

RTD – §5309 - Bus & Bus Facilities Program (Livability) Award  
FTA Grant (FAIN)# CO-04-0115  
CFDA #: 20-500  
**Federal Award Date 08/15/13**

§5307-3 – Urbanized Area Formula (STP Metro) Award  
FAIN: CO-2017-030  
CFDA: 20-507  
**Federal Award Date: 09/20/2017**

Subrecipient DUNS: 085596802

## 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

for the

### CONTRIBUTION of FEDERAL FUNDING to the RECONSTRUCTION of the 16<sup>TH</sup> STREET PEDESTRIAN MALL AND TRANSITWAY

This Intergovernmental Agreement (*IGA*) is made and entered into as of the *Effective Date* (as hereinafter defined) between the Regional Transportation District (*RTD*), a political subdivision of the State of Colorado, and the City and County of Denver, a Home Rule City and municipal corporation of the State of Colorado (*City*), each a *Party* and together, the *Parties*, to provide pass-through of federal funding awards through RTD to the City as partial funding for the City's reconstruction of the 16<sup>th</sup> Street Pedestrian Mall and Transitway.

#### I. RECITALS

- A. The U.S. Department of Transportation (*USDOT*) provides funding through the Federal Transit Administration (*FTA*) to assist states and direct recipients to replace and rehabilitate bus and bus related equipment and facilities through its Bus and Bus Livability Program under 49 U.S.C. 5309 (*Section 5309*).

- B. The USDOT also provides funding through federal grants to assist states and direct recipients in financing capital projects under 49 U.S.C. §5307 (*Section 5307*). See generally, FTA Circular 9030.1 E (effective 1/16/14).
- C. RTD applied for and was awarded two separate FTA awards for the reconstruction and rehabilitation of portions of the 16<sup>th</sup> Street Mall Transitway.
- D. In 2012, RTD applied for and subsequently was awarded FTA funding for the reconstruction of portions of the 16th Street Mall Transitway under the Bus and Bus Facilities Program (*Bus Livability Award*).
- E. In addition, in 2017 RTD applied through DRCOG for and subsequently was awarded funds in a Section 5307 grant from FTA to provide eligible services for the rehabilitation of additional portions of the 16<sup>th</sup> Street Mall Transitway (*STP-Metro Award*).
- F. RTD is designated as a direct recipient (*Direct Recipient*) of USDOT awards from the FTA and, as such, is permitted to pass through Subawards of USDOT funds to eligible Subrecipients.
- G. As the Direct Recipient, RTD is responsible for contracting with eligible Subrecipients for projects selected by DRCOG and the FTA to receive funds through competitive selection processes, and for ensuring that Subrecipients comply with award requirements as a condition for receipt of USDOT funds through RTD's oversight and monitoring of award Subrecipients.
- H. The City desires to become a Subrecipient for the Bus Livability Award and the STP-Metro Award (together, the *RTD Awards*).
- I. After execution of this IGA, RTD shall request with due diligence any necessary approvals from the FTA and DRCOG to amend the RTD Awards to allow the City to use the funds as set forth in this IGA.
- J. Upon approval from the FTA and DRCOG allowing RTD to amend the RTD Awards as requested, the Parties shall terminate their prior agreements detailing the expenditure of the Bus Livability Award funds for the 16<sup>th</sup> Street Mall Transitway reconstruction (the Intergovernmental Agreement Between the Regional Transportation District and The City and County of Denver for the 16<sup>th</sup> Street Mall Reconstruction Project from Department of Transportation's Bus & Bus Facilities Grant, dated as of November 1, 2013) and their prior agreement detailing the improvements of certain City intersections with the 16<sup>th</sup> Street Mall Transitway (the Intergovernmental Agreement between the Regional Transportation District and the city and County of Denver for 16<sup>th</sup> Street Mall Intersection Improvements dated as of March 13, 2015) and enter into this IGA which will maximize the impact of the RTD Awards by integrating the funds into the City's reconstruction of the entire Transitway.

## II. SUBAWARD AGREEMENT

NOW, THEREFORE, it is hereby agreed as follows:

### 1. RECITALS.

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

2. DEFINITIONS. The following terms and phrases in “bold” print shall have the meanings ascribed herein: Terms not defined in this IGA shall have the meanings defined in the FTA Master Agreement MA(26) or the Code of Federal Regulations.

**16<sup>th</sup> Street Mall (or, Mall):** 16<sup>th</sup> Street in Downtown Denver, Colorado, from Broadway to Market Street.

**Design/Build Contractor or D/BC:** Any Third-Party Participant selected by the City to design and construct the Project pursuant to Request for Proposal procurement process initiated and administered by the City (the “RFP”).

**Design/Build Contract:** The Third-Party Contract with the Design/Build Contractor.

**FreeMallRide:** This is a free shuttle service operated by RTD connecting the two major Denver transportation hubs at Denver Union Station and Civic Center in Denver that runs on the 16<sup>th</sup> Street Mall Transitway which currently consists of an all-electric fleet of Mall shuttle vehicles purchased for and suitable only for use on the Mall. The FreeMall Ride provides service to RTD’s light rail system which crosses the 16<sup>th</sup> St Mall at California Street and Stout Street (**Light Rail Crossings**) and connects with approximately 60 RTD bus lines.

**Project:** Reconstruction of the Mall consistent with the Locally Preferred Alternative (LPA) as described in the Environmental Assessment documents for the Project pursuant to the RFP Documents for the Project. The Project consists of the work described on **Exhibit A** attached hereto (**Scope of Work**).

**RFP Documents:** The final written Request for Proposal document 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.

**Subaward:** An award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity.

**Subrecipient:** Subrecipient means entity that receives federal assistance provided by an FTA Recipient instead of FTA directly, but does not included a Third Party Contractor or Third Party Subcontractor or Lessee. For purposes of this IGA, the City is the Subrecipient.

**Third-Party Contract:** Third-Party Contract means a legal instrument by which a recipient or Subrecipient purchases property or services to carry out the award or Subaward. This does not

include an instrument describing a transaction that meets the definition of a Federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.

***Third-Party Participant or Third-Party Contractor:*** Third-Party Participant or Third-Party Contractor means each participant in the Project, except for FTA and RTD, whose work under the Project is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. Third-Party Participants or Third-Party Contractors may also include a Subrecipient or a Third-Party Subcontractor in the Project. The terms Third-Party Participant and Third-Party Contractor are used interchangeability in this IGA. For purposes of this IGA, the Design/Build Contractor and each of its subcontractors will be a Third-Party Participant or Third-Party Contractor.

***Transitway:*** Portions of the 16<sup>th</sup> Street Mall constituting a “fixed guideway” for the operation of public transit service from Market Street to Broadway in Denver, Colorado.

### 3. **SUBRECIPIENT STATUS.**

- a. **Acknowledgement of Status.** The City, as a Subrecipient of the RTD Awards, understands, acknowledges and expressly agrees that application of those funds to the Project subjects the City to compliance with all Federal laws, regulations, policies, procedures, requirements and directives applicable to the receipt of those funds and any amendments, modifications or additions thereto, including but not limited to FTA Circulars 5010, 9030.1E and 8100.1c, and the FTA Master Agreement, during the term of this IGA. The Parties shall administer this IGA and any Subawards that receive funding as a result of this IGA in accordance with FTA Circular 4220.1E and as more fully set forth herein. As a Subrecipient, the City is required to undergo risk assessment reviews and monitoring by RTD in its role as direct recipient of such funds. Any violations of or failures to comply with Federal requirements by the City may result in an enforcement action, termination of this IGA, disallowance of funding or other appropriate measures.
- b. **Compliance.** The Project went through a public environmental clearance process under the National Environmental Policy Act (***NEPA***) that resulted in the issuance of an Environmental Assessment (***EA***) and a FTA Finding of No Significant Impact (***FONSI***). In connection with the NEPA process, FTA entered into a Programmatic Agreement (***PA***) with certain historic groups (together with RTD, the City, the State Historic Preservation Officer and other parties), to mitigate the impacts of the Project on the cultural resource. A copy of the PA is attached to this IGA as **Exhibit B-1**. In addition to the matters described in **Section 3(a)** above, the City shall require the Design/Build Contractor to design, construct, and otherwise complete the Project in compliance with (i) all requirements arising under the EA, FONSI and PA, (ii) the Design/Build Contract and the RFP Documents, (iii) all applicable federal, state, City laws, codes, regulations and ordinances, including the requirements set forth in Section 4(k) below; and (iv) RTD safety requirements as specified in **Section 4(l)** below.

