and resources that indicate an ability to accumulate substantial wealth based on specific factors, similar to those used by the Small Business Administration (SBA), that are set out in the DBE regulations. (see 49 CFR Part 26.67(b))
- C. To count a DBE's participation toward the DBE Goal established for the Contract or the commitments to the percentage of certified DBE utilization made by the prime Contractor, the proposed DBE(s) must be certified as a DBE(s) with the City and County of Denver or CDOT (Colorado UCP) under the NAICS code that coincides with the scope of work that they will execute in the project. The DBE firm must be certified as a DBE and perform a Commercially Useful Function. Contractors should also be sure that the DBE is certified as

of the date that RTD receives this bid/proposal unless some other time frame is required by the nature of the project delivery method, project duration or when the DBE is approved by RTD to be added to the Contractor's Schedule of Participation.

### **3. GENERAL REQUIREMENTS**

#### **A. DBE GOALS AND GOOD FAITH EFFORTS**

- i. Unless otherwise indicated in the Contract or an addendum to the Contract, for Invitations for Bids (IFB), the Contract will be awarded to the lowest responsive and responsible bidder. For Request for Proposals (RFP) with best value criteria, the Contract will be awarded to the responsive and responsible proposer or proposers who best meet the Evaluation Criteria, cost and other factors considered (including DBE Program requirements and DBE approach/strategy). A bidder/proposer who fails or refuses to complete and return the required enclosures to these DBE Contract Requirements will be deemed non-responsive. The specified DBE participation goal applies to all post selection negotiations. Contractor's commitment to the percentage of certified DBE utilization during the term of the Contract will be stated in the DBE Affidavit (Enclosure 1A). All extensions, amendments, change orders and options of the Contract are subject to review by RTD's SBO. The SBO may determine that a modification may impact Contractor's ability to comply with its initial commitment. However, a partial waiver of the DBE Goal will not be considered until the end of the Contract and the totality of Contractor's compliance efforts are assessed to determine its ability to comply with the initial commitment. The SBO will evaluate all decisions to self-perform scopes of work where DBE availability was present, yet not solicited, not utilized or disregarded.
- ii) RTD has specified the DBE Goal on this project as found in Enclosure 1A - DBE Affidavit. Bidders/proposers must make adequate good faith efforts to meet this DBE Goal in order to be deemed as a responsive and responsible bidder. Award of the Contract will be conditioned on meeting the requirements of this section. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Additionally, bidders/proposers are required to solicit the support and assistance of RTD's SBO if they are unable to meet the DBE participation goal assigned to the Contract. The bidders/proposers can meet this requirement in one of two ways:
- iii) First, the bidder/proposer can meet the DBE participation goal assigned to the Contract by demonstrating and documenting their commitments for participation by DBEs for at least the total percentage of the DBE Goal assigned to the Contract, or a percentage that exceeds the goal for the project. 49 CFR Part 26.53 explains the procedures that recipients/agencies such as RTD should follow in this situation. For purposes of this section, RTD will only accept DBE(s) that are currently certified with the City and County of Denver or CDOT (Colorado UCP) under the NAICS code that coincides with the scope of work that they will execute in this project. All DBEs must be certified prior to the bid/proposal submission, except in a "design-build" or "turnkey" contracting situation or some on-call or task order contracts where RTD

will explain its procedures in section 3 of this document. RTD requires that all bidders/proposers submit the following information to RTD, under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures:

- a. The names and addresses of DBE firms that will participate in the Contract; (please include DBE current certification letters issued by the Colorado UCP);
  - b. Description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the Contract; (this is RTD Enclosure 2A – DBE Schedule of Participation and Enclosure 3A - DBE Letter of Intent, also please include DBE current certification letters issued by the Colorado UCP); The dollar amount of the participation of each DBE firm participating; (This is included on RTD Enclosure 2A - DBE Schedule of Participation and Enclosure 3A- DBE Letter of Intent);
  - c. Written documentation of the bidder/proposer's commitment to use a DBE Subcontractor whose participation it submitted to meet a contract goal; (this is covered under RTD Enclosure 1A or 1B – DBE Affidavit as well as Enclosure 3A - DBE Letter of Intent) and;
  - d. Written confirmation from each listed DBE firm that it is participating in the Contract in the kind and amount of work provided in the bidders'/proposers' commitment. (This is included on RTD Enclosure 3A - DBE Letter of Intent).
- iv) Second, if the bidder/proposer does not meet the DBE Goal or is able to only meet part of the DBE Goal, they must document adequate good faith efforts. Appendix A to 49 CFR part 26 clearly states, "this means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE Goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful." Additionally, 49 CFR Part 26.53 explains the good faith efforts procedures that recipients/agencies such as RTD should follow when a bidder/proposer does not meet the DBE Goal.

The following are a list of information that bidders/proposers must submit as proof of good faith efforts along with RTD Enclosure 6 – Disadvantaged Business Outreach and Enclosure 7 – DBE Unavailability Certification form. Bidders/proposers are expected to document adequate/sufficient good faith efforts to meet the DBE Goal.

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

- a. Whether the bidders/proposers solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written



notices) the interest of all certified DBEs who have the capability to perform the work of the Contract. The bidders/proposers must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidders/proposers must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- b. Whether the bidders/proposers selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.
- c. Whether the bidders/proposers provided interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
- d. Whether the bidders/proposers negotiated in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and suppliers, so as to facilitate DBE participation. The fact that a bidder/proposer may perform 100% of the work with its own workforce is not sufficient justification to fail to negotiate with DBEs or not to meet the DBE participation goal assigned to a project.
- e. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- f. Whether the bidders/proposers made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- g. Whether the bidders/proposers made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Whether the bidders/proposers effectively used the services of available minority/women community organizations, Contractors' groups and other organizations to provide assistance in the recruitment and placement of DBEs, including RTD's SBO.
- i. Whether other bidders/proposers on the procurement met the DBE Goals and submitted an acceptable DBE Plan demonstrating compliance with the DBE Program requirements for a turnkey, multi-year design-build project, alternative delivery method contracts, other multi-year projects, On-Call or Task-Order projects.
- j. Bidders/proposers are required to submit copies of each DBE and non-DBE

Subcontractor quotes submitted to them when a non-DBE Subcontractor was selected over a DBE for work on the Contract so RTD SBO can review whether DBE prices were substantially higher; and contact the DBEs listed on a Contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts. A bidder/proposer will not be deemed to demonstrate good faith if it rejects a DBE simply because it is not the low bidder, or if it is unable to find a replacement DBE at the original price. It is important to note that a complete good faith efforts procedure is described under 49 C.F.R. §26.53 for further guidance and review.

- v) All good faith efforts information must be complete and accurate and adequately documented by the bidders/proposers and shall be submitted with the bid/proposal.

To award a Contract to a bidder/proposer that has failed to meet the DBE Goal, the RTD SBO Manager will decide whether the Contractor made a "good faith effort" to actively, effectively and aggressively seek DBEs to meet those goals prior to bid/proposal submission and in its commitments as set forth in their Schedule of Participation or DBE Plan to continue its efforts to meet the DBE participation goals for subsequent phases of the project. Contractors are also responsible for collecting good faith efforts documentation of all major non-DBE Subcontractors/suppliers as part of their responsibility to implement the DBE Program. If, after reviewing the "good faith efforts" documentation submitted by the bidder/proposer, the RTD SBO Office Manager determines that good faith efforts were met, the Contract will be recommended for award to the responsive and or responsible bidder/proposer.

- vi) If RTD determines that the apparent successful bidder/proposer has failed to meet the DBE Goal or make adequate/sufficient good faith efforts, before awarding the Contract, RTD will provide the bidder/proposer an opportunity for administrative reconsideration.
  - a. The bidder/proposer will be informed in writing that their submittal was deemed non-responsive to the DBE Contract Requirements and will not be considered for contract award. The bidder/proposer may appeal the decision of the RTD SBO Office Manager to the reconsideration official(s). If the bidder/proposer wishes to appeal, they must do so in writing to the RTD Director of Contracting and Procurement within 5 business days of being informed of the decision of the RTD SBO Office Manager that their submission was non-compliant. As part of this reconsideration, the bidder/proposer must 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.

If the decision of the SBO Office Manager is appealed in writing, within the 5 day submission window, the reconsideration official(s) will review the documentation submitted by the Contractor as part of Contractor's bid/proposal—and no other information under this Section, including any additional information

provided with Contractor's request for administrative reconsideration, to decide whether the DBE requirements have been satisfied through "good faith efforts". The reconsideration official will be a member of RTD staff who did not take part in the initial "good faith efforts" decision.

- b. If the written appeal request is received after the 5 business day submission window, it will be disallowed and the determination of the RTD SBO Office Manager that the submission was non-compliant will stand.
- c. The bidder/proposer will have the opportunity to meet in person with RTD's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- d. If the reconsideration official(s) determines that "good faith efforts" were met, the contract will be recommended for award to the Contractor. If the reconsideration official(s) determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be informed in writing. RTD will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- e. The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- f. The reconsideration official will review the documentation submitted as part of Contractor's bid/proposal— and no other information, including any additional information provided with Contractor's request for administrative reconsideration - under this Section to decide whether the DBE requirements have been satisfied through good faith efforts.

#### **B. MULTI-YEAR DESIGN BUILD PROJECT REQUIREMENTS**

- (i) In a design-build, unless different and specific instructions are provided for alternative delivery method procurements, the Bidder/Proposer must make the good faith efforts to meet or exceed the specified project DBE Goal at the time of bid or proposal submission. To be considered a responsive bidder/proposer, when a DBE Goal is specified for design-build, a Bidder/Proposer must meet the goal referred to in the bid specification by committing to meet the DBE Goal for each phase of the design build or other alternative delivery method project process by specifically identifying certified DBE firms that will be performing services. Bidder/Proposer is required to submit two sets of DBE Enclosures. One for "**design phase**", and one related to the "**construction phase**".
- (ii) For the "**design phase**":
  - a. Award of the Contract will be conditioned on meeting the requirements of this section. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements.
  - b. Proposers can meet the DBE requirements of this section in one of two

ways. First, and for the "design phase" only, Proposer can meet the DBE goal by demonstrating and documenting its commitments for participation by DBEs for at least the total percentage identified above or a percentage that exceeds the goal for the "design phase". The DBE Contract Requirements provided in the Attachment E to this RFP (the "DBE Contract Requirements") as well as 49 CFR Part 26.53 explain the procedures that RTD will follow in this situation.