### 4. **PROJECT.**

- a. **General:** The RTD Grants to be provided under this IGA shall only be used by the City for the completion of elements of the Scope of Work included in the Project and consistent with the terms of this IGA and the RTD Awards. Changes to the Scope of Work affecting Transitway

functionality, operations, or safety shall be made in accordance with the terms and procedures set forth in this IGA, including Section 4(n) and Section 13(d) of this IGA.

b. Project Commencement/Funding Completion:

- i. All funds from the RTD Awards for the Project must be expended for work completed on the Project by the completion date specified in the Transit Award Management System database (TrAMS), which period of performance is currently through December 31, 2024; as such date may be amended or extended by agreement of the Parties with approval by the FTA.

c. Project Control: The City shall manage, control, and implement the Project,

d. Satisfactory Continuing Control:

- i. Upon completion of portions of the Project that can be utilized by RTD (***Substantial Completion***) and then for the entire Transitway within the Mall when the Project is complete, RTD shall maintain continuing control of the Transitway and responsibility for ensuring RTD transit operates on the Transitway in a manner substantially similar to the transit services currently provided by RTD for the useful life of the Transitway unless otherwise agreed to in writing by the Parties and approved by the FTA. RTD shall have exclusive use to operate transit vehicles on the Mall within the Transitway. The Project is expected to achieve a design useful life for the Transitway improvements of not less than forty (40) years.
- ii. The City and RTD will ensure that the Transitway lanes continue to meet the FTA definition of a “fixed guideway” as applicable. The City shall limit the use by other modes of the transit lanes, during the time transit is operating, to uses permitted on the Mall as of the Effective Date.

h. Light Rail Interface:

- i. All changes to the RTD Light Rail Crossings shall be approved by the State Public Utilities Commission, as applicable.
  - ii. As a separate unrelated project, RTD intends to reconstruct the Light Rail Crossings connecting with the Mall in the same time frame as the Project. RTD and the City will consult with each other to coordinate access, schedules, PUC approvals, and related matters to the extent reasonably feasible.
- i. Responsible Charge: Design and construction of the Project shall be under the responsible charge of qualified professionals, as defined by the State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors and the Colorado State Board of Landscape Architects, as applicable.
  - j. RTD Design Elements to Accommodate Transit: The Parties will cooperate in the design of the Project to integrate transit into the City’s vision for the Mall as a destination and premier public space. The City shall include this IGA as a reference document in the RFP. The Transitway shall (1) consist of two 12-foot wide lanes, (2) provide vertical clearance to

accommodate all RTD vehicles that may use the Transitway, plus a two-foot safety buffer, and (3) contain a minimum turning radius of 35' at all street intersections (the "Required Elements"). In addition to the Required Elements, RTD has provided certain additional Transitway design guidelines listed in **Exhibit B** and the Parties have agreed to other design elements in the PA (**Exhibit B-1**) (together, the "Design Guidelines"). The City shall include the Design Guidelines in the RFP and the Parties shall endeavor to incorporate the Design Guidelines into the final Scope of Work for the Project through the design development process. Any material deviations from the Design Guidelines shall be discussed and resolved prior to implementation in accordance with the terms and procedures set forth in this IGA, including Section 4(n) and Section 13(d) of this IGA.

- k. Compliance with Americans with Disabilities Act: Pursuant to the terms of Section 3(b) above, the City will require the Design/Build Contractor to comply with all applicable laws and regulations relating to accessibility in the design and construction of the Project, and the City will require the Design/Build Contractor to include similar compliance requirements in all Project contracts.

The City will require its Project Team and the Design/Build Contractor to provide an opportunity to representatives of the disabled community for consultation and input on the design and construction of the Project.

The Engineer of Record shall certify to RTD and CCD that the design complies with the above requirements, and the finished product has been constructed in compliance with the approved plans. A sample certification is attached to this IGA as **Exhibit C**.

The City shall engage the services of a third party, under a separate contract from the D/B Contract, to review the design and construction that will affect the disabled community and to document compliance with applicable laws and regulations prior to final certification by the Engineer of Record.

- l. Safety and Security: The Project shall comply with RTD's System Safety and Security Certification requirements, which requirements shall be incorporated into the RFP.

m. Construction:

- i. The Project shall be designed and constructed in accordance with EA, Fonsi, PA and this IGA, including mitigation measures and Required Elements and Design Guidelines.
- ii. The City will require the Design/Build Contractor to take reasonable steps to minimize disruption to the commuting public by minimizing impact to RTD's FreeMallRide, bus and rail services. Details and logistics will be worked out at staff level among the City, RTD, and the Design/Build Contractor.
- iii. The City will cause the Design/Build Contractor to provide RTD with a baseline schedule for design and construction (**Baseline Schedule**). RTD will not approve the Baseline Schedule, but the Parties will coordinate and cooperate with regard to the construction schedule and RTD will have the opportunity to provide input as

part of the Project submittal process. The Design/Build Contractor will provide monthly updates to the Baseline Schedules to RTD for coordination and reporting.

- iv. RTD may choose to conduct separate testing of granite pavers and the installations that will affect transit operations and safety. RTD will reserve \$250,000 of the grant funds for this effort. Any such testing to be performed by RTD shall require prior notice to the City and the Design/Build Contractor and shall be coordinated with the City's Project Manager and the Design/Build Contractor with regard to timing, access and related matters. If RTD determines the design, specifications, or construction of the Transitway, including adjacent elements, do not meet regulatory, safety or RTD design requirements, RTD will notify the City of its findings and the Parties will work to implement a resolution of RTD's concerns in a manner reasonably acceptable to RTD. RTD will contribute any funds remaining from this reserve to the Project once the Transitway and associated elements are substantially complete. Any separate testing activities will be coordinated and implemented through the oversight team for the Project established and managed by the City and the Design-Build Contractor.

n. Project Governance:

- i. RTD will be part of the governance team for the Project.
- ii. RTD will assign a project manager (**RTD-PM**) to participate at all points in the progression of the design and construction of the Project, including all matters and decisions that affect RTD transit operations, such as deviations from current service plans, scheduling, paving and bus stop design, construction inspection, testing, and Project acceptance. The RTD-PM will meet with the City and the Design/Build Contractor on a regular basis throughout the implementation and completion of the Project to provide information and resolve issues, questions and concerns. The City shall provide the draft of the RFP to RTD prior to publication per Sections 8 and 9 below, as well as all design submittals impacting the Transitway received from the Design/Build Contractor to RTD for RTD's review and consultation. RTD shall have ten (10) business days to provide any comments to such materials in writing to the City. The Parties will work together in good faith to resolve any conflicts, issues or concerns in a mutually acceptable manner. If the Parties are unable to resolve any such matters in a timely manner, such matters shall be resolved in accordance with the procedures set forth in Section 13(d) below.
- iii. The RTD-PM, and any additional staff designated by RTD, shall have the right to attend and shall receive notice of all formal meetings with a Third Party Participant related to transit functionality, operations, safety, and interaction with people and the built environment.
- iv. RTD shall not give direction to a Third Party Participant except as provided for in Section 9, but shall submit all comments on a Third Party Participant's work to the Project Manager for the City.

5. MAINTENANCE.

- a. The Parties' agreement for ongoing maintenance of the 16<sup>th</sup> Street Mall, the Intergovernmental Agreement Between The Regional Transportation District and the City and County of Denver for the 16<sup>th</sup> Street Mall Transit Lane Paver Maintenance dated January 1, 2013 as amended (the ***Mall Maintenance IGA***) shall remain in full force and effect during the Project, but shall be suspended as to those portions of the Transitway for the period of time beginning when control of such portions of the Transitway is delivered to the D/BC until that work has reached contractual substantial completion.
- b. Prior to expiration of the Mall Maintenance IGA, the Parties intend to terminate the Mall Maintenance IGA and enter into a new agreement for the ongoing performance of Transitway maintenance. The terms of such agreement shall be consistent with the "Agreement Parameters" adopted by the RTD Board of Directors on June 26, 2018 as set forth on Exhibit D attached hereto.

6. FUNDING.

- a. RTD Awards. The RTD Awards, are USDOT awarded to and administered by RTD and overseen by the FTA. The City shall use the funds from RTD Awards solely for eligible purposes as defined in FTA regulations and guidance, as they may be amended, promulgated or updated from time to time during the term of this IGA (see Section 12). Any future funding for the Project awarded to RTD by the FTA for the performance of elements of the Scope of Work will be governed by the terms of this IGA and overseen by the FTA consistent with the existing RTD Awards.
- b. Financial Capacity. Together, RTD and the City agreed to provide the local match funding to the RTD Awards in a combined amount equal to or greater than twenty percent (20%) of the federal portion of the RTD Awards for the Project as set forth in Paragraphs 6(c) and 6(d) below. The City provided RTD with evidence that it has the financial capacity to meet this obligation. In addition, the City is responsible for providing all funds necessary to fund the Project after applying funds received from the Bus Livability Award and the STP Metro Award.
- c. Bus Livability Award. The USDOT Grant CO-04-0115 will fund eligible costs for portions of the design and construction of the Project as defined by the approved scope in the Federal award. The original Bus Livability Award amounts were as follows:

\$7,978,998 Federal portion  
\$1,994,750 Local portion  
\$9,973,748 Total

After expenditures drawn down against the award to date, the remaining Bus Livability Award funds available for the Project are Eight Million, Eight Hundred Forty-Five Thousand, Six Hundred Ninety-Six Dollars (**\$8,845,696**) (the "**Bus Livability Award Amount**"). The Bus Livability Award Amount in the table below represents the total amount of federal funding provided under this IGA to partially fund the Project (**\$7,978,998**), less amounts spent or committed as of the date of this IGA, and includes the amount of local match\* for which the City and RTD are responsible (originally **\$1,329,833\*** by the City and **\$664,917\*** by RTD).



Bus Livability Award Funding Summary:

<b>Funding Source</b>	<b>Amount</b>
<b>Federal Share Remaining (80%)</b>	<b>\$ 7,076,557</b>
<b>Local Match Remaining (20%)*</b>	<b>\$ 1,769,139</b>
RTD Local Match	\$ 589,713
City Local Match	\$ 1,179,426
<b>Total Plan Budget Remaining</b>	<b>\$ 8,845,696</b>

\* The local match shall be drawn out as 66.67% to the City and 33.33% to RTD.

- d. STP Metro Award. FHWA funds, administered under FTA Grant CO-2017-030 will fund eligible costs for the design and construction of the Project as defined by the approved scope in the Federal award. The original STP Metro amounts were as follows:

\$4,799,000 Federal portion  
 \$1,199,750 Local portion  
 \$5,998,750 Total

RTD anticipates that the remaining STP Metro Award funds available for the Project after initial expenditures will be Five Million, Nine Hundred Fifty-Six Thousand Eight Hundred Five Dollars (**\$5,956.805**) (the “**STP Metro Award Amount**”). The STP Metro Award Amount represents the total amount of federal funding provided under this IGA to partially fund the Project (**\$4,799,000**), less amounts spent or already committed as of the date of this IGA, and includes the amount of local match for which the City and RTD are responsible (originally **\$799,873** by the City and **\$399,877** by RTD).

STP Metro Award Funding Summary:

<b>Funding Source</b>	<b>Amount</b>
<b>Federal Share Remaining (80%)</b>	<b>\$ 4,765,444</b>
<b>Local Match Remaining (20%)*</b>	<b>\$ 1,191,361</b>
RTD Local Match	\$ 397,120
City Local Match	\$ 794,241
<b>Total Plan Budget Remaining</b>	<b>\$ 5,956,805</b>

\* The local match shall be drawn out as 66.67% to the City and 33.33% to RTD.

- e. Overruns; Limited Award. Unless otherwise agreed to by RTD’s Board of Directors, in no event shall RTD be responsible for reimbursement of Project costs in any amount greater than the RTD Awards and RTD’s portions of the local match. If the amount of the RTD Awards received by RTD is less than the amounts set forth in this Section 6, RTD shall not be responsible to provide any shortfall to the City; provided that, in such event, adjustments to the

Scope of Work may need to be made by the City. Any such changes shall be made in consultation with RTD pursuant to the terms and procedures set forth in this IGA.

- f. No RTD Obligation. RTD is not responsible to provide any funding to substitute for RTD Award funds in the event either RTD Award is withdrawn, disallowed or otherwise not funded by the FTA. The City agrees to remit to RTD any payments made to the City by RTD that are later disallowed by the FTA due to the actions or omissions of the City or its Design/Build Contractor, together with any penalties and interest arising from such disallowed payments. Notwithstanding the foregoing or any other term or provision of this IGA to the contrary, in the event that all or any portion of the RTD Awards is withdrawn, disallowed, or otherwise not funded for any reason, the Parties shall coordinate and cooperate in making changes to the Scope of Work to reflect and account for the loss of such funding pursuant to the terms and procedures set forth in this IGA.
- g. Administrative Fee. The Parties acknowledge that RTD has elected not to charge an administrative fee to recover RTD's costs of administering the RTD Awards.
- h. No Research and Development. The Parties acknowledge that the RTD Awards will not include reimbursement from the FTA for research or development.
- i. No Indirect Costs. The City shall identify all Project costs and no Party shall charge the RTD Awards for Indirect Costs as defined in 2 C.F.R. Part 200.

## 7. INVOICING.

- a. Monthly Invoices. With each monthly Progress Report, if costs or expenses are incurred during that period, the City may submit invoices to RTD for verified, eligible costs and expenses consistent with the Scope of Work up to the maximum amount of the RTD Awards (if the RTD Awards are in the amounts as anticipated; otherwise up to the actual RTD Awards amount). **The City shall provide invoices in the form required by the RFP Documents and Design/Build Contract.** RTD shall reimburse the City only for actual Third-Party Participant work and other eligible expenses detailed in the Scope of Work.

Submit invoices to:

Regional Transportation District  
Attn: Accounts Payable  
1660 Blake Street DO-M3  
Denver, CO 80202  
to: [AP.Department@RTD-Denver.com](mailto:AP.Department@RTD-Denver.com)

- b. Payment by RTD. RTD shall pay up to 86.66% of all approved invoices (80% for the federal share plus 6.66% of the remaining 20% for RTD's 33.33% local match) within thirty (30) days of receipt of completed invoices from the City. If RTD disputes any invoice or portion thereof, RTD shall provide written notice to the City of the dispute within fourteen (14) calendar days of RTD's 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 Project funded pursuant to this IGA other than as set forth herein, unless previously authorized in writing. RTD shall not pay Third Party

Participant bills directly. RTD's approval 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 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 FTA, the City shall reimburse RTD or 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, provided that the Parties shall first cooperate to identify and correct any circumstances leading to the ineligibility determination.

## **8. THIRD PARTY CONTRACTOR / PARTICIPANT AGREEMENTS**

- a. **Flow Down of Provisions to Contractors.** City will issue the RFP to engage the Design/Build Contractor to perform the Project work. The City understands, acknowledges and agrees that the City is responsible for ensuring that each such contract with a Third Party Contractor, as a subgrantee of the RTD Awards, shall comply with all applicable federal requirements in order to be eligible for reimbursement of amounts paid under such contract. The City shall manage, through its D/BC, the performance of all Third Party Participants and the fulfillment of all federal requirements by those Third Party Participants, including, but not limited to, guidance provided by FTA Circular 4220.1F, Third Party Contracting Guidance and 2 C.F.R. Part 1200 which requires Third Party Contracts 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 those requirements imposed by 2 C.F.R. Part 1200.

With regard to all contracts with a Third Party Participant to perform work on the Project, the City shall require the D/B C to ensure that any such contract complies with all the terms of this IGA and all applicable federal statutes and requirements as these requirements 'flow down' to every Project participant and that all checks and certifications are completed for each subcontract. The D/BC and each subcontract entered into between the D/B C and a Third-Party Participant (as subcontractors) are considered Third-Party Contracts and shall include the following provision or a substantially similar version of the following provision:

**“RTD/Denver Intergovernmental Agreement (IGA) Terms and Conditions Binding on Subcontractors:** [Third Party Participant] has received and reviewed a copy of the RTD/CCD 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 for the performance of work under this contract. [Third Party Participant] agrees to be bound to those obligations under the IGA as the Contractor is bound to the City and County of Denver under the IGA. Additionally, all terms and provisions in the IGA, the FTA Terms and Conditions and the Federal Certifications and Assurances that are applicable to the Third Party Participant and the work are incorporated in this contract by reference, in their entirety. Third Party Participant agrees to cooperate with RTD and the City and County of Denver in providing any information requested by RTD or City and County of Denver for federal award reporting purposes.

[Third Party Participant] shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Third Party Participant shall

carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Third Party Participant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- b. Requests for Proposals. Prior to issuance of the RFP, the City shall provide RTD with the draft RFP and form of the Design/Build Contract prior to City publication and RTD shall timely consult with the City regarding any changes necessary to cause the draft RFP to comply with the RTD Awards and the terms of this IGA. Compliance review shall consist of inclusion of this IGA, required contract clauses for federally assisted subcontracts and Third-Party Contracts, including exhibits attached hereto, unless otherwise approved by the City and RTD. Compliance by the City and the D/BC with RTD required contract clauses for federally assisted projects shall be a condition of receipt of grant funding through RTD for the development of the Project. Once the RFP form is complete, the City may publish the RFP, select a D/BC, execute a contract, issue notice to proceed, and otherwise advance the Project as contemplated herein. The Parties will work together in good faith to resolve any conflicts, issues or concerns relating to the RFP in a mutually acceptable manner. If the Parties are unable to resolve any such matters in a timely manner, such matters shall be resolved in accordance with the procedures set forth in Section 4(n) and Section 13(d) of this IGA.
- c. Prior to the execution of a contract between the City and the Design/Build Contractor selected by the City, the D/BC shall complete and submit to the City all required forms found in Exhibits E, F, G and H attached hereto, and the City shall timely submit those completed forms to RTD. The City and the D/BC shall be the parties to the D/BC contract; and the City, as the contracting agency, shall be responsible for administering the D/BC contract and ensuring that the D/BC similarly requires execution of all applicable Third Party Participant contracts, System Award Management (SAMs) checks and collection of certifications prior to any Third Party Participant performing work on the Project. Under no circumstance shall the D/BC or its subcontractors begin Project work without an executed contract and completed certification.
- d. RTD will not directly contact the D/BC except as specifically set forth in Section 9.
- e. Review. The City shall manage all work performed by the D/BC for the development of the Project. RTD shall have the opportunity to review and comment upon all matters that pertain to bus and rail transit, including change orders affecting these elements, and transit's interaction with people and the built environment as provided in Section 4 of this IGA.

## **9. CIVIL RIGHTS SMALL BUSINESS OFFICE.**

- a. The Parties shall ensure that the Disadvantaged Business Enterprise (***DBE***) requirements comply with 49 CFR Part 26 and RTD's FTA approved DBE Plan and Program (***DBE Program***). RTD shall be responsible for administering its own DBE Program to set and monitor compliance with the goals on the Project in coordination with the City through RTD's Small Business Office (***RTD SBO***)

- b. RTD SBO established DBE goals of eighteen percent (18%) for the design phase and seventeen percent (17%) for the construction phase of the Project (collectively, the **DBE Goal**). The City shall use the DBE Goal in awarding and administering the Design/Build Contract.
- c. The City shall provide a contact person from the City to work with the RTD SBO for the Project. This person will be responsible for administering 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 Goal and the DBE Requirements.
- d. RFP Requirements:
  - i. The RTD SBO shall be part of the City's RFP preparation and evaluation response team.
  - ii. The City shall provide RTD SBO with a copy of all information and forms relating to the DBE Requirements from all proposals received in response to an RFP at least ten (10) business days in advance of the City's selection of the D/BC as part of the DBE Requirements.
  - iii. The City shall include the RTD Civil Rights/EEO/DBE Contract Requirements, **Exhibit H**, in the RFP and in the D/BC contract.
- e. Subcontract Requirements: The City shall require the Design/Build Contractor to include required contract language and exhibit materials in each Third Party Participant contract for Project work. The City shall require the D/B C to ensure that the selected prospective DBE Third Party Participants complete and submit all necessary documentation and forms to RTD SBO with a copy to the City. The City and its DBE Third Party Participants shall submit all forms from the DBE Requirements, **Exhibit H**, to RTD SBO prior to execution of a DBE Third Party Participant subcontract in compliance with RTD DBE Plan and Program. RTD may deem a prospective DBE Third Party Participant's failure to submit completed forms as non-responsive. The D/BC selected by the City must provide documented proof of good faith efforts using the RTD SBO documentation process if such D/BC is unable to meet the DBE Goal.
- f. The City shall ensure the selected D/BC submit a copy of all DBE Third Party Participant contracts and/or purchase orders to the City's DBE compliance office and the RTD SBO within thirty (30) days of execution of each DBE Third Party Subcontract. Under no circumstances shall a DBE Third Party Participant, as designated by the City, begin work without an executed subcontract or purchase order. The City shall direct its D/BC to obtain RTD SBO's review of all DBE contract amendments and change orders to any DBE-related contracts prior to the execution of such contract amendments and change orders.
- g. 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, including any reductions to scopes of services and/or subcontract values.
- h. RTD SBO will directly contact the D/BC and DBE Third Party Participants for compliance monitoring, reviews and/or auditing purposes. The City shall be copied and notified of all such communications by the RTD SBO. The City shall require its DBE Third Party Participants to cooperate with the RTD SBO.