- c. Second, in the rare event, a Proposer does not meet the DBE goals identified in this contract or is able to only meet part of this goal, it must document adequate good faith efforts (GFE). Appendix A to 49 CFR part 26 clearly states, "This means that the proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful." Additionally, the DBE Contract Requirements as well as 49 CFR Part 26.53 explain the good faith efforts procedures that recipients/agencies such as RTD should follow when a Proposer does not meet the goal.
- d. By the proposal due date, and for the "design phase" only, proposer is required to submit the following DBE Enclosures:
  - i. Enclosure 1A - DBE Affidavit
  - ii. Enclosure 1B - DBE Prime Affidavit (only when proposer is a certified DBE)
  - iii. Enclosure 2A - Schedule of DBE Participation
  - iv. Enclosure 3A - Letter of Intent to Perform as a DBE Subcontractor
  - v. Enclosure 3B - DBE Regular Dealer/Distributor Affirmation Form (for each DBE regular dealer or distributor listed in Enclosure 2A)
  - vi. Enclosure 4 - Bidders List Information (Information of Subcontractors Seeking to Work) (one for each subcontractor (DBE and non-DBE)
  - vii. Enclosure 5 - Employer Certification Workforce
  - viii. Enclosure 6 - Disadvantaged Business Outreach
  - ix. Enclosure 7 - DBE Unavailability Certification
- e. Regarding the DBE Enclosure 4 (Bidders List Information (Information of Subcontractors Seeking to Work)), Bidder/Proposer is required to submit certain information for those firms (DBEs and non-DBEs) that are interested in working on the Contract. The required information includes the names of the firms that submitting quotes, or bids for a subcontract amount, specifically related to the project you are bidding or submitting proposal. Information applies to all firms submitting quotes or bids, and not limited to the ones preliminary selected as the best bid or quote. For this purpose, please refer to DBE Enclosure 4 – (Bidders Information of Subcontractors Seeking to Work).

- f. Contractor is required to make good faith efforts to fulfill their commitment to DBE participation/utilization throughout the duration of the "design phase" contract.

(iii) For the **"construction phase"**:

- a. Bidder/Proposer is required to submit different sets of DBE Enclosures at different stages throughout the Contract.
- b. By the proposal due date, and for "construction phase" only, Proposer is required to submit:
  - i. DBE Enclosures 1A (DBE Affidavit);
  - ii. 1B (DBE Prime Affidavit – when bidder/proposer is a certified DBE); and
  - iii. DBE Enclosure 2B Open-Ended Performance Plan (DBE OEPP). The DBE Open-Ended Performance Plan (OEPP) must include a commitment to meet the DBE goal for the construction phase and provide details of the types of subcontracting work or services, with projected dollar amount that the bidders/proposer will solicit DBEs to perform. The OEPP must also include an estimated time frame in which actual DBE subcontracts would be executed. A Contractor must submit an updated OEPP every month of the construction phase to ensure compliance with the original submitted OEPP and scheduled timeframe. Unless otherwise specified, a Bidder/Proposer is required to submit the OEPP along with the bid or proposal to be considered responsive.
- c. Within seven (7) days after the first Notice to Proceed (NTP) related to "construction phase", is issued, the awarded Contractor will submit the following DBE Enclosures required for the "construction phase":
  - i. DBE Enclosures 2A (Schedule of DBE Participation);
  - ii. Enclosures 3A (Letters of Intent to Perform as a DBE Subcontractor);
  - iii. DBE Enclosure 4 – (Bidders List Information (Information Regarding Subcontractors Seeking to Work));
  - iv. DBE Enclosure 5 (Employer Certification of Workforce);
  - v. DBE Enclosure 6 (Disadvantaged Business Outreach); and
- d. Once each DBE have been identified and selected, Contractor will update Enclosure 2A (Schedule of DBE Participation), and provide Enclosure 3A (Letter of Intent to Perform as DBE Subcontractor) for each DBE added to the updated Enclosure 2A. Contractor will submit to RTD an update Enclosure 2A each time a DBE is added, to satisfy DBE participation committed on Enclosure 2B (Open-Ended Performance Plan), along with an Enclosure 3A (Letter of Intent to Perform as DBE Subcontractor).

- e. For the "construction phase", Contractor will be conditioned on meeting the requirements of section 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 which shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Contractor will provide updates on the OEPP on monthly basis and perform and/or adjust the proposed schedule, as long as the Contractor continues to use good faith efforts to meet the goal.

(iv) The bidder/proposer must submit a DBE Plan as described in Section 3 Part E of these DBE Contract Requirements explaining how the bidder/proposer intends to fulfill their DBE requirements and commitments throughout the duration of the Contract. Areas that need to be included in the DBE Plan include, but are not limited to: mechanisms to comply with prompt payment provisions, release of retainage, outreach efforts, outreach efforts, reporting, among other DBE requirements.

(v) The successful Contractor/consultant is expected to make good faith efforts to engage and utilize DBEs on an ongoing basis throughout the duration of the Contract. It should be noted that each time a Contractor adds a DBE to the project, the RTD SBO must review the DBE's certification with Colorado UCP to ensure that the NAICS code/s coincides with the scope of work that the DBE is expected to perform on the project. The DBE utilization/good faith efforts will be reviewed to determine if they are in compliance with 49 CFR Part 26 as well as the terms of these DBE Contract Requirements. Additionally, the successful Contractor/consultant is required to make good faith efforts to fulfill their initial commitment to DBE/s participation/utilization throughout the entire Contract duration, as well to comply with the DBE Open-Ended Performance Plan, applicable for the **"construction phase"**.

**C. OTHER MULTI-YEAR DBE AND ALTERNATIVE METHODS DBE (CMGC, CM AT RISK, ETC.) PROJECT REQUIREMENTS**

In other multi-year procurement with base contract scope and base contract value as well as optional scope of work and optional additional years of performance, the Bidder/Proposer must make the good faith efforts to meet or exceed the specified project DBE Goal at the time of bid or proposal submission. To be considered a responsive bidder/proposer, when a DBE Goal is specified for these types of multi-year projects, a bidder/proposer must meet the goal referred to in the bid specification by committing to meet the DBE Goal for the base contract value and the base scope of work, specifically identifying certified DBE firms that will be performing services or providing supplies within the allotted defined base contract and submit the DBE Contract Requirements enclosures or document its good faith efforts to attain the goal.

The bidder/proposer is also expected to submit a DBE Plan as described in Section 3 Part E of these DBE Contract Requirements explaining how the bidder/proposer intends to fulfill their DBE requirements and commitments if the optional year/s and optional scopes of work are exercised/awarded in the future. The DBE Plan will be evaluated and may be accepted or required to be modified/updated to include critical missing components.

The successful Contractor/consultant is expected to make good faith efforts to engage

and utilize DBEs for optional renewal years, prior to any of the optional year/s and optional scopes of work being exercised/awarded. The Contractor must also revise and submit to RTD's SBO, updated Enclosure 2A and Enclosure 3A with each optional year/s and each optional scopes of work that are exercised, prior to the start of any option year/s. Also, it should be noted that each time a Contractor adds a DBE to the project, the RTD SBO must review the DBE's certification with Colorado UCP to ensure that the NAICS code/s coincide/s with the scope of work that the DBE is expected to perform on the project. Additionally, the DBE utilization/good faith efforts will be reviewed each time an optional year/s is exercised and each time optional scopes of work are awarded to determine if they are in compliance with 49 CFR Part 26 as well as the terms of these DBE Contract Requirements. The successful Contractor/consultant is required to make good faith efforts to fulfill their initial commitment to DBE/s participation/utilization throughout the entire Contract duration.

**D. TASK ORDER OR ON-CALL DBE CONTRACT REQUIREMENTS**

In a task order or on-call procurements, the bidder/proposer must make good faith efforts to meet or exceed the specified project DBE Goal at the time of bid or proposal submission. To be considered a responsive bidder/proposer, when a DBE Goal is specified for a task order or on-call project, a bidder/proposer is required to make good faith efforts to meet the DBE Goal identified in the bid solicitation by committing to meet the DBE Goal for the project and identifying some of the certified DBE firms that will be performing services or providing supplies for the initial projects that were identified in the RFP/IFB or documenting good faith efforts to attain the DBE Goal as referenced in section 3 of this document under 'General Requirements – DBE Goals and good faith efforts'. 49 CFR part 26.53 and Appendix A of 49 CFR part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. The documentation evidencing good faith efforts shall be submitted with the bid/proposal.

The bidder/proposer should only specify the scope of work that the DBE/s will perform in the project if RTD has determined and confirmed those specific initial tasks or projects will be awarded. Otherwise, if RTD cannot confirm that a particular task or project will be awarded, then the bidder/proposer should indicate 'to be determined/TBD' under the scope of work that the DBE/s will perform. The bidder/proposer should never specify dollar values or make commitments to utilize DBEs for a specific contractual amount on a task order or on-call projects as it is not known at the time of the bid/proposal by RTD which tasks or projects will be awarded and what values will be associated with those tasks. Therefore, the bidder/proposer should indicate 'to be determined/TBD' under the agreed price to be paid to DBE/s.

The bidder/proposer is required to submit a DBE Plan explaining how they will do outreach and engage DBEs, specific to each individual task, and describe how they intend to fulfill their DBE commitments throughout the life of the task order/on-call contract. Section 3 Part E of these DBE Contract Requirements shall serve as a guide of what a DBE Plan should include. Please note that your answers to specific questions related to the DBE Plan will be evaluated. The bidder/proposer must explain how they intend to fulfill their DBE requirements and commitments if any tasks are exercised/awarded in the future.

The successful Contractor/consultant is expected to make good faith efforts to engage and utilize DBEs if any of the tasks are exercised/awarded. They will also be expected to revise and submit updated Enclosures 2A and Enclosures 3A if DBEs are added to the project or if additional scope of work are assigned to the original DBEs on the project. It should be noted that each time a Contractor/consultant adds a DBE to the project, the RTD SBO must review the DBE's certification with Colorado UCP to ensure that the NAICS code/s coincide/s with the scope of work that the DBE is expected to perform on the project. All good faith efforts documentations for each task order must be submitted to RTD and will be reviewed on each task awarded to determine if they are in compliance with 49 CFR Part 26 and terms of these DBE Contract Requirements. Additionally, the Contractor/consultant is required to make good faith efforts to fulfill their initial commitment to DBE/s participation/utilization throughout the entire Contract duration.