- i. If required by the applicable DBE Requirements, the City shall direct the D/BC to withhold payment from a DBE Third Party Participant for non-compliance with the DBE Requirements and this IGA as requested in writing by RTD SBO.

## **10. REPORTING/AUDITS.**

- a. RTD shall perform all grant reporting for the development of the Project to the FTA. The City shall cooperate with RTD in providing information required by RTD for grant reporting and shall also require the D/BC and to cooperate with RTD.
- b. As of the Effective Date, the City shall submit monthly Project progress reports to RTD (***Progress Report***) *regardless of whether any work has actually been performed during that month*, consistent with and in reference to the Project's Scope of Work on a monthly basis due on the 5th day of each month until Award Closeout (defined in Section 10(d)). After Award Closeout, the City shall submit Progress Reports on a quarterly basis to RTD until Project completion. The Progress Report shall include the required milestone reporting elements of FTA Circular 5010. If requested by the FTA pursuant to the terms of FTA Circular 5010, additional information may be required.

RTD may withhold reimbursements to the City until all required reporting is submitted. In the event Progress Reports are untimely or incomplete, RTD may delay payments and exclude or disallow certain amounts if any Project costs are rendered ineligible as a result. RTD may report delinquent or incomplete reporting to DRCOG and the FTA.

- c. Audits. City shall provide copies of any Third Party Participant subcontracts for performance of Project work to RTD upon request to ensure compliance with the RTD Awards.

RTD, FTA, and any auditor or contractor acting on their behalf shall have the right to audit the City's, D/BC's and Third-Party Participants' books and records related to the Project for a period of three (3) years from the date of completion of the City's, D/BC's or Third-Party Participants' work on the Project, as applicable.

- d. Award Closeout. Completion of the Federal Awards occurs when FTA agrees that all activities approved for the Award have been completed and/or the federal assistance awarded has been expended for eligible costs ("***Award Closeout***"). Awards are to be closed 90 days after the end of the period of performance. Closeout must include a list of assets acquired or improved under the Award, a final reconciled budget reflecting actual costs, and any other documentation or reports required as part of the terms and conditions of the Award. RTD shall notify the City when FTA accepts the closeout documentation, and closes the Award in FTA's grant management system. RTD will coordinate the effort to process all closeout documentation and otherwise exercise diligent efforts to achieve Award Closeout pursuant to applicable laws and regulations relating to the Federal Awards. The City agrees that RTD Award closeout by FTA does not invalidate any continuing requirements imposed by this or any other agreement, or any unmet requirements.

## **11. DELAY/MODIFICATION/TERMINATION.**

- a. Revision of Scope for Delay. The Parties may terminate this IGA and terminate the development of the Project if both Parties agree in writing that the continued development of the Project would not produce beneficial results commensurate with the further expenditure of funds.
- b. Delay. If the Project is reasonably anticipated to be delayed during construction for more than three (3) months or if the Project schedule is otherwise significantly modified, postponed or cancelled due to Project delays or other factors, the Parties shall meet and confer to agree upon a satisfactory way to keep the Transitway in a safe and functional condition in a manner reasonably acceptable to RTD and the City until such delay is resolved.
- c. In the event of a delay, the Parties agree to report delays and efforts to recover as required by FTA Circular 5010 and 2. C.F.R. 200.328.

## **12. COMPLIANCE WITH FEDERAL AWARD REQUIREMENTS**

- a. Flow Down Provisions. As detailed in Section 8, the Parties acknowledge that development of the Project will be at least partially Federally funded and this IGA and all Subawards, Third-Party Contracts and subcontracts are therefore subject to the FTA Master Agreement MA(26), as updated, and all other applicable Federal regulations. All Subawards, Third-Party Contracts and subcontracts must include as flow down provisions the terms of this IGA, including the FTA contract provisions attached as Exhibit E & H.
- b. Without limiting the foregoing, the following are specifically incorporated herein by this reference and shall govern this IGA: (i) FTA Master Agreement MA; (ii) US DOT Regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" 2 C.F.R. part 1201; (iii) FTA Circular 9030.1E, Urbanized Area Formula Program: Program Guidance and Application Instructions; (iv) FTA Circular 5010.1E, Grants Management – General; (v) FTA Circular 4220.1F, "Third Party Contracting Guidance"; (vi) Executive Order 12898 (Environmental Justice), and (vii) FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" (collectively, the ***Requirements***). 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 Requirements shall control the interpretation of this IGA in the event of a conflict with this IGA.
- d. The Federal Certifications and Assurances applicable to this IGA are attached and fully incorporated by reference herein as Exhibit F. The City shall complete the Certification Regarding Lobbying Form, included within Exhibit G, and return such form 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, assurances, and terms applicable to the City during the term of this IGA, and further agrees to require such compliance by any Third Party Participants for awards exceeding applicable thresholds prior to entering into such Third-Party Contract. The City further understands and

agrees that the City shall require the performance System of Award Management (SAM) checks for all Third Party Participants prior to that Third Party Participant performing work on the Project to confirm that no Federally excluded parties are participating in the Third-Party 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.

- e. The City is required to adopt and publish its Title VI policy, providing a copy thereof to RTD, which policy shall include Title VI complaint procedures for investigating and tracking Title VI complaints. The City and RTD are required to handle Title VI complaints in compliance with Federal law and **EXHIBIT I** attached hereto (entitled Subrecipient Transit Equity Compliance Guide).

### **13. MISCELLANEOUS**

- a. Third Parties. Except as herein specifically provided, no rights, privileges or immunities of any Party shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this IGA, except for the Federal government.
- b. 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.
- c. Merger; Amendment. This IGA represents the entire agreement between the Parties for the Project funding through RTD and may be amended only in writing, signed by the Parties.
- d. Disputes. Disputes shall initially be resolved by the City's Project Manager for the Project and the RTD-PM designated under Section 4(n) of this IGA. If such parties are unable to resolve the dispute, the matter shall be referred to RTD's Chief Engineer and the City Engineer for the City. If the Party liaisons are unable to resolve the dispute, they shall escalate the dispute to RTD's Assistant General Manager of Capital Programs, and the City's Executive Director of Public Works. If no resolution can be found, the dispute will be escalated to the General Manager of RTD and the Mayor of Denver.
- e. Notices. All contacts, communications, and data required to be performed or exchanged pursuant to this IGA will be in writing sent to the following persons or their successors designated in writing:

For RTD:

Jyotsna Vishwakarma  
Senior Manager, Chief Engineer  
Regional Transportation District  
1560 Broadway, Suite 700  
Denver, Colorado 80202

For City:

City and County of Denver  
Department of Transportation and Infrastructure  
201 W. Colfax Avenue, Department 608  
Denver, Colorado 80202  
Attention: Executive Director



[Jyotsna.Vishwakarma@RTD-Denver.com](mailto:Jyotsna.Vishwakarma@RTD-Denver.com)

With a copy for legal notices to:

General Counsel  
Regional Transportation District  
1660 Blake Street  
Denver, Colorado 80202

City and County of Denver  
Denver City Attorney's Office  
1437 Bannock Street, Room 353  
Attention: Denver City Attorney

- f. Term. This IGA shall commence as of the Effective Date and will terminate upon final close out of the Project, unless sooner as provided in Section 11 or extended in writing by both Parties. The following provisions shall survive termination of this IGA: Section 10 and 13(g).
- g. Indemnification. The City shall require its Design/Build 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 the Design/Build Contractor, or its employees, agents, subcontractors or assignees arising out of the Project.
- h. Insurance. The City shall require its D/BC to include RTD as a named insured on any policies issued for the Project and shall require its D/BC to obtain Railroad Protective Liability insurance in the amounts set forth in **Exhibit J**.
- i. Successors and Assignment. The terms of the IGA shall be binding on the successors and assigns of each of the Parties. Neither Party shall assign this IGA, or any part thereof, without the prior written consent of the other Party and any assignment without such consent shall be void and unenforceable.
- j. 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.
- k. 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.
- l. 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.
- m. 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.

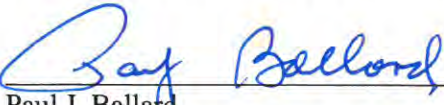
- n. Applicable Law and Venue. This IGA shall be given effect and construed by application of the law of the State of Colorado, and any action or proceeding arising hereunder shall be brought in the District Court for the City and County of Denver, State of Colorado; provided, that if any such action 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.
- o. 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.
- p. 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.
- q. 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.

*[Signatures on followings pages]*

IN WITNESS WHEREOF, the Parties hereto have executed this IGA on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**REGIONAL TRANSPORTATION DISTRICT**

**CITY of DENVER**

By:   
Paul J. Ballard  
Interim General Manager and CEO

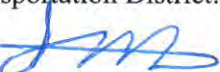
By: \_\_\_\_\_  
Michael B. Hancock  
Mayor

DATE: Feb. 28, 2020

DATE: \_\_\_\_\_

Approved as to legal form for the Regional Transportation District:

Approved as to legal form for City:

By:   
Dana E. Steele  
Sr. Associate General Counsel

By: \_\_\_\_\_  
Kristin M. Bronson  
Assistant City Attorney

DATE: 2/27/2020

DATE: \_\_\_\_\_



## EXHIBIT A

### Project Scope

Downtown Denver's 16th Street Mall (Mall) is Denver's busiest transit artery and premier public space; a significant cultural resource; one of the longest pedestrian and transit malls in the world; and a designated transit fixed guideway.

The Project limits cover the length of the original 12.5 blocks of the Mall from Market Street to Broadway, from building face to building face, the triangular plaza at Broadway, and portions of cross streets intersecting the Mall.

The overall Project scope includes a spatial reorganization and rebuilding of the transit way lanes and pedestrian spaces; intersection improvements; lighting replacement and upgrades; upgrades to utilities and traffic control devices; tree replacement; signage; custom street furnishings; potential accommodations for future technologies, and associated ancillary work, consistent with the Locally Preferred Alternative (LPA) as described in the Environmental Assessment documents for the Project.



## EXHIBIT B

### DESIGN ELEMENTS TO ACCOMMODATE TRANSIT ON THE MALL

The Design shall consider how the Transitway and associated elements will be constructed, maintained, repaired, and replaced.

#### **1. Spatial Requirements for the Mall Shuttle:**

The Project shall provide adequate space for the Mall shuttle to operate safely. In addition to transit lanes from Market to Broadway, the Project shall provide adequate turning areas at street intersections, clear of all obstructions, so buses can be detoured on and off the Mall from the cross streets. The transition across Market Street shall be analyzed, and if necessary, retrofitted. At a minimum, the space provided shall consist of two, 12-foot wide lanes with 15-foot high vertical clearance. Minimize changes in horizontal alignment and provide smooth transitions. Coordinate with RTD to demonstrate that the space provided is adequate for all anticipated movements.

#### **2. Bus Boarding Area Requirements:**

- a. Accommodation for all doors of at least one bus at each stop, with unobstructed doorways
- b. Provision of adequate passenger waiting areas.
- c. No more than 10-inches of step height vertically, for passengers to traverse, as they get on and off the bus from the bus boarding areas.
- d. Visual aids for drivers to know where to stop the bus at boarding areas.

#### **3. Keeping People Safe**

The driver sits on the right hand side in the Mall bus. This factor needs to be considered in accommodating bus movements. The driver needs to know where to drive the bus in all weather conditions, and should be able to see sufficiently ahead in order to be able to brake and stop the bus in the event of passengers drifting or getting in the Transitway. The Project shall provide visual aids that work in all-weather conditions, to help drivers stay in their lanes, cross-intersections, avoid striking vehicles traveling in the opposing direction, and avoid striking people and wayside fixtures and furnishings.

People using the Mall may be distracted and unaware of their surroundings for a variety of reasons. If a driver has to brake abruptly to avoid hitting a pedestrian in the Transitway, it may lead to injuries to people within the bus. The design shall encourage people to stay on the pedestrian walkways, and discourage walking adjacent to the transit lanes. The design shall ensure that pinch points are not created where people may get trapped between a bus and fixtures and furnishings.

The Mall is heavily used by pedestrians of different ages and abilities. As a premier tourist attraction, it also attracts people from around the country and the world. Signs, visual, and tactile cues intended to guide behavior must be widely understood.

**4. Paving:**

The required design life for the pavement will be specified by the City. Adequate traction and support to carry the expected running load of the buses shall be provided by the paving materials, in all weather conditions. The potential for sliding of the buses is a concern in inclement weather.

**5. Grading and Drainage:**

Composite slopes to be considered in establishing vertical profile and cross-section for the Transitway. Criteria for ponding of storm water in the transit lanes to be mutually agreed to. Bus boarding areas to have slopes complying with normal City sidewalk standards, and have no ponding. Design changes in vertical alignment and grades to prevent buses from bottoming out. Minimize grade transitions of the Transitway and provide smooth transitions.



**EXHIBIT B-1 to Subrecipient IGA**

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO**

**WHEREAS**, the Federal Transit Administration (FTA) plans to provide federal financial assistance to the Regional Transportation District (RTD) who is working in partnership with the City and County of Denver (CCD), and Downtown Denver Partnership (DDP) (herein referred as the Project Partners) for improvements to the 16th Street Mall (collectively, such improvements are referred to herein as the Project) and has determined that this action will constitute an Undertaking under 36 *Code of Federal Regulations* (CFR) 800.16(y), which requires compliance with Section 106 of the National Historic Preservation Act (54 United States Code [U.S.C.] § 306108) and its implementing regulations in 36 CFR Part 800;

**WHEREAS**, the Undertaking consists of the improvements to the 16th Street Mall (Mall), a transit way and commercial corridor in the downtown of the City and County of Denver, Colorado, to address infrastructure, mobility, safety, and public use needs; and includes the reconstruction of the entire 12.5 blocks of the historic Mall property, including the following anticipated improvements: (1) the transit way will be realigned, pedestrian walkways will be expanded, new amenity zones will be added, and existing patio spaces will be maintained; (2) subsurface drainage systems, utilities, and tree boxes and irrigation systems will be replaced; (3) the pavement surface, including granite pavers and mortar, will be replaced with similar appearing granite pavers; (4) trees will be replaced, and new trees will be added; and (5) replica light fixtures will be added and relocated as needed;

**WHEREAS**, the Project Partners propose to develop and implement a flexible and sustainable design for the Mall to address deteriorating infrastructure, provide equitable and sufficient space for high-quality public gathering opportunities, improve pedestrian and vehicle safety, and continue safe and accessible two-way transit shuttle service (Free MallRide) on the Mall, while honoring the Mall's use and iconic design;

**WHEREAS**, FTA initiated Section 106 consultation with the Colorado State Historic Preservation Office (SHPO) in a letter dated June 23, 2017 and will continue to consult with the SHPO under the terms of this Programmatic Agreement (PA);

**WHEREAS**, FTA has defined the undertaking's Area of Potential Effects (APE) as 16th Street from Market Street to Broadway and one parcel on each side of the corridor (Attachment 1);

**WHEREAS**, FTA has identified 32 historic properties within the APE, where historic property is defined as a property listed on or eligible for listing on the National Register of Historic Places (NRHP), in consultation with the SHPO and other Consulting Parties, and in accordance with 36 CFR §§800.4(b) and 800.4(c), Attachment 1 contains a map book showing the locations of the historic properties within the APE, and Attachment 2 is a summary table of the historic properties within the APE;

**WHEREAS**, FTA has determined the Mall, an 80-foot-wide linear transit way and pedestrian/commercial corridor of 12.5 blocks with three distinct zones (asymmetrically aligned end blocks and symmetrically aligned center blocks) was built between 1980 and 1982. The Mall is a NRHP-eligible

1 historic property under Criterion A in the areas of Transportation and Community Planning and  
2 Development, under Criterion C as an award-winning landscape design by I.M. Pei & Partners, and  
3 under Criteria Consideration G, as exceptionally significant at the state and local level, because of the  
4 Mall's role in shaping downtown Denver and the Mall's distinctive design by a team of master  
5 designers, which is unique in the state;

6 **WHEREAS**, FTA, in consultation with the SHPO and other Consulting Parties, has identified the  
7 following character-defining features of the Mall transit way historic property: consistent paving  
8 pattern design; granite paver units/modules that are square (1-foot-5-inch by 1-foot-5-inch), in three  
9 shades: charcoal gray, light gray, and "Colorado red" (specified as White, Black, and Red on the 1980  
10 plans); granite special units of charcoal and light gray for curbs, cuts, drains, and other applications;  
11 red oak and honey locust trees planted in specially designed under-pavement concrete root boxes and  
12 ringed at the surface with custom-designed grates; custom-designed and -built light standards; street  
13 furniture of custom-designed and custom-built fiberglass trash and flower receptacles; and custom  
14 metal street signs on traffic signals and overhead lights;

15 **WHEREAS**, FTA has determined the Undertaking may have an Adverse Effect on the Mall historic  
16 property, which is NRHP-eligible, and has consulted with the SHPO pursuant to 36 CFR 800;

17 **WHEREAS**, the FTA has determined the Undertaking would result in a finding of "No Adverse  
18 Effect" on thirty (30) of the historic properties and a finding of "No Historic Properties Affected" on  
19 the one (1) remaining historic property in the APE, and SHPO concurred with this effect finding on  
20 June 29, 2018;

21 **WHEREAS**, FTA in consultation with SHPO has determined preparation of this PA is the appropriate  
22 means to ensure the resolution of adverse effects on historic properties within the APE pursuant to 36  
23 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), subsequent to the approval of the Undertaking, because  
24 the Undertaking consists of a corridor where design details are not yet known;

25 **WHEREAS**, FTA notified the following federally recognized American Indian tribes (Tribes) and  
26 invited their participation in consultation for the Project pursuant to 36 CFR § 800.2(c)(2)(ii), upon  
27 initiation of the Section 106 consultation for the Project, and, pursuant to 36 CFR § 800.14(b) and (f),  
28 invited these tribes to participate in the development of this PA: the Apache Tribe of Oklahoma, the  
29 Cheyenne & Arapaho Tribes of Oklahoma, Comanche Nation of Oklahoma, the Kiowa Tribe of  
30 Oklahoma, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Ute Mountain Ute Tribe  
31 and the Ute Indian Tribe;

32 **WHEREAS**, although no Tribes have requested to participate in the development of this PA, FTA  
33 shall re-initiate consultation with Tribes that may attach religious and/or cultural significance to  
34 historic properties that may be identified under the terms of this PA, as appropriate;

35 **WHEREAS**, FTA has consulted with RTD, as the recipient of federal financial assistance from FTA.  
36 RTD will be responsible for coordinating with CCD as the sub-recipient of such federal funds. CCD  
37 will manage the design and construction of the Project. Therefore, FTA has invited RTD and CCD to  
38 sign this PA as an Invited Signatory;

39 **WHEREAS**, FTA has consulted with the Downtown Denver Partnership (DDP), due to its  
40 management of the Downtown Denver Business Improvement District (BID), that operates, maintains,  
41 and finances maintenance for the pedestrian zones of the Mall through an intergovernmental  
42 agreement between the BID and CCD regarding the effects of the undertaking on historic properties  
43 and has invited them to sign this PA as an invited signatory to this PA;

44 **WHEREAS**, FTA has consulted with Historic Denver, Colorado Preservation, Inc. (CPI), the National  
45 Trust for Historic Preservation, the Landmark Preservation Commission, and the Lower Downtown  
46

1 Design Review Board as “Consulting Parties” regarding the Undertaking on historic properties and  
2 ways to avoid, minimize and mitigate any adverse effect, in accordance with and as defined by 36  
3 CFR 800.6(b)(2) and have invited these same parties to sign this PA as Concurring Parties as defined  
4 by 36 CFR 800.6(c)(3);

5 **WHEREAS**, the Signatories, Invited Signatories, and Concurring Parties, are all considered  
6 Consulting Parties pursuant to 36 CFR § 800.2(c) and their roles described herein are consistent with  
7 those described in 36 CFR § 800.6(c)(1), (2), and (3), respectively;

8 **WHEREAS**, FTA has developed this PA with appropriate public involvement in accordance with 36  
9 CFR 800.2(d) and 800.6(a)(4), and the public involvement has been coordinated with the public  
10 review and comment conducted by FTA and RTD to comply with the National Environmental Policy  
11 Act (NEPA), 42 U.S.C. §4321 et. seq. pursuant to 36 CFR 800.8(a); and

12 **WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), FTA notified the Advisory Council on  
13 Historic Preservation (ACHP) on July 5, 2018, of the finding of adverse effect for the Undertaking  
14 with specified documentation, and ACHP responded on July 31, 2018, agreeing to participate in the  
15 consultation pursuant to 36 CFR § 800.6(a)(1)(iii).