#### **E. DBE PLAN**

The DBE Plan is the Proposer's written approach and strategy to the overall administration of their DBE commitment on this project (including the expectations of the lower tier DBE Subcontractors). Proposers will be required on all turnkey, Multi-Year Design/Build projects, Alternative Delivery Method projects, other Multi-Year projects, On-Call or Task-Order Contracts as well as other specified projects to submit a comprehensive detailed DBE Plan with their proposal. For design/build contracts, Contractor will also be required to explain how its DBE Open-Ended Performance Plan (OEPP) will be updated and submitted to comply with the monthly updates requirement. DBE Plan is subject to the RTD's SBO's approval and must comply with several provisions as defined under 49 CFR Part 26 requirements. The DBE Plan must minimally incorporate the first two years of the Contract and will be required to cover each phase (i.e. design and construction phases, base contract) of the project.

If the proposer is selected, upon the successful Contractor/Consultant will be required to formalize and use as basis the proposed DBE plan submitted with their RFP to implement their official DBE Plan upon Notice to Proceed from RTD. The DBE Plan must be reviewed and approved by the RTD SBO. Thereafter, the Contractor/Consultant is required to prepare and submit to the SBO an updated DBE Plan on an annual basis throughout the project duration.

As it relates to the Proposer/Contractor, the DBE Plan should be innovative and comprehensive and include the following program fundamentals listed below. It should be noted that the following is not an exhausted list as creativity, diversity and originality may cause change within the plan.

- i. Submitting their overall subcontracting process and program including how they will communicate and coordinate the scheduling with the DBEs;
- ii. Describing how DBE participation will be solicited and incorporated into the proposer's overall procurement process;
- iii. Describing the DBE project goal and the proposer's DBE commitment/utilization;
- iv. Promoting a level playing field and non-discrimination, by providing an open and transparent process;
- v. Identifying how the Contractor's/Consultant's DBE Liaison Officer/Compliance Officer/Diversity Manager, etc. will be incorporated into the procurement process;



- vi. Incorporating mandatory federal non-discrimination clauses into each subcontract regardless of the tier (Must include the entire clauses included in Part A of these DBE Contract Requirements and cannot simply be a reference to another document);
- vii. Describing a positive approach to business initiatives, support services, bonding assistance, mentoring programs, joint ventures, etc.;
- viii. Defining Good Faith Efforts requirements and evaluation criteria for post award solicitation process;
- ix. Identifying the DBE Plan Annual Update Process, as well DBE OEPP monthly updates submission plan (when applicable);
- x. Describing the debriefing process, how bid selections are made and keeping record of each;
- xi. Describing Contract's proactive prompt payment and release of retainage provisions and ensure compliance with RTD requirements regardless of tier;
- xii. Describing compliance with the removal, replacement, substitution and termination of DBEs as it relates to 49 CFR Part 26.53 (f) and the commitment to not include termination for convenience clauses in any subcontract agreements, regardless of the tier, as this is inconsistent with federal regulations;
- xiii. Ensuring that the DBE Plan is Signed and dated by the Contractor/Consultant; and
- xiv. Describing the monthly reporting relationship with RTD's SBO and compliance with overall reporting requirements.

**F. CONTRACTOR'S/CONSULTANT'S DBE LIAISON OFFICER/COMPLIANCE OFFICER/DIVERSITY MANAGER/COMPLIANCE MANAGER, ETC.**

On a Turnkey Multi-year project such as Design Build and other Alternative Delivery Method projects or other larger projects, RTD will require in the RFP that a Contractor designate a DBE Liaison/ Compliance Manager, etc. or such other title as designated by the Contractor. In lower value or shorter duration contracts, the DBE Liaison's/ Compliance Manager's, etc., duties may be a collateral responsibility. The DBE Liaison / Compliance Manager, etc. shall be responsible for the following:

- i. Day-to-day operational components of the DBE Program;
- ii. Effectively responding to and reporting to the RTD SBO on the status of any DBE Contractor/supplier;
- iii. Submitting executed DBE subcontracts/purchase orders and any subsequent material amendments thereto to the SBO within thirty (30) days of the Subcontractor Agreement Execution. No DBE should commence any work or provide any material/supply without an executed subcontract/purchase order;
- iv. Submitting a written monthly report detailing the activities and documentation of good faith efforts of the previous month;
- v. Interfacing with RTD SBO regarding DBEs issues and obtaining approvals for all DBE replacements, substitutions or terminations;
- vi. Preparing, completing and submitting all required compliance documentation,

- inclusive of subcontract agreements, schedule of participation enclosure, monthly payment entries in RTD's Diversity and Compliance solution, B2GNow. ); as well as submitting any DBE Participation Reports;
- vii. Ensuring that all DBE subcontracts regardless of tier include flow-down provisions as described in the DBE Contract Requirements which contains non- discrimination clause, prompt payment provisions, termination/substitution/replacement/reduction of scope, changes, etc.;
- viii. Carrying out or implementing technical assistance activities;
- ix. Implementing, managing and reporting on attainment of the DBE Goal/commitment, communicating subcontracting opportunities and supportive services activity at all tiers, ensuring compliance with the non-discrimination provisions and the affirmative action and equal employment opportunity provisions;
- x. Monitoring lower tier Subcontractors and suppliers to ensure that they comply with the DBE Program requirements and the DBE Plan submitted by the prime Contractor/Consultant; and
- xi. Scheduling monthly meetings between the Contractor and SBO if deemed necessary to provide status updates and address goal attainment, issues or concerns.

#### G. **COUNTING DBE PARTICIPATION**

RTD will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55

The DBE Goal applies to the total value of all work performed under the Contract which includes the value of all change orders, amendments and modifications. Any partial waiver determination will be made at or near the conclusion of the Contract when the totality of the circumstances can be taken into consideration and Contractor's efforts can be objectively evaluated. To count DBE participation toward the DBE Goal established for the Contract, the proposed DBE(s) must be certified as a DBE(s) with the City and County of Denver or Colorado Department of Transportation (Colorado UCP) under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Additionally, the DBE firm must be certified as a DBE and perform a Commercially Useful Function as defined in these DBE Contract Requirements. DBE certification does not, however, constitute a representation or warranty by RTD as to the qualification of any listed firm. In accordance with 49 CFR Part 26, RTD will require the total DBE participation commitment to be achieved in accordance with the following:

- (a) When a DBE participates in a contract, only the value of the work performed by the DBE counts toward DBE Goals.
  - (1) RTD will count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. That includes the cost of supplies and materials obtained by the DBE for the work of the Contract, any supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subcontractor purchases or leases from the prime Contractor or its affiliate);

- (2) RTD will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract toward DBE Goals, if RTD determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) RTD will count DBE work performed by DBE Prime Contractors for self-performance toward meeting the DBE Goal, only for the scope of work that they are certified in as a DBE and at a percentage level they will be performing themselves with their own forces;
- (4) Work performed by DBEs is deemed to include the cost of materials and supplies purchased and equipment leased by the DBE from non-DBE sources. Work subcontracted can only count if the subcontractor is another eligible DBE;
- (5) When a DBE performs as a participant in a joint venture, RTD will count a portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the DBE performs with its own forces toward DBE Goals;
- (6) RTD will count expenditures to a DBE Contractor toward DBE Goals only if the DBE is performing a Commercially Useful Function on that contract;
- (7) A DBE performs a Commercially Useful Function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by 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. To determine whether a DBE is performing a Commercially Useful Function, RTD must 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 performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (8) Each DBE must perform a Commercially Useful Function to be counted toward the DBE Goal and at least 30% of the work must be performed by a DBE of the total cost of its contract for the DBE to be presumed to be performing a Commercially Useful Function;
- (9) 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, RTD will examine similar transactions, particularly those in which DBEs do not participate.
- (10) When a DBE is presumed not to be performing a Commercially Useful Function, the DBE may present evidence to rebut this presumption. You may

determine that the firm is performing a Commercially Useful Function given the type of work involved and normal industry practices.

(b) Use the following factors in determining whether a DBE trucking company is performing a Commercially Useful Function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE Goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

(3) 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.

(4) The DBE may also lease trucks from non-DBE firms. RTD uses the option that permits limited DBE credit to be obtained for the use of trucks leased from non-DBE sources. This option permits counting of credit for the use of non-DBE trucks not to exceed the value of transportation services on the Contract provided by DBE trucks. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

(5) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

(6) A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(c) Count expenditures with DBEs for materials or supplies toward DBE Goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies.

(A) For purposes of this paragraph (c)(1), a manufacturer is a firm that owns (or leases) and operates 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. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

(2) For materials and supplies supplied by a regular dealer or a distributor, as those terms are defined below:

(A) If the materials or supplies are purchased from a DBE regular dealer, [§26.55\(e\)\(2\)\(iv\)\(A\)](#), [\(B\)](#), and [\(C\)](#), count 60 percent of the cost of the materials or supplies (including transportation costs).

(i) For purposes of this section, a regular dealer is a firm that owns (or leases) and operates, 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 sufficient quantities, and regularly sold or leased to the public in the usual course of business.

(ii) Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the Contract.

(ii) DBE regular dealers, per paragraph (c)(2)(iv)(A) of this section, must operate over a reasonable period of time, keeps sufficient quantities, and regularly sells the items in question. Regular dealer of bulk items per (c)(2)(iv)(B) of this section must own/lease and operates distribution equipment for the products it sells.

(a) To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

(b) A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in paragraph (c)(2)(ii) of this section if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.

(c) A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per paragraph

(c)(2)(iv)(B) of this section. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.

(d) Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers within the meaning of paragraph (c)(2) of this section.

(B) If the materials or supplies are purchased from a DBE distributor, [§26.55\(e\)\(3\)](#), that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs).

(i) A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the Contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(C) Bidders or proposers must submit, along with DBE Enclosures 2 (Schedule of DBE Participation) and DBE Enclosure 3 (Letter of Intent of using DBE Subcontractors), the **DBE Enclosure 3B (DBE Regular Dealer/Distributor Affirmation Form)**. This form needs to be completed by any DBE firm listed as a regular dealer or distributor in the DBE Enclosure 2. For each DBE listed as a regular dealer or distributor, RTD will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in 49 CFR [§26.55\(e\)\(2\)\(iv\)\(A\)](#), [\(B\)](#), and [\(C\)](#) and [\(e\)\(3\)](#), under the Contract. RTD's preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function (CUF) will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, RTD will make appropriate adjustments in counting such participation toward the bidder's or proposer's good faith efforts to meet the contract goal. The bidder or proposer is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

(4) With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, count the entire amount of fees or commissions charged that you deem to be reasonable, including transportation charges for the delivery of materials or supplies. Do not count any portion of the cost of the materials and supplies themselves.