16 **NOW, THEREFORE**, FTA, the SHPO, ACHP, RTD, CCD and DDP agree that the Project shall  
17 be implemented in accordance with the following Stipulations in order to take into account the  
18 effect of the Undertaking on historic properties.

19 **STIPULATIONS**

20 FTA shall ensure that the Project Partners carry out the following measures:

21 **I. DESIGN GUIDELINES**

22 A. RTD, and CCD commit to include the following elements in the Project design of the Mall  
23 between Market Street and Broadway as shown in the drawings in Attachment 3:  
24

25 1. Paving Pattern

- 26 a. Retain a granite paver pavement system in similar three colors of granite  
27 pavers as the current design. Install granite pavers with a textured surface  
28 that increases surface friction for pedestrians and vehicles; surface texture  
29 may differ among pedestrian areas, transit way, and textured edge  
30 delineation.
- 31 b. Maintain overall design concept of a carpet covering the 80-foot-wide  
32 Mall property by retaining the pattern.
- 33 c. Retain the geometric and spatial relationships within the design.
- 34 d. Retain the 45-degree diagonal grid pattern in the design.
- 35 e. Retain the small, medium, and large diamond patterns in the same (or  
36 approximately the same) spatial relationship as the original design.
- 37 f. Maintain spatial relationship between trees and light standards.  
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- 2. Light Standards
    - a. Use replicated light standards per specifications shown in Attachment 3.
    - b. Light levels, colors, and operation may be adjusted.
  - 3. Trees
    - a. Maintain alternating trees and light standards within rows. Unless infeasible due to site constraints, the trees will be centered in diamonds within the pavement pattern.
    - b. Replace trees with new trees of the species listed in Attachment 3, which match the characteristics of the historic design and improve species diversity to better avoid preventable loss due to disease and insect issues.
  - 4. Transit way
    - a. Retain two-way transit service along the Mall.
    - b. Retain the existing locations of symmetrical to asymmetrical alignment shifts in the transit way cross-sections, which occur at Arapahoe Street (to Market Street) and Tremont Street (to Broadway), in keeping with the beginning, middle, and end in the original design.
    - c. Close the 22-foot medians on symmetrical blocks and 6-foot medians on asymmetrical blocks to remove median areas between the transit lanes as shown in Attachment 3 drawings.
  - 5. Signage
    - a. Retain extant custom metal street name signs at intersections and overhead traffic signals.
  - 6. 16th Street: Cleveland Place to Broadway (triangle block)  
Rebuild the eastern half-block of the Mall between Cleveland Place and Broadway in its historic configuration. The reconstruction will include the following elements:
    - a. Maintain the transit way alignment in current location.
    - b. Maintain 6-foot median with light fixtures between transit way lanes.
    - c. Replace granite pavers in existing pattern and location as shown in Attachment 3. It is intended that the new replacement granite pavers will have a textured surface that is intended to increase surface friction for pedestrians and vehicles; surface texture may differ among pedestrian areas, transit way, and textured edge delineation.
    - d. Rebuild granite curb at the edges of transit way with like-kind materials and profile as shown in Attachment 3.
    - e. Maintain replicated light standards in existing locations as shown in Attachment 3.
    - f. Install new trees in the locations specified in the original design. Replace trees and add new trees in locations where trees were removed.
    - g. Replace trees with new trees of the species listed in Attachment 3, which match the characteristics of the historic design and improve species diversity to better avoid preventable loss due to disease and insect issues.
    - h. The repair and reconfiguration of the fountain on the north side of the plaza will be reviewed separately as part of the design review under Stipulation II.
- B. To help ensure compliance with the design commitments in Stipulation I.A, the Signatories and Concurring Parties will have an opportunity to review and consult on the City's RFP for procuring a contractor as well as the design plans at 30, 60, and 90 percent

1 completion for review of the representation of character-defining features in the  
2 Undertaking included in Attachment 3. This consultation will occur together with, and  
3 follow the process for, the design review process outlined in Stipulation II.B below.  
4

5 **II. DESIGN REVIEW AND CONSULTATION**

- 6 A. CCD, in coordination with FTA and RTD, will provide the other Signatories and  
7 Concurring Parties the opportunity to review and provide ongoing consultation on all  
8 design elements affecting the character-defining features of the Mall that are not defined  
9 in Stipulation I according to the process described in Stipulation II.B below.  
10
- 11 B. The design consultation process, with respect to the items described in Stipulation I and  
12 Stipulation II, will proceed as follows: CCD will submit the 30, 60, and 90 percent design  
13 development plans to Signatories and Concurring Parties for review and comment.  
14 1. At each design stage, Signatories and Concurring Parties will be provided advance  
15 notice of the upcoming available plans by email at least one week before the plans  
16 are made available for review;  
17 2. For each design review, Signatories and Concurring Parties will have 21 calendar  
18 days from receipt of a printed copy of the materials to provide written comments  
19 to CCD. A meeting may be requested during this period for CCD to present and  
20 review the plans in person.  
21 3. Signatories and Concurring Parties may request a meeting with CCD, RTD, and  
22 FTA to discuss their comments, before and/or after CCD has responded pursuant  
23 to Stipulation II.B.4. The meeting request(s) will be granted.  
24 4. For each design review, CCD will provide an explanation of how the comments  
25 were evaluated and to what extent they can be incorporated into the design to the  
26 other Signatories and Concurring Parties within 21 calendar days after receiving  
27 the comments.  
28 5. If a Signatory identifies through the 30, 60, or 90 percent design plan reviews that  
29 the design commitments significantly alter the character defining features  
30 specified in I.A., the dispute resolution process described in Section X may be  
31 followed.  
32
- 33 C. The following are excluded from design review:  
34 1. Sub-base design, including underground safety related elements, underground  
35 utilities; underground infrastructure, including drainage and electrical conduit;  
36 and underground tree boxes;  
37 2. Vehicular and pedestrian traffic signals, visual and tactile aids for bus drivers and  
38 pedestrians, and safety-related or bus stop signage; and  
39 3. Tree species selection beyond the location of trees as specified in Stipulation I.  
40 Consultation regarding preferred tree species and the agreed-upon intent to  
41 replicate the features of the original tree design plan occurred during earlier  
42 consultation. The parties recognize that the final tree species selection will be  
43 made through a process led by qualified horticulturists in the interest of long-term  
44 viability of tree species on the Mall, while attempting to be consistent with the  
45 original tree design. The location of trees has been defined in the conceptual  
46 design plans included in Attachment 3 and referenced in Stipulation I.A.3.  
47  
48  
49

1 **III. HISTORIC PROPERTIES FAÇADE LIGHTING PROGRAM**

- 2 1. Separate from the primary Mall reconstruction project, CCD will assist DDP in  
3 establishing a funding program to enhance lighting of historic building façades  
4 along the 16th Street Mall. Specific requirements of grant program for owners of  
5 eligible historic properties will be determined.
- 6 2. CCD will contribute \$490,000 to funding the program by separate agreement,  
7 which is inclusive of administration and grant costs, with the stipulation that these  
8 contributed funds will be matched by property owners.
- 9 3. CCD will assist DDP in exploring options for agency or agencies to administer  
10 the program and CCD will assist DDP in creating the organizational documents  
11 for the program. DDP will be the fiscal agent and market the program to property  
12 owners of eligible historic properties facing the Mall.
- 13 4. The lighting program is intended to meet the following requirements:
- 14 a. The program will be based on the DDP *Lighting Study for 16th Street*  
15 *Denver Mall – Concept Design Report* published May 24, 2013.
- 16 b. The program may result in incorporating updates to the Landmark  
17 Preservation Commission (LPC) *Design Guidelines for Denver Landmark*  
18 *Structures and Districts*, published January 27, 2016. CCD and DDP will  
19 coordinate with LPC, following the appropriate process for design  
20 guideline changes. The updates will be presented to the SHPO.
- 21 5. Work under the program shall commence once construction of the Project is  
22 complete, and after notification has been made to the Concurring Parties.
- 23 6. The program will last up to five years, after which time any remaining funds will  
24 be reallocated as provided under the terms of the governing documents for the  
25 program.
- 26

27 **IV. CONSTRUCTION COMMITMENTS**

28 **A. Protection of Historic Properties During Construction**

- 29 CCD will provide and fund a third-party contractor to monitor construction-related  
30 vibration. CCD will ensure that the contractor:
- 31 1. Establishes a baseline vibration threshold that takes into account any specific  
32 tolerances or sensitivities of the historic properties adjacent to the Mall;
- 33 2. Measures vibration levels during construction;
- 34 3. Alerts the construction contractor and CCD, if vibration reaches or exceeds the  
35 baseline vibration threshold;
- 36 4. If the baseline vibration threshold is broken more than once for any individual  
37 building, CCD will work with its contractor to develop remedial measures;
- 38 5. CCD will provide reports and other applicable documentation from Stipulations  
39 IV.A.2 – IV.A.5 annually to FTA, RTD, the SHPO and the Concurring Parties.
- 40

41 **B. Access to Historic Properties During Construction**

42 CCD, in coordination with property and business owners, shall ensure reasonable  
43 access to historic properties in the APE during construction. CCD, in coordination  
44 with RTD, CCD's construction contractor, and business owners will implement the  
45 Project Management Plan developed in advance of Project construction consistent  
46 with the environmental mitigation commitments in accordance with NEPA and the  
47 construction contract documents for the Project.