- (5) RTD will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.

(1)

(d) RTD will not count DBE participation towards the RTD's overall triennial goal for any dollar value of work performed under a contract with a DBE firm after it loses its DBE certification with the Colorado UCP, except as provided for in [49CFR Part 26.87\(j\)](#)

(e) RTD will not count the participation of a DBE subcontractor toward a Contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

(f) RTD will not count DBE participation if a firm is not currently certified as a DBE in accordance with the standards of 49CFR Part 26.55 ([subpart D](#)) at the time of the execution of the Contract.

#### H. **JOINT VENTURES**

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

#### 4. **FLOW-DOWN PROVISIONS**

**While no subcontractor will be considered a third-party beneficiary to the Contract between RTD and the prime Contractor, RTD considers all subcontractors of every tier to be agents of the Contractor. Therefore, every Contractor of every tier will be held to all the requirements of the Contract. With that understanding, the Contractor is well advised to conform all subcontracts to the terms and conditions found in the RTD Contract. Also, it would be wise to make the RTD Contract available to all subcontractors wanting to review it. At the very least, the Contractor must include the following provisions in their subcontract agreements with their DBE subcontractors as well as ensure that all tiered-subcontractors comply with and insert the provisions of Part A - the Non-discrimination clause, 5-7, Prompt**

**Payment provisions; 8., Joint Check Utilization; 9., DBE Removal/Termination/Substitution/Reduction of Scope provisions; and 10., Changes.**

The Contractor will be required to submit to the RTD Small Business Opportunity Office all DBE subcontracts/purchase orders within 30 days of the execution of its contract with RTD or issuance of the notice to proceed (whichever occurs first). Throughout any contract or after the award of any RTD contract, including the Contract, if the Contractor makes good faith efforts and engages or subcontracts with additional DBEs, the Contractor must get approval from RTD if the Contractor intends to count DBE participation from those additional DBEs. To count DBE participation toward the goal established for the Contract or commitments made by the Contractor for DBE utilization, the RTD SBO must ensure that those additional DBEs are properly certified as a DBE(s) with the City and County of Denver or CDOT under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Notwithstanding, RTD SBO shall also request any appropriate documents it deems necessary including subcontract agreements for review. The Contractor shall ensure that this information flows down to all tier Contractors that intends to subcontract or subcontracts with DBEs.

## **5. PROMPT PAYMENT OF DBE SUBCONTRACTORS**

The Contractor agrees that:

It shall pay its DBE subcontractor(s) any undisputed amounts for the satisfactory performance of the subcontractor's work within 30 days of the Contractor's receipt of the subcontractor's invoice, regardless of whether RTD has paid the Contractor for such invoice;

i) Its approval of DBE subcontractor invoices shall not be unreasonably delayed, and it shall approve or reject invoices with written notice of deficiency or dispute to the payee DBE subcontractor within ten days of the Contractor's receipt of invoice;

ii) Within 30 days after a DBE subcontractor's work has been satisfactorily completed and accepted by the Contractor or by RTD's Project Manager, whichever is earlier, the Contractor shall make full payment to the subcontractor of any retainage the Contractor has kept related to such work, unless a claim is filed against the subcontractor related to such work. In the case of a dispute regarding satisfactory completion between a Contractor and its subcontractor, within the first ten (10) days after work has been completed, the Contractor must notify RTD in writing of the dispute; RTD, in its sole discretion, shall review the dispute submitted and make a final determination with respect to whether the work was satisfactorily completed.

iii) Failure to comply with the above may give RTD just cause to impose one or more of the following penalties, until the required payment(s) to the Contractor's DBE subcontractor(s) is satisfied, unless RTD has given prior written approval to the Contractor for the delay or postponement of payment(s): (1) withhold payments to the Contractor; (2) assess sanctions against the Contractor; (3) assess the DBE subcontractor's indirect or consequential damages against the Contractor; (4) disqualify the Contractor from future bidding on RTD contracts *as non-responsible*; (5) enforce the payment bond against the Contractor; (6) pay the DBE



subcontractor(s) directly and deduct this amount from any retainage owed to the Contractor; (7) *provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part; or* (8) issue a stop-work order until the DBE subcontractor(s) is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages against the Contractor. Unless approved by RTD, the Contractor's failure to comply with this Section is a material breach of the Contract.

iv) It shall ensure that tiered subcontractors comply with this Section and that they insert provisions (i), (ii), and (iii) of this Section into all lower-tiered subcontractor agreements with DBE firms; and

v) On a monthly basis, it shall submit a report of its payments to its DBE subcontractors using RTD's Diversity and Compliance solution, B2GNow. The Contractor shall ensure that its DBE subcontractors at every tier also report monthly payments made or received through B2GNow. All payments made will be entered in B2GNow by or before the 5<sup>th</sup> of every month. If Contractor has issues accessing B2GNow, Contractor must immediately request support from the B2GNow support line, and notify by email the RTD SBO's designated Compliance Officer for the contract. RTD's Diversity and Compliance Solution (B2GNow) can be accessed through this link <https://rtd-denver.gob2g.com/>

## 6. PROMPT PAYMENT OF NON-DBE SUBCONTRACTORS

The Contractor agrees that:

- i) It shall pay its subcontractor(s) any undisputed amounts for the satisfactory performance of their Work within seven days of the Contractor's receipt of payment from RTD for such Work;
- ii) Within 30 days after a subcontractor's Work has been satisfactorily completed and accepted by RTD's Project Manager or by the Contractor, whichever is earlier, the Contractor shall make full payment to the subcontractor of any retainage the Contractor has kept related to such subcontractor's Work, unless a claim is filed against the subcontractor related to such Work;
- iii) For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by RTD. When RTD has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- iv) Failure to comply with the above may give RTD just cause to impose one or more of the following penalties, until the required payment(s) to the Contractor's subcontractor(s) is satisfied, unless RTD has given prior written approval to the Contractor for the delay or postponement of payment(s): (1) withhold payments to the Contractor; (2) assess sanctions against the Contractor; (3) assess the subcontractor's indirect or consequential damages against the Contractor; (4)

- disqualify the Contractor from future bidding on RTD contracts as non-responsible; (5) enforce the payment bond against the Contractor; (6) pay the subcontractor(s) directly and deduct this amount from any retainage owed to the Contractor; (7) provide notice of default to the Contractor, stating the potential for termination or suspension of the contract, in whole or in part; or (8) issue a stop-work order until the subcontractor(s) is paid, which order shall constitute an unauthorized delay under the contract that could result in liquidated damages against the Contractor. Unless approved by RTD, the Contractor's failure to comply with this Section is a material breach of the contract;
- v) It shall ensure that tiered subcontractors comply with this Section and that they insert provisions (i) and (ii) of this Section into all lower-tiered subcontractor agreements; and
  - vi) On a monthly basis, it shall submit a report of its payments to its non-DBE subcontractors, using RTD's Diversity and Compliance solution, B2GNow. The Contractor shall ensure that its non-DBE subcontractors at every tier also report monthly payments made or received through B2GNow. If Contractor has issues accessing B2GNow, Contractor must immediately request support from the B2GNow support line, and notify by email the RTD SBO's designated Compliance Officer for the contract. RTD's Diversity and Compliance Solution (B2GNow) can be accessed through this link <https://rtd-denver.gob2g.com/>

For federally funded contracts with a DBE Goal, see the DBE Contract Requirements' provisions on prompt payment of DBE subcontractors, which include monthly reporting requirements. The DBE Contract Requirements shall control in the event of a conflict with this Section.

## **7. PROMPT PAYMENT MONITORING, COMPLAINTS, AND DISPUTE RESOLUTION PROCEDURES**

**This document describes RTD's proactive process for monitoring compliance with prompt payment requirements and investigating prompt payment complaints by DBE and non-DBE subcontractors on RTD federally funded projects, as well as subrecipient contracts.**

RTD implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms in RTD's DBE Program. RTD includes prompt payment and release of retainage provisions in every federally funded contract, including subrecipient contracts. Additionally, every federally funded contract executed by RTD or its subrecipients that has a DBE Goal incorporates a '*DBE Contract Requirements*' document that requires Contractors and subcontractors at every tier to comply with flow-down provisions, which include, but are not limited to Non-discrimination, Prompt Payment, DBE Removal/Termination/Substitution/ Reduction of Scope, etc. Failure by the Contractor to comply with or implement these requirements is a material breach of the Contract, which may result in the termination of the Contract and/or other remedies as RTD deems necessary. These legal remedies include, but are not limited to

withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor from future bidding as a non- responsible Contractor (see 49 CFR Part 26.13).

RTD is well aware that prompt payment and release of retainage concerns are prevalent in contracting and that subcontractors are usually affected and impacted significantly as a result of prompt payment issues. Therefore, RTD commits to thoroughly investigating and finding ways and means to resolve prompt payment concerns and to ensuring that subcontractors are treated fairly and paid promptly.

### **Monitoring**

RTD undertakes ongoing and proactive monitoring of Contractors' payments to subcontractors, at every tier, over the course of any covered contract through the following methods. However, in the case of subrecipient contracts, RTD and its subrecipients may agree on alternative methods/mechanisms or an established approach that is effective and is in accordance with RTD's process.

- i) After execution of a federally funded contract by RTD or its subrecipients, and on a monthly basis, Contractor must submit to RTD:
  - proactive Prompt Payment status from Contractor during the DBE Monthly Meeting, where Contractor will disclose all subcontractors expected to be paid within the current month, and any potential issue that may preclude Contractor from making the payment according to the DBE and non-DBE Prompt Payment Provisions.
  - subcontract agreements or purchase orders with all required DBE Flow-down Provisions, within 30 days of subcontract execution of any work performed by subcontractor.
  - report from the Contractor of its payments to DBE subcontractors, using RTD's Diversity and Compliance solution B2GNow.;
  - report from the Contractor of its payments to non-DBE subcontractors, using RTD's Diversity and Compliance solution B2GNow.
  - a confirmation of payment received, or non-payment received from DBE subcontractors at every tier of their receipt of payments from the Contractor or subcontractors, using RTD's Diversity and Compliance solution B2GNow.
  - a confirmation of payment received, or non-payment received report from non-DBE subcontractors at every tier of their receipt of payments from the Contractor or subcontractors, using RTD's Diversity and Compliance solution B2GNow..
- ii) Twice a month, RTD will audit payment made by the Contractor to all subcontractors, using RTD's Diversity and Compliance solution B2GNow, to make sure payments have been made within the respective DBE or non-DBE Prompt Payment Provisions.