- 48 1. This Plan will establish access to properties adjacent to the Mall, as much as  
49 practicable.

- 1                   2. CCD will take steps to ensure that its construction contractor adheres to the  
2                   Project Management Plan and to CCD ordinances and standards for maintaining  
3                   access to historic properties during construction.  
4

5 **V. UPDATE MALL MAINTENANCE GUIDELINES**

- 6 A. CCD, in coordination with RTD, DDP and CPI, will update existing policies, plans,  
7 manuals, and/or guidelines for maintenance of the Mall to ensure the condition of the  
8 rebuilt Mall is maintained long-term. Concurring Parties will be invited to review and  
9 provide suggestions to the draft updated maintenance guidelines, which will be reviewed  
10 and considered by FTA, RTD and CCD, before updated maintenance guidelines are  
11 finalized.  
12 B. These new or updated policies, plans, manuals, and/or guidelines will include instructions  
13 for maintaining the design commitments in Stipulations I and II.  
14 C. CCD will complete the appropriate plans, manuals, or guidance within one year of the  
15 completion of the Project construction.  
16 D. CCD will provide Signatories and Concurring Parties with the opportunity to review and  
17 comment on the new or updated policies, plans, manuals, and/or guidelines related to  
18 maintenance of elements that conveyed the original Mall's historic significance. CCD will  
19 consider input from the Signatories and Concurring Parties when finalizing the new or  
20 updated policies, plans, manuals, and/or guidelines.  
21

22 **VI. DURATION**

23 This PA will be null and void if its terms are not carried out within ten (10) years from the  
24 date of its execution. Prior to such time, FTA may consult with the other Signatories to  
25 reconsider the terms of the PA and amend it in accordance with Stipulation XIII below.

26 **VII. POST-REVIEW DISCOVERIES**

27 See the Unanticipated Discoveries Plan (UDP) in Attachment 4 for more detailed information  
28 regarding the following steps and procedures.

29 **A. Inadvertent Discovery of Cultural Resources**

- 30           1. If, during Project implementation, CCD uncovers any unanticipated, previously  
31 unidentified historic archaeological, or paleontological materials, CCD will  
32 proceed in accordance with the procedures outlined in the UDP in Attachment 4  
33 and notify FTA and other Signatories. CCD will not proceed with construction  
34 within 30 feet of the discovery until the requirements of 36 CFR 800.13 have been  
35 satisfied.  
36           2. Cultural resources include remains of prehistoric or historic structures, prehistoric  
37 or historic artifacts, and plant or animal bones and fossils.

38 **B. Human Remains**

- 39           1. In the event of the discovery of any human remains, funerary objects, sacred  
40 objects, or objects of cultural patrimony, as defined in 43 CFR § 10.2(d), CCD  
41 will stop work within 50 feet of the discovery until a qualified archaeologist can  
42 examine the resources and assess their significance. CCD will follow the  
43 procedures outlined in Colorado Revised Statutes (CRS) 24-80-1301 to 1304,  
44 Unmarked Human Graves.  
45           2. Construction will not resume in the location of the discovery until the  
46 requirements of CRS 24-80-1302 are met.  
47  
48

1 **VIII. PROFESSIONAL QUALIFICATIONS**

2 RTD and CCD shall ensure that all historic preservation and archaeological activities carried  
3 out pursuant to this PA shall be accomplished by or under the direct supervision of a person or  
4 persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's  
5 *Professional Qualification Standards* (48 Federal Register [FR] §§44738-44739) in those  
6 areas in which the qualifications are applicable for the specific work performed.

7 **IX. MONITORING AND REPORTING**

8 Each year following the execution of this PA until it expires or is terminated, RTD and CCD  
9 shall provide the other Signatories and Concurring Parties a Summary Report detailing work  
10 undertaken pursuant to its terms. Such report shall include any material Project problems  
11 encountered, reports from Stipulation IV.A, and any disputes and objections received by FTA  
12 during efforts to carry out the terms of this PA.

13 **X. DISPUTE RESOLUTION**

14 Should any Signatory to this PA object at any time to any actions proposed by another  
15 Signatory or Concurring Party or the manner by which the terms of this PA are implemented,  
16 the Signatory shall consult with FTA to resolve the objection. If FTA determines that such  
17 objection cannot be resolved, FTA will:

- 18 A. Forward all documentation relevant to the dispute, including the FTA's proposed  
19 resolution, to the ACHP. ACHP shall provide FTA with its advice on the resolution of the  
20 objection within thirty (30) days of receiving adequate documentation. FTA will make  
21 good faith efforts to accommodate advice provided by ACHP. Prior to reaching a final  
22 decision on the dispute, FTA shall prepare a written response that considers any timely  
23 advice or comments regarding the dispute from ACHP and/or the Signatory and provide  
24 the applicable party with a copy of this written response. FTA will then proceed according  
25 to its final decision.
- 26 B. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, FTA  
27 may make a final decision on the dispute and proceed accordingly. Prior to reaching such  
28 a final decision, FTA shall prepare a written response that considers any timely comments  
29 regarding the dispute from the Signatories and Concurring Parties and provide the  
30 applicable party and ACHP with a copy of such written response.
- 31 C. The terms of this PA, that are not the subject of the dispute, remain unchanged.

32 **XI. OTHER**

33 **A. EMERGENCIES**

34 If an emergency situation, that represents an immediate threat to public health, safety, life or  
35 property creating the potential to effect a historic property should occur during the duration of  
36 this PA, the regulations set forth in 36 CFR 800.12 shall be followed. CCD and RTD, shall  
37 notify FTA and the SHPO of the condition that has created the situation and the measures to  
38 be taken to respond to the emergency or hazardous condition. FTA and the SHPO may submit  
39 comments to the CCD and RTD within seven days of notification. If CCD and RTD  
40 determine that circumstances do not permit seven days for comment, CCD and RTD shall  
41 notify FTA and the SHPO and invite any comments in the determined and stated time  
42 available. CCD and RTD shall consider these comments in developing a response to the  
43 treatment of historic properties in relation to the emergency situation.

44  
45 **B. ANTI-DEFICIENCY ACT – FEDERAL PARTIES**

46 The obligation of Federal agencies under this PA are pursuant to 31 U.S.C. 1341(a)(1);  
47 therefore nothing in this PA shall be construed as binding the United States to expend in any



1 one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to  
2 involve the United States in any contract or obligation for the further expenditure of money in  
3 excess of such appropriations.  
4

5 **XII. AMENDMENTS**

6 This PA may be amended by an amendment executed by all Signatories. The amendment will  
7 be effective on the date a fully executed copy is filed with the ACHP.

8 **XIII. TERMINATION**

9 If a Signatory to this PA determines that such Signatory cannot comply with the terms hereof,  
10 such Signatory shall immediately consult with the other Signatories to amend this PA per  
11 Stipulation XII, above. If the Signatories do not amend the PA within thirty (30) days (or  
12 another time period agreed to by all Signatories), any Signatory may terminate the PA upon  
13 written notification to the other Signatories.

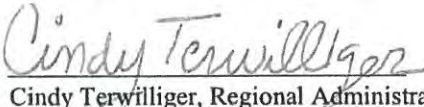
14 Once the PA is terminated, and prior to continuing work on the Undertaking, FTA must either  
15 (a) execute a new PA or MOA pursuant to 36 CFR § 800.6 or (b) request, consider and  
16 respond to the comments of the ACHP under 36 CFR § 800.7. FTA shall notify the  
17 Signatories as to the course of action it will pursue.

18  
19 **EXECUTION** of this PA by FTA, ACHP, SHPO, RTD, DDP, and CCD, the submission of  
20 documentation and filing of this PA with the ACHP pursuant to 36 CFR § 800.6(b)(1)(iv) prior to  
21 FTA's approval of the Undertaking, and implementation of the terms of this PA provide evidence that  
22 FTA has taken into account the effects of this Undertaking on historic properties and afforded the  
23 ACHP an opportunity to comment.