- iii) Subcontractors are encouraged to report any issues pertaining to prompt payment or release of retainage using RTD's Diversity and Compliance solution B2GNow.
- iv) Subcontractors are also encouraged to report any issues pertaining to prompt payment or release of retainage directly to the appropriate RTD Compliance Officer, RTD Small Business Opportunity Office Manager, and/or RTD Civil Rights Director via email, phone call, or any method they deem necessary.
- v) RTD follows up with Contractors by phone and/or email on the status of outstanding payments due to subcontractors, reiterating the prompt payment provisions. RTD requires Contractors to send confirmation when such outstanding payments have been made. RTD also communicates with the unpaid subcontractors to assure them RTD is monitoring the status of their invoices and to gather additional information.
- vi) RTD requests and collects final lien waivers from subcontractors to ensure release of retainage to subcontractors have been made and will generate final report of payments using RTD's Diversity and Compliance solution B2GNow.

### **Complaints and Dispute Resolution**

Subcontractors are encouraged to try to resolve any issues pertaining to prompt payment or release of retainage directly with the Contractor (and any involved higher-tier subcontractor(s)). If such resolution is not possible, RTD may utilize the following approach when receiving a complaint from a subcontractor regarding issues pertaining to prompt payment or release of retainage:

- i) Contact the subcontractor directly to understand, validate, and collect all the applicable data associated with the complaint, which may include outstanding invoices, how long the invoices have been outstanding, steps taken by the subcontractor thus far to resolve the issues and/or obtain payment before reaching out to RTD, and any other relevant information. If such communication takes place, RTD should inform the subcontractor of its rights to file a claim against the Contractor's bond or to file a verified statement of claim with RTD and the process required to pursue the claim should there be no resolution of the complaint under these procedures.
- ii) Contact the RTD Project Manager and the Contractor (and any involved higher-tier subcontractor(s)) to discuss the complaint and request all information deemed necessary to understand the nature of the complaint and to determine steps that may be taken to address the concern. RTD should remind the Contractor of potential enforcement actions for non-compliance with the prompt payment or release of retainage provisions per the Contract with RTD.
- iii) Contact the subcontractor again to discuss the complaint in light of the information

gathered from the RTD Project Manager and/or the Contractor (and any involved higher-tier subcontractor(s)).

- iv) If deemed necessary, contact the pertinent RTD Purchasing Agent and/or RTD attorney and present all of the facts and issues relevant to the complaint.
- v) Request separate meetings with the subcontractor and the Contractor (and any involved higher-tier subcontractor(s)) with or without the RTD Purchasing Agent and/or the RTD attorney.
- vi) Host an internal meeting with all the appropriate RTD stakeholders to discuss the matter.
- vii) Conduct a settlement mediation with both the subcontractor and Contractor (and any involved higher-tier subcontractor(s)) present, with or without the RTD Purchasing Agent and/or RTD attorney.
- viii) If settlement cannot be achieved, then within five business days of completion of the unsuccessful mediation RTD shall establish a Dispute Resolution Panel of three RTD personnel, with one from the Small Business Opportunity Office/Civil Rights Division (or Capital Programs), one from Contracting & Procurement Division, and one from the General Counsel Department ("Panel"). This Panel will conduct a hearing on the matter with the subcontractor, the Contractor, and any involved higher-tier subcontractor(s) presenting evidence and arguments in an informal setting, but as controlled by the RTD attorney. The hearing shall begin within 30 days of the Panel being established.
- ix) At the hearing, the Contractor, the subcontractor, and any involved higher-tier subcontractor(s) will be required to address all outstanding issues and concerns that any of them may have, even if not directly related to the complaint. These may include, but are not limited to, discrepancies on invoice amounts, work not accepted, incomplete work, differing site conditions, delays, work inefficiencies, and any other matter that involves the parties at the hearing. Any party asserting a complaint, issue, or concern must present evidence.
- x) The Panel is empowered to interpret and enforce the Contract. It also is the trier of fact and can weigh the evidence, including witness credibility, to arrive at a binding determination. Such determinations of fact and law shall be by clear and convincing evidence. (Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain, a higher standard than preponderance of the evidence.) The findings and determinations of the Panel need only be by majority; they do not need to be unanimous.
- xi) By participating in the hearing, the subcontractor, the Contractor, and any involved higher-tier subcontractor(s) agree to be bound by the Panel's findings and

determinations, with one exception listed in subsection (xv) below.

- xii) The Panel may find that the Contractor has not complied with the Contract's prompt payment or release of retainage requirements and determine that the Contractor owes payment to the subcontractor. The Panel also may order any of the following actions by RTD:
- a. withhold payments to the Contractor until the Contractor and/or higher-tier subcontractor(s) pay the full amount owed to the subcontractor;
  - b. assess sanctions against the Contractor;
  - c. assess the subcontractor's indirect or consequential damages against the Contractor;
  - d. disqualify the Contractor from future bidding on RTD contracts as non-responsible;
  - e. work with the subcontractor to enforce any pertinent payment bond;
  - f. pay the subcontractor directly and deduct the amount from any retainage or monies owed by RTD to the Contractor;
  - g. provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part; and/or
  - h. issue a stop-work order until the subcontractor is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages against the Contractor.

Should the Panel determine that it cannot make findings by clear and convincing evidence, or that RTD has a conflict of interest in the determination of the issues presented, the Panel shall rule that the Contractor, any higher-tier subcontractors, and the subcontractor should resolve the matter in the State District Court for the City and County of Denver, independent of RTD. Following this determination by the Panel, if requested by one or more of the parties, any of the Panel members can meet with any of the parties to explain what was perceived by the Panel as a lack of evidence, lack of proof, etc.

If requested, one or more Panel members can supervise a mediation of the involved parties to once again attempt to settle the issues presented. The determination of the Panel is binding on the parties and cannot be appealed. However, either party may file an action in the State District Court for the City and County of Denver to overrule the Panel's findings, but only if the plaintiff can prove by clear and convincing evidence that the Panel had discriminatory bias, that the Panel's ruling was arbitrary and capricious, or that RTD had a conflict of interest that would not allow a fair determination of the issues presented.

## **8. JOINT CHECK UTILIZATION**

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A joint check is a two-party check between a DBE, a prime Contractor and a regular dealer of materials/supplies. All joint check arrangements with DBE subcontractors must be pre-approved by the RTD SBO and must strictly adhere to the joint check requirements set forth in USDOT guidance regarding same. At a minimum, the request must be initiated by the DBE to remedy a financial hardship for a specific period of time. There are monthly reporting requirements that must be complied with in order to receive DBE participation credit. The SBO will closely monitor the use of joint checks to ensure that the independence of the DBE firm is not compromised. Joint check usage will not be approved merely for the convenience of the prime Contractor. Please note, if Joint Checks are applicable, monthly reporting as defined by the RTD SBO will also be required.

## **9. DBE REMOVAL/TERMINATION/SUBSTITUTION/REDUCTION OF SCOPE FROM CONTRACT**

A Contractor must have good cause to remove/terminate/substitute/replace a DBE subcontractor and such removal/termination/substitution requires the consent and approval of RTD's SBO. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the Contractor by RTD. This requirement applies to instances that include, but are not limited to, when a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. No DBE subcontract agreement may contain a "termination for convenience" clause/provision because any termination for convenience provision/clause is contrary to the objectives of this part and the objectives of 49 CFR Part 26. To initiate the termination, substitution, removal or replacement process with a DBE subcontractor/supplier (regardless of the tier), the Contractor or lower tier contractor/subcontractor must do the following:

- i) Before transmitting to RTD's SBO its request to terminate and, substitute a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy of the notice sent to RTD SBO concurrently. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to RTD's SBO at the time the original letter is sent to the DBE subcontractor;
- ii) The Contractor must give the DBE subcontractor five (5) business days to respond to the notice and provide the RTD SBO with reasons, if any, why it objects to the proposed termination of its DBE subcontract or a portions thereof and why the SBO should not consent the Contractor's action;
- iii) RTD's SBO will then assess all pertinent/applicable documentation conduct interviews and site visits if necessary, and host meetings if deemed necessary to ensure a thorough review. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution;
- iv) If RTD's SBO determines the Contractor has good cause to terminate, substitute, reduce

scope or contract amount to the DBE firm, the SBO will provide written consent of DBE removal and the requirements to substitute work to another DBE firm. If RTD's SBO finds that good cause does not exist to terminate the DBE firm, the SBO will provide a written denial of the request to terminate/replace the DBE subcontractor and will immediately request a corrective action plan from the Contractor. Please note that if a Contractor elects to terminate, substitute and or reduce the scope of work initially committed to a DBE subcontractor without the approval or consent of the RTD SBO, this constitutes a material breach of a contract, which may result in the termination of the Contract or such other remedy as the RTD deems necessary as set forth under 49 C.F.R. §26.13. These legal remedies may include, but is not limited to: withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor from future bidding as non-responsible.

- v) For purposes of good cause to remove, replace, or terminate a DBE subcontractor, the following circumstances should exist: (1) failure or refusal by the DBE subcontractor to execute a written contract without good cause, (2) failure or refusal by the DBE subcontractor to perform the work of its subcontract in a way consistent with normal industry practice and the Contractor has not acted in bad faith, (3) failure by the DBE subcontractor to meet the Contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness by the DBE subcontractor that creates a risk for the Contract, (5) ineligibility by the DBE subcontractor to work on public works project because of suspension or debarment proceedings, (6) a determination by RTD that the DBE is not a responsible Contractor, (7) voluntary withdrawal from the project by written notification that has been verified, (8) ineligibility to receive DBE participation credit for the type of work to be performed, (9) other documented good cause that compels the replacement of the DBE.
- vi) When a DBE subcontract is terminated with the approval of RTD SBO, or a DBE subcontractor fails to complete its work on the Contract for any reason, including when work committed to a DBE subcontractor is not countable or reduced due to overestimations made prior to award, the Contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal.
- vii) Contractors must show that it took all necessary and reasonable steps to find another DBE subcontractor 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 RTD SBO has established for this project and or commitments made by the Contractor for DBE utilization/participation. 49 CFR Part 26.53 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Additionally, Contractors are required to solicit the support and assistance of RTD's SBO if they are unable to meet the DBE Goal/DBE commitment on the Contract.
- viii) The good faith efforts shall be documented by the Contractor. If RTD SBO requests documentation under this provision, the Contractor shall submit the documentation to RTD SBO designated Compliance Officer within 7 days, which may be extended for an additional 7 days if necessary at the request of the Contractor, and RTD SBO shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.
- ix) Contractors are required to comply with Good Faith Efforts procedures as defined under



49 CFR Part 26.53 and detailed under these DBE Contract Requirements. Contractors are required to comply with this section of the DBE requirements or any DBE program requirements and failure by the Contractor to carry out the requirements of this part as they administer the Contract is a material breach of contract, which may result in the termination of the Contract or such other remedy as RTD deems necessary as set forth under 49 C.F.R. §26.13. The legal remedies include, but is not limited to: withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Contractor from future bidding as non-responsible.

The Contractor shall ensure that DBE tiered subcontractors comply with this Section and insert the provisions of this Section into all DBE lower tiered subcontractor agreements, regardless of their certification status.

## **10. CHANGES**

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

## **11. REQUIREMENTS OF DBE CONTRACT REQUIREMENTS ENCLOSURES**

The Contractor must complete and return all applicable Enclosures in the forms set out in these DBE Contract Requirements with bid/proposal. All enclosures must also be submitted with the bid/proposal.

- i) The Enclosure 2, Schedule of DBE Participation must be submitted with the initial bid/proposal. Subsequent to the award of the Contract, the prime Contractor (Contractor) will be responsible for revising the initial Schedule of DBE Participation any time a new DBE is added to the project. The Contractor must also submit a copy of the DBE certification letter to RTD SBO with any new DBE(s) added to the project. RTD will only accept and approve new DBE(s) that are currently certified with the City and County of Denver or CDOT (Colorado UCP) under the NAICS code that coincides with the scope of work that they will execute in this project.
- ii) The Enclosure 3, DBE Letter of Intent (LOI) must be submitted with the initial bid/proposal. Subsequent to the award of the Contract, the prime Contractor will also be responsible for submitting to RTD SBO individual DBE Letters of Intent for each new DBE that is added to the project after the award of the Contract.
- iii) The Contractor completing the DBE Contract Requirements Enclosures is advised to contact the RTD's SBO main office at (303) 299-2111 if they have any questions or concerns prior to submitting bid/proposal documentation, unless otherwise specified in

the bid/proposal that all questions must be submitted through RTD designated Procurement Officer. Additional DBE Contract Requirements documentation will not be accepted after the Contractor submits their bid/proposal to RTD, unless otherwise stated in the bid or proposal.

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

**Failure to submit all required DBE Enclosures may result in your bid or proposal being deemed non-responsive. Failure to submit all completed Enclosures within the DBE Contract Requirements may result in your proposal being deemed Non-Responsive. Modification of any DBE Contract Requirements Enclosures prior to the official award of the Contract will result in your proposal being deemed Non-Responsive. Inconsistencies within the following Enclosures: Enclosure 1A, Enclosure 1B, Enclosure 2A and Enclosure 3A may also result in your proposal being deemed Non-Responsive. All Enclosures must be submitted with the bid/proposal, unless specified on contract solicitation. Modification of any DBE Enclosure documentation after the bid due date without prior approval or consent from the RTD SBO may result in your bid/proposal being deemed non-responsive.**

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

## **12. REPORTING, AUDITS, REVIEWS AND ORIENTATION REQUIREMENTS**

- i) By the fifth (5<sup>th</sup>) of each month, the Contractor(s) are required to report payments to DBEs through RTD's Diversity and Compliance Solution (B2GNow), which can be accessed through the following link <https://rtd-denver.gob2g.com/>. The Contractor shall ensure that its DBE subcontractors at every tier submit a monthly report of payments received and payments made to lower tier subcontractors, through RTD's Diversity and Compliance Solution (B2GNow).
- ii) The Contractor shall submit a report of its payments to its non-DBE subcontractors, using RTD's Diversity and Compliance Solution (B2GNow). The Contractor shall ensure that its non-DBE subcontractors at every tier confirm or deny receipt of payments from the Contractor, through RTD's Diversity and Compliance Solution (B2GNow) which can only be accessed by RTD's SBO.
- iii) The Contractor acknowledges that the RTD SBO has the right to independently confirm

the information contained in the RTD's Diversity and Compliance Solution (B2GNow) by soliciting such information from each DBE subcontractor and non-DBE subcontractor as may be required to verify payments received, distribution of payments received, subcontracting practices, participation credit, and sharing of resources/personnel. The Contractor shall not attempt to dissuade any such DBE subcontractor or non-DBE subcontractor from disclosing, confirming or denying any payment information or cooperating in any investigation initiated by the SBO.

- iv) The Contractor shall report Subcontractors' Participation and all payments made to all DBEs and non-DBEs through RTD's Diversity and Compliance Solution (B2GNow).
- v) The DBE subcontractor shall confirm or deny payments received from its Contractor, regardless of their lower tier, through RTD's Diversity and Compliance Solution (B2GNow). The non-DBE subcontractor shall confirm or deny all payments received from its Contractor, regardless of their lower tier, through RTD's Diversity and Compliance Solution (B2GNow).
- vi) By committing to working on this RTD project which is subjected to DBE requirements set forth under 49 CFR Part 26, all DBE subcontractors participating in this project are therefore required to undergo a Commercially Useful Function (CUF) review and a DBE compliance review/written certification before their contract can be closed by RTD SBO. DBEs are required to fully cooperate with RTD's SBO or its designee in the compliance review process. The CUF review and a DBE compliance review process will be initiated with a request for documents relating to contract performance and management of the actual work performed on the Contract. The scope and intensity of each CUF review will depend on the specific facts and circumstances. The compliance review/written certification/CUF is purposed to ensure that work committed to DBEs is actually being performed by DBEs, verify the amount of DBE participation credit to ensure that work is actually performed by the DBE consistent with the DBE Program requirements and/or to ensure that there is no activity engaged in by the DBE that would be inconsistent with the intent and objectives of the DBE Program. The CUF reviews are also to ensure that the DBEs are performing at least 30% of the work with their own workforces. The reviews are initiated with an overview/explanation process and closed out with a briefing and determination. The DBE subcontractor may be subjected to an informal compliance review by RTD's SBO or its designee with or without notice. The informal compliance review will generally be conducted at the work site where RTD actually observes and assesses the services/supplies being provided by the DBE.
- vii) The Contractor or any of its lower tier non-DBE subcontractors that is utilizing a DBE subcontractor may be selected for DBE compliance review to ensure that they are in compliance with the DBE Program requirements. This process will be initiated in a formal manner with written notice and instructions sent to the prime Contractor or its major subcontractor. The process will conclude with a close-out interview or debriefing where the Contractor or non-DBE subcontractor firm will be given an opportunity to refute the determination or add to any corrective action requested by RTD SBO. The Contractor must cooperate with any DBE Program audit or compliance review. Failure to cooperate can result in part or all of the DBE participation credit being denied / removed from counting toward the DBE participation goal for the Contract.
- viii) It is the recommendation of RTD that all DBE subcontractors on RTD led projects participate in the RTD's SBO DBE Orientation Program. DBEs who have attended the

orientation in the past, may be encouraged to repeat the orientation if there are changes to the DBE Program requirements, changes in the DBE regulations, changes in the DBE personnel, or if the DBE is experiencing challenges in complying with the reporting requirements.

- viii) Please note, if the Contract is subject to Davis Bacon requirements and RTD SPSP Program, monthly reporting to RTD SBO will be required. The RTD SBO will communicate and describe the reporting provisions. Additionally, if Joint Checks are applicable, monthly reporting as stipulated by the RTD SBO will also be required.
- ix) All Contractors that perform under the Contract are required to retain all records of participation on this project for seven (7) years from the completion of the project. This requirement flows down to all lower tier Contractors and must be within their subcontract agreements.

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## **DBE CONTRACT REQUIREMENTS - DBE ENCLOSURE CHECKLIST**

This checklist will help you verify that all the required enclosures are complete and submitted as required. Submit this checklist as the front page of your DBE Contract Requirements Enclosures. DBE Contract Requirements Enclosures are to be submitted with the bid/proposal. Failure to submit all completed Enclosures within the DBE Contract Requirements may result in your proposal being deemed Non-Responsive. Modification of any DBE Contract Requirements Enclosures prior to the official award of the Contract will result in your proposal being deemed Non-Responsive. Inconsistencies within the following Enclosures: Enclosure 1A, Enclosure 1B, Enclosure 2A and Enclosure 3A may also result in your proposal being deemed Non-Responsive. All Enclosures must be submitted with the bid/proposal. If you have any questions concerning the completion of any of the Enclosures, please contact RTD's SBO main office at (303) 299-2111, unless otherwise specified in the bid/proposal that all questions must be submitted through RTD designated Procurement Officer.

**The following Enclosures (Enclosure 1A through Enclosure 7) must be submitted with your bid or proposal as a matter of responsiveness.**

**[ ] Enclosure 1A: DBE Affidavit**

This form must be completed, signed and notarized by all Prime Contractors, whether DBE or not, to acknowledge the percentage of DBE utilization and DBE Goal commitment in this project.

**[ ] Enclosure 1B: DBE Prime Affidavit**

This form must be completed, notarized and signed only if the bidder/proposer is a DBE submitting a proposal/bid as a Prime Contractor. This form, if applicable, must be submitted with a current DBE certification letter(s) from the Colorado UCP to affirm DBE status.

**[ ] Enclosure 2A: Schedule of DBE Participation**

This form must be submitted by all bidders/proposers including DBE prime Contractors. This form must include a list of DBEs that the bidder/proposer intends to do business with if awarded the Contract. It must contain the following information: names and addresses of certified DBE firms, the scope of work they are to perform in the Contract, the applicable NAICS codes (found in their DBE certification with Colorado UCP) that coincides with the scope of work they will be performing in the Contract, their projected start and finish date for work in this project as well as the dollar value of each proposed certified DBE contract. Subsequent to the award of the Contract, the prime Contractor will be responsible for revising the initial Schedule of DBE Participation any time a new DBE is added to the project. The prime Contractor must also submit a copy of the DBE certification letter to RTD SBO with any new DBE(s) added to the project. RTD will only accept and approve new DBE(s) that are currently certified with the City and County of Denver or CDOT (Colorado UCP) under the NAICS code that coincides with the scope of work that they will execute in this project. The DBE firms listed on this schedule of DBE Participation cannot be terminated, substituted nor does RTD allow reduction of work without the final approval of RTD SBO. This form must be signed by the proposer/bidder. Subsequent to the award of the Contract, the prime Contractor must submit this form with each additional new DBEs added to the Contract.

**[ ] Enclosure 2B: DBE Open Ended Performance Plan (OEPP)**

This form must be completed by bidder/proposer only on Design/Build contracts. The OEPP will

apply only to the "construction phase" of a design/build contract. Bidder/Proposers are required to include the expected total contract amount, for the "construction phase", and fill the table listing all DBE activities or scopes intended to be subcontracted to DBE firms. Next to each listed scope, bidders/proposers are required to specify the time frame when each scope is expected to be performed; NAICS code(s) applicable for each scope/task, estimated dollar value and anticipated percentage of the total "construction phase" value each task represents.

**[ ] Enclosure 3A: Letter of Intent to Perform as a DBE Subcontractor**

This form must be submitted by all bidders/proposers. It must contain the following information: names and addresses of each individual certified DBE firm listed on the DBE Schedule of Participation, the scope of work the DBE is expected to perform in the Contract, the applicable NAICS codes (found in their DBE certification with Colorado UCP) that coincides with the scope of work the DBE will be performing in the Contract, the DBE's projected start and finish date for work in this project and the dollar value for the proposed certified DBE contract. This form must be signed by both the proposer/bidder and the DBE subcontractor. Subsequent to the award of the Contract, the prime Contractor must submit this form with each additional new DBEs added to the Contract.

**[ ] Enclosure 3B: DBE Regular Dealer/Distributor Affirmation Form (FTA Form)**

This form must be completed by DBE suppliers that are intended to be used for material or supplies. Each listed supplier in Enclosure 2 (Schedule of DBE Participation) must include a signed affirmation form. DBE suppliers intended to be considered "regular dealers" or "distributors" are required to fully complete the form and provide specific details on stocked materials they are intended to provide for the Contract. Bidder/proposer is required to submit completed affirmation forms, along with all other DBE Enclosures at the time bid or proposal is submitted.

**[ ] Enclosure 4: Bidders List Information (List of Subcontractors Seeking to Work)**

This form is for statistical purposes only. All bidders/proposers along with all their proposed subcontractors, DBEs and non-DBEs must complete this form.

**[ ] Enclosure 5: Employer Certification of Workforce**

This form defines the make-up of the company's workforce broken down by job categories, race and gender. This must be completed by every bidder/proposer as well as their subcontractors.

**[ ] Enclosure 6: Disadvantaged Business Outreach**

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

**[ ] Enclosure 7: Unavailability Certification**

Bidders/proposers that did not meet the specified DBE Goal identified in this bid/proposal or were only able to meet part of the DBE Goal in this bid/proposal are required to complete this form. In addition to this form, bidders/proposers are required to document and submit adequate and sufficient good faith efforts as required under 49 CFR Part 26.53. If the DBE Goal is met or exceeded by the bidder/proposer, please indicate N/A.

**RTD's Diversity and Compliance Solution will track prompt payment and retainage to DBEs and non-DBEs.** Please note that Failure to comply with the prompt payment provisions of DBE subcontractors and non- DBE subcontractors may give RTD just cause to impose one or more

of the following penalties, until the required payment(s) to the Contractor's subcontractor(s) is satisfied, unless RTD has given prior written approval to the Contractor for the delay or postponement of payment(s): (1) withhold payments to the Contractor; (2) assess sanctions against the Contractor; (3) assess the DBE and non-DBE subcontractor's indirect or consequential damages against the Contractor; (4) disqualify the Contractor from future bidding on RTD contracts *as non-responsible*; (5) enforce the payment bond against the Contractor; (6) pay the DBE and non-DBE subcontractor(s) directly and deduct this amount from any retainage owed to the Contractor; (7) *provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part*;

(8) issue a stop-work order until the DBE subcontractor(s) is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages against the Contractor. Unless approved by RTD, the Contractor's failure to comply with this Section is a material breach of the contract;

**[ ] Enclosure 8 - Instructions on DBE Participation and Payment Reporting Requirements through RTD's Diversity and Compliance Solution (B2GNow)**

Contracting reporting requirements related to payments and release of retainage to subcontractors DBEs and Non-DBEs will be accomplished through RTD's Diversity and Compliance Solution – B2GNow. After the award of the Contract, and by the 5<sup>th</sup> of every month, Contractor/s is required to report its payments to its DBE and non-DBE subcontractors, through RTD's Diversity and Compliance Solution (B2GNow). All payments should be entered by the 5<sup>th</sup> of the month, regardless of the tier of participation in the Contract and throughout the entire duration of the contract. The Contractor shall also ensure that its DBE subcontractors at every tier confirm or deny payments from the Contractor, using RTD's Diversity and Compliance Solution (B2GNow). You may access B2Gnow through this link <https://rtd-denver.gob2g.com/>. **This will not be required to be submitted with your bid/proposal.**



## ENCLOSURE 1A- DBE AFFIDAVIT

**THIS PAGE MUST BE COMPLETED BY ALL PRIME PROPOSERS/BIDDERS TO INDICATE THEIR PERCENTAGE OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION COMMITMENT.**

RTD has specified a \_\_\_\_\_% DBE Participation goal on this project.

THIS BIDDER/PROPOSER IS COMMITTED TO MEETING \_\_\_\_\_% - DBE (Disadvantaged Business Enterprise) PARTICIPATION IN THE CONTRACT.

Per 49 CFR Part 26 bidders/proposers must make adequate good faith efforts to meet this goal in order to be deemed as a responsive and responsible bidder. Award of the Contract will be conditioned on meeting the requirements of this section.

**The undersigned Contractor hereby agrees and understands that they must comply with their DBE commitments in this project in conformity with the Requirements, Terms, and Conditions of these DBE Contract Requirements.**

Business Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

(Name of Business Entity)

\_\_\_\_\_  
(Date) (Affiant Print Name) (Title)

\_\_\_\_\_  
(Affiant's Signature)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

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

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

My Commission Expires: \_\_\_\_\_

(Notary Public) (SEAL)

May I

## ENCLOSURE 1B- DBE PRIME AFFIDAVIT

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

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title)

And duly authorized representative of (the firm of) \_\_\_\_\_  
(Name of Corporation or Joint Venture)

whose address is \_\_\_\_\_

\_\_\_\_\_  
(Telephone No.)

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

\_\_\_\_\_ and that I will provide information  
and/or the  
(Contract number and name)

certification to document this fact with this enclosure.

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

\_\_\_\_\_  
(Date) (Affiant Print Name) (Title)

\_\_\_\_\_  
(Affiant's Signature)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the

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

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

My Commission Expires: \_\_\_\_\_

(Notary Public) (SEAL)

May I

Enclosure 2A – Schedule of DBE Participation

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

RTD Contract No: \_\_\_\_\_

Total Proposed Contract Cost: US \$ \_\_\_\_\_

DBE FIRM NAME	ADDRESS	TYPE OF WORK (ELECTRICAL, PAVING, i.e.) AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED	NAICS code(s)	PROJECTED START & COMPLETION DATES FOR DBE	AGREED PRICE TO BE PAID TO DBE /ANTICIPATED

1. Please list all DBEs involved on the Contract including the Prime Contractor if it is a DBE. All DBEs listed on this enclosure must be properly certified under the NAICS code(s) that coincides with the scope of work they will execute in this project. Work performed by DBEs for which they are not certified to perform will not count towards the DBE participation and/commitments. A current DBE certification for each listed DBE recorded on this schedule from the Colorado UCP (City and County of Denver or CDOT) must accompany this enclosure. Failure to provide proof of current DBE certification for any or all listed DBEs will eliminate such listed DBE’s participation, and work performed by such DBE will not count towards satisfaction of the DBE participation and/commitments. If additional pages are required to list all contracted DBEs, photocopy this enclosure as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE Goal as follows:
- (i) Materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE Goal;
  - (ii) Materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE Goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE Goal; and
  - (iii) Materials or supplies obtained from a DBE Distributor will be counted at 40% of the cost of materials or supplies (including transportation costs), toward the DBE Goal.
  - (iv) Materials or supplies obtained from a DBE broker firm only fees/commission will be counted toward the DBE Goal.

Contractor must submit copies of all DBE subcontracts, purchase orders or change orders within 30

Days of execution of the notice to proceed. There may be exceptions to Design Build contracts, multi-year contracts and other alternative delivery method contracts as DBEs are added throughout the course of the contracts and in some instances at different phases of the contract. DBE subs should not commence any work on this project without an executed subcontract agreement or purchase order. Failure to submit a copy of the subcontract agreement with a DBE sub to RTD may result in RTD not counting DBE participation towards the DBE Goal.

---

NAME OF CONTRACTOR

---

SIGNATURE OF CONTRACTOR & DATE

ENCLOSURE 2B – DBE OPEN-ENDED PERFORMANCE PLAN (OEPP)  
FOR DESIGN-BUILD CONTRACTS ONLY

NAME OF CONTRACTOR:  
RTD Contract No.  
Total Proposed Contract Cost (**CONSTRUCTION PHASE ONLY**): US \$ \_\_\_\_\_

DBE OPEN ENDED PERFORMANCE PLAN (OEPP) FOR DESIGN BUILD CONTRACTS ONLY THIS SECTION WILL APPLY ONLY TO THE CONSTRUCTION PHASE ON A DESIGN-BUILD CONTRACT				
DBE PLAN WORK ACTIVITIES OR SCOPES (i.e. ELECTRICAL, PAVING, CONCRETE, ETC.)	TIME FRAME BASED ON YEAR AND QUARTER WHEN SCOPE WILL INITIATE (i.e. 2025-Q-1)	NAICS CODE(S)	ESTIMATED DOLLAR VALUE FOR DBE PARTICIPATION	ANTICIPATED DBE %
SUM				

1. Please list all work activities or scopes expected to be subcontracted to DBEs, for the **construction phase** of this contract, including the Prime Contractor if it is a DBE. All listed tasks should include the year and the quarter of the year (i.e. Q-1 for work expected to initiate between January and March of any given year) of when each task is expected to initiate. Also, identified NAICS code(s) applicable for each listed task and the estimated dollar value dedicated for each of the listed tasks. The anticipated DBE percentage expected to be credited toward the DBE goal, should be based on **49CFR Part26.55 – How is DBE Counted Toward the Goal**. Although all expected DBE subcontracted amount should be listed under the **Estimated dollar value for DBE Participation** column, only the applicable and allowed DBE participation credit percentage should be recorded under the **Anticipated DBE %** column.

Awarded bidder or proposer will be required to submit to RTD’s SBO a signed DBE Enclosure 3 (Letter of Intent to use Subcontractors DBEs), for each DBE participant, prior to the execution of each subcontract agreement. RTD’s SBO will confirm whether selected firms are properly certified as a DBE and under the appropriate NAICS code(s). Also, RTD’s SBO will confirm how much DBE participation could be credited toward the DBE goal.

Upon execution of each subcontract agreement, Prime Contractor will be required to submit a copy of the executed subcontract agreement to RTD’s SBO, within 30 days of subcontract execution date. DBE subcontractors should not commence any work on this project without an executed subcontract agreement or purchase order. Failure to submit a copy of the subcontract agreement with a DBE subcontractor to RTD’s SBO may result in RTD not counting DBE participation towards the DBE goal.

Expected subcontracted DBEs must be certified under the Colorado UCP (City and County of Denver or CDOT), and specifically under the appropriate NAICS code(s), at the time of subcontract execution, and based on the Open Ended DBE Performance Plan (OEPP). Please photocopy this enclosure as required to make a complete list.

2. Expected tasks to be subcontracted to DBEs for materials or supplies will be counted toward the DBE Goal as follows:

- (i) Materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE Goal;
- (ii) Materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE Goal;
- (iii) Materials or supplies obtained from a DBE Distributor will be counted at 40% of the cost of materials or supplies (including transportation costs), toward the DBE Goal, and
- (iv) Materials or supplies obtained from a DBE broker firm only fees/commission will be counted toward the DBE Goal.

\_\_\_\_\_  
NAME OF CONTRACTOR

\_\_\_\_\_  
SIGNATURE OF CONTRACTOR & DATE

ENCLOSURE 3A – LETTER OF INTENT TO PERFORM AS A DBE SUBCONTRACTOR

Contract No.

The undersigned **Contractor** intends to engage the undersigned **DBE** to perform work in connection with the Project pursuant to a contract (the **DBE Contract**) between the Contractor and the DBE as [*check one*]:

\_\_\_\_\_an individual

\_\_\_\_\_a partnership

\_\_\_\_\_a corporation

\_\_\_\_\_a joint venture

The DBE status of the undersigned DBE is confirmed on the attached schedule of DBE participation and represents a company that is certified as of the date on which the DBE Contract is executed.

TYPE OF WORK AND CONTRACT ITEMS OR PART THEREOF TO BE PERFORMED	NAICS Codes	PROJECTED START DATE	PROJECTED COMPLETION DATE	Agreed Price to be Paid to DBE

\_\_\_\_\_% of the Dollar value of the DBE Contract will be sublet and/or awarded to non-DBE Contractors and/or non-DBE suppliers. The undersigned Proposer and the undersigned DBE will enter into the DBE Contract for the above work conditioned upon the Proposer's execution of the Contract with RTD.

\_\_\_\_\_

NAME OF CONTRACTOR

\_\_\_\_\_

NAME OF DBE FIRM

\_\_\_\_\_

OWNER/REPRESENTATIVE

\_\_\_\_\_

OWNER/REPRESENTATIVE

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

EMAIL ADDRESS

\_\_\_\_\_

EMAIL ADDRESS

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

TITLE

\_\_\_\_\_

DATE

\_\_\_\_\_

TITLE

\_\_\_\_\_

DATE

## Enclosure 3B – DBE Regular Dealer/Distributor Affirmation Form

OMB Control #2105-0586 (Exp. 5/31/2027)



U.S. Department of  
Transportation

### DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO\* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? ☐ YES ☐ NO<sup>1</sup>

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES<sup>2</sup> ☐ NO<sup>3</sup>

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

**For access to the fillable version of the DBE Regular Dealer/Distributor Affirmation Form please go to the U.S. Department of Transportation's Office of Civil Rights website or visit the link below:**

**<https://www.transportation.gov/mission/civil-rights/dbe-regular-dealer-distributor-affirmation>**



## ENCLOSURE 4 – BIDDERS LIST INFORMATION (INFORMATION REGARDING SUBCONTRACTORS SEEKING TO WORK)

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.

**Instructions:** The bidder/proposer is required to make copies of this form and have all bidders for subcontracting opportunities complete and return the form, along with their bid or quote. The form is required for all bidders or firms submitting bids or quotes, regardless of whether they are certified as DBE or not. Information required to be submitted includes Type of Scope work; NAICS code related to the type of work; firm's name; address; firm's certification status (whether DBE or non-DBE); race and gender information of majority owner; age of firm (how long firm have been in business); annual gross receipt. **Bidder/proposer is required to submit copy of all completed forms to RTD's SBO, along with other DBE Enclosures.**

RTD RFP/IFB Project Name: \_\_\_\_\_ RFP/IFB Number \_\_\_\_\_

Bid or Quote Description: \_\_\_\_\_ NAICS Code \_\_\_\_\_

Firm's Name: \_\_\_\_\_ Age of Firm \_\_\_\_\_

Firm's Address (Office Reporting): \_\_\_\_\_ Zip Code \_\_\_\_\_

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

Majority Owner's Race \_\_\_\_\_ Gender \_\_\_\_\_

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

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. \$30.73 Million \_\_\_\_\_ Above U.S. \$30.73 Million \_\_\_\_\_

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

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

### Enclosure 5 – EMPLOYER CERTIFICATION OF WORKFORCE

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/Admin Support															
Craft Workers (skilled)															
Operatives (semi-skilled)															
Service & Maintenance															
Service Workers															
TOTAL															

## 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 non-protective service occupations.

## RACE/ETHNIC IDENTIFICATION

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

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

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

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

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

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

**ENCLOSURE 6 – DISADVANTAGED BUSINESS OUTREACH**

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

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

RTD Contract Name and Number:

Contract No. (the ***Contract***).

Proposer:

\_\_\_\_\_

Subcontractor – if applicable:

\_\_\_\_\_

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

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Website: \_\_\_\_\_

Currently Sponsored Disadvantaged Business Outreach Activities:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

If so, how? \_\_\_\_\_

\_\_\_\_\_

ENCLOSURE 7– DBE UNAVAILABILITY CERTIFICATION

I, \_\_\_\_\_, \_\_\_\_\_,  
Name Title

of \_\_\_\_\_, certify that [*the Contractor*], made the following efforts to meet the DBE Goals on Regional Transportation District Contract No. for the Project:

[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 by Contractor*]

▪ 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 DBE including RTD:

Date	Organization	Phone #

As shown by the documentation provided to RTD, Contractor certifies that it has made good faith effort to attain the DBE Goals.

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

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

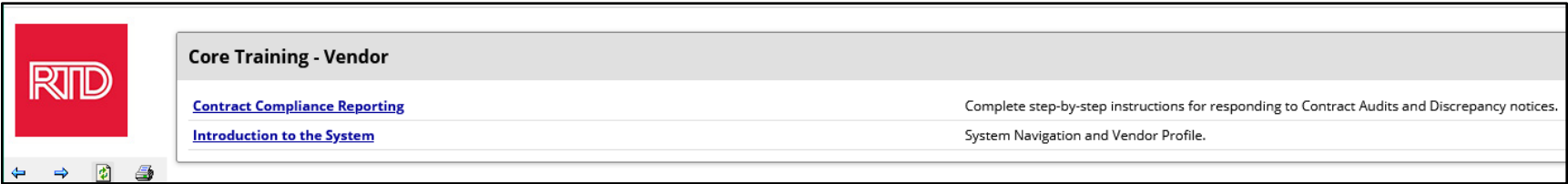
**ENCLOSURE 8 - INSTRUCTIONS ON DBE PARTICIPATION AND PAYMENT REPORTING REQUIREMENTS THROUGH RTD’S DIVERSITY AND COMPLIANCE SOLUTION (B2GNow)**

The use of RTD’s Diversity and Compliance System B2GNow will be mandatory, as the system will assist in tracking DBE participation and payments requirements, specifically regarding the Prompt Payment Provisions.

The Contractor must complete a mandatory Contract Compliance Reporting training class. This training will be held via a recorded webinar. To access the system, visit <https://rtd-denver.qob2g.com/>. If you have never logged on or do not know your username and password, click the Account Lookup link on the right side of the Login button.

On the left-hand side, please click on Help & Support>>>Video Library >>>>and select – Vendor Trainings. Vendors (Primes) can also sign up for the training class without logging in. See below for a print screen that includes the title of the two classes your team needs to complete.

RTD SBO encourages Contactor/Primes to make sure all DBE and non-DBE are aware of and complete their training sessions. However, RTD’s Small Business Opportunity Office (SBO) will directly notify to all vendors or subcontractors about the B2GNow.



**Exhibit E**  
**Template Subrecipient Progress Report Form**

Subrecipient:	
Project:	
Funding Agency:	
Date of Submission of Monthly Report:	
Report Submitted By:	
Submittal Date:	

*Please provide an update on the status of the project. Updates should include the following:*

- Work plan deliverables (scope of work)*
- Milestone status*
- Invoice status (including a total of amount invoiced to date)*
- Briefing of project meetings conducted*
- Briefing of public meetings conducted*
- NEPA Status (this item concludes when FTA issues NEPA determination) (if applicable)*
- Overview of any issues that have arisen or are anticipated*
- Projection of work plan and meetings for the next month*

**Task 0: Project Management**

**Task 1: Community Engagement**

**Task 2: Existing Conditions**

**Task 3: ETOD Policy and Strategy**

**Task 4: Opportunity Site and Infrastructure Planning**

**Task 5: Regulatory Framework Assessment**

**Task 6: First-Mile/Last-Mile Study**

**Task 7: Implementation Plan**