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO**

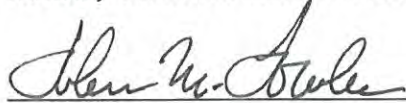
**SIGNATORIES:**

**Federal Transit Administration**

  
Cindy Terwilliger, Regional Administrator

Date 7/22/19

**Advisory Council on Historic Preservation**

  
John M. Fowler, Executive Director

Date 9/18/19

**Colorado State Historic Preservation Officer**

  
for Steve Turner, AIA, State Historic Preservation Officer

Date 7/22/19

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO**

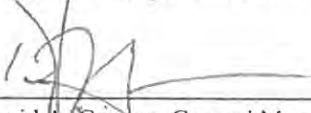
**INVITED SIGNATORIES:**

**City and County of Denver**

*See attached signature page*  
Eulois Cleckley, Public Works Executive Director

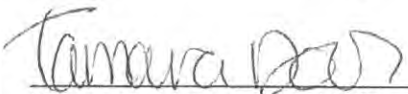
Date

**Regional Transportation District**

  
David A. Genova, General Manager and CEO

*7.24.19*  
Date

**Downtown Denver Partnership, Inc.**

  
Tamara Door, President and CEO

Date *8.12.19*

**Contract Control Number:** PWADM-201951329-00  
**Contractor Name:** Federal Transit Administration

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: *August 2, 2019*

SEAL



CITY AND COUNTY OF DENVER:

ATTEST:

*[Handwritten Signature]*  
\_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

By:

*[Handwritten Signature]*  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By:

*[Handwritten Signature]*  
\_\_\_\_\_  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By:

*[Handwritten Signature]*  
\_\_\_\_\_  
Manager of Finance

By:

*[Handwritten Signature]*  
\_\_\_\_\_  
Auditor

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO**

**CONCURRING PARTIES:**

**Colorado Preservation, Inc.**

  
Title: Executive Director

Date: 9/19/19

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO**

**CONCURRING PARTIES:**

**Historic Denver**

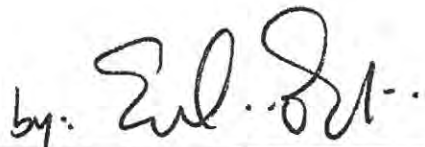
  
Title *Executive Director*

Date *9-19-19*

PROGRAMMATIC AGREEMENT  
AMONG  
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THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
IMPROVEMENTS TO THE 16TH STREET MALL  
CITY AND COUNTY OF DENVER, COLORADO

CONCURRING PARTIES:

Landmark Preservation Commission

by:   
Title Interim Exec. Dir., CPD

9/19/2019  
Date

**ATTACHMENT 1**  
**Area of Potential Effects and Locations of Historic Properties**

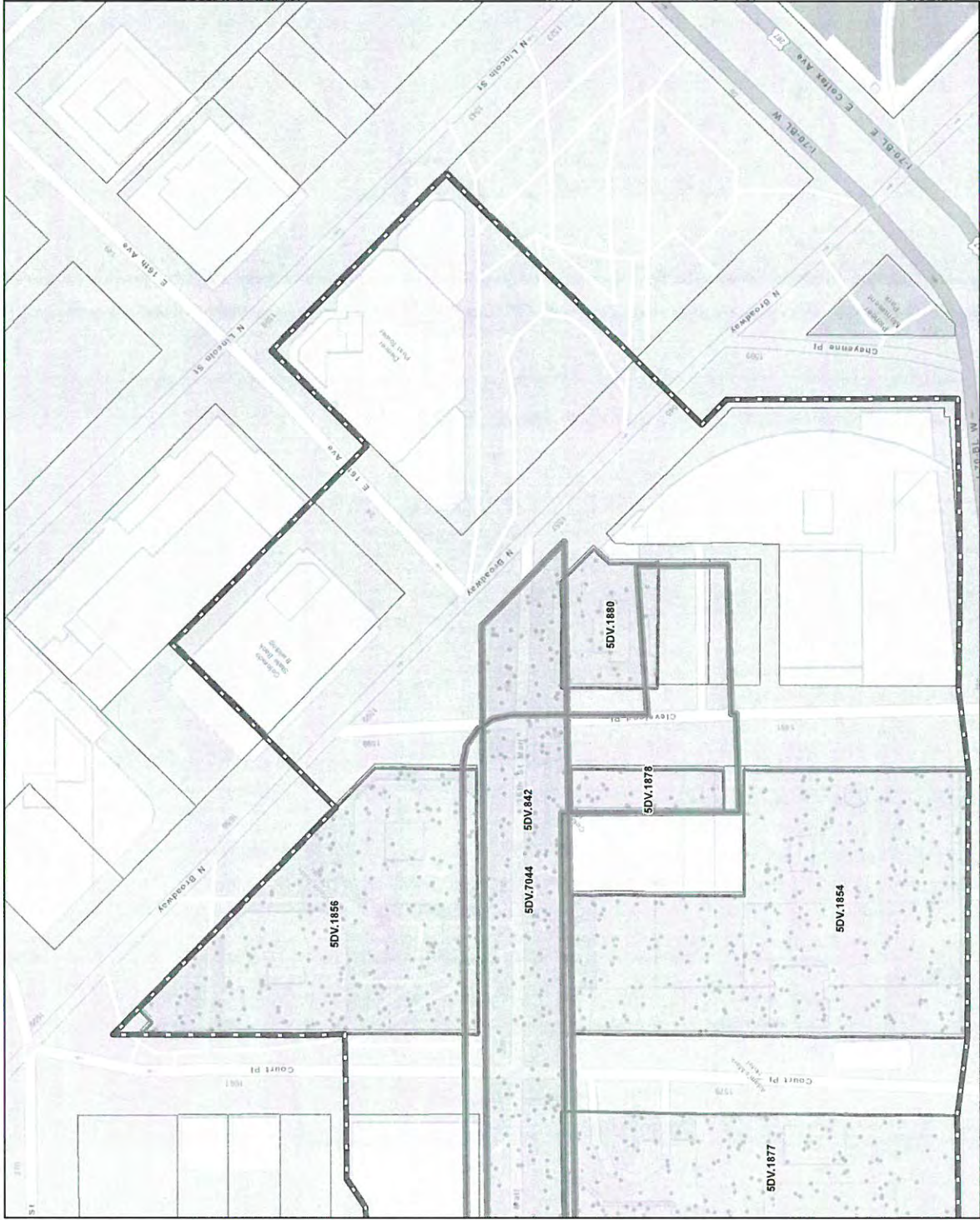




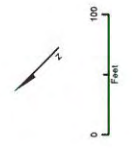
- LEGEND**
- Area of Potential Effects
  - Parcel Boundary
  - Historic Properties**
  - NRHP Status**
  - Listed on NRHP
  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
  - Contributes to Historic District



**Overview  
Identified Historic Properties**  
16th Street Mall  
March 2018



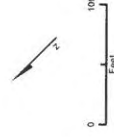
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  - Historic Properties**
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  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
  - Contributes to Historic District



**Map Book 1**  
**Identified Historic Properties**  
 16th Street Mall  
 March 2019



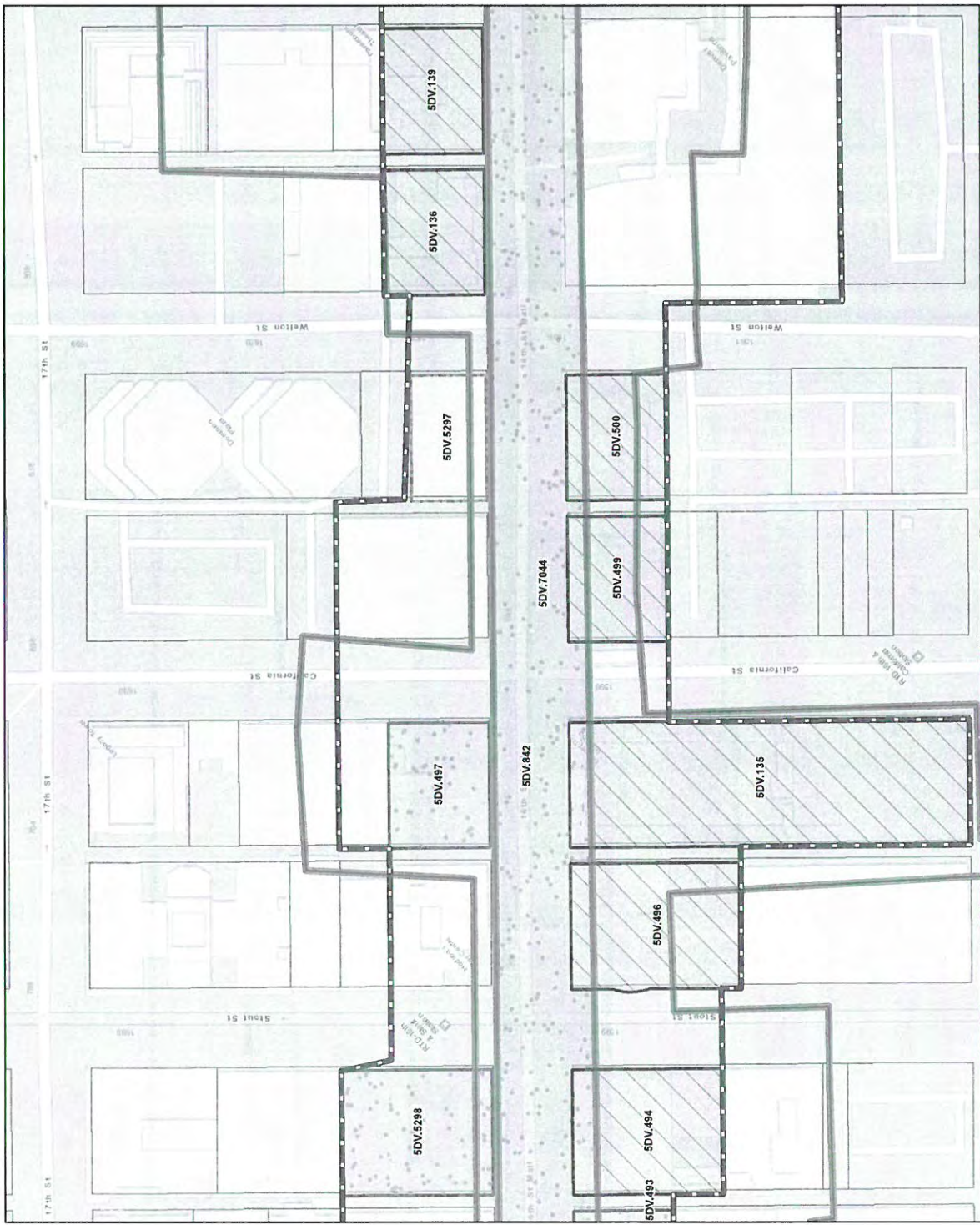
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  - Historic Properties**
  - NRHP Status**
  - Listed on NRHP
  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
  - Contributes to Historic District



**Map Book 2**  
**Identified Historic Properties**  
 16th Street Wall  
 March 2019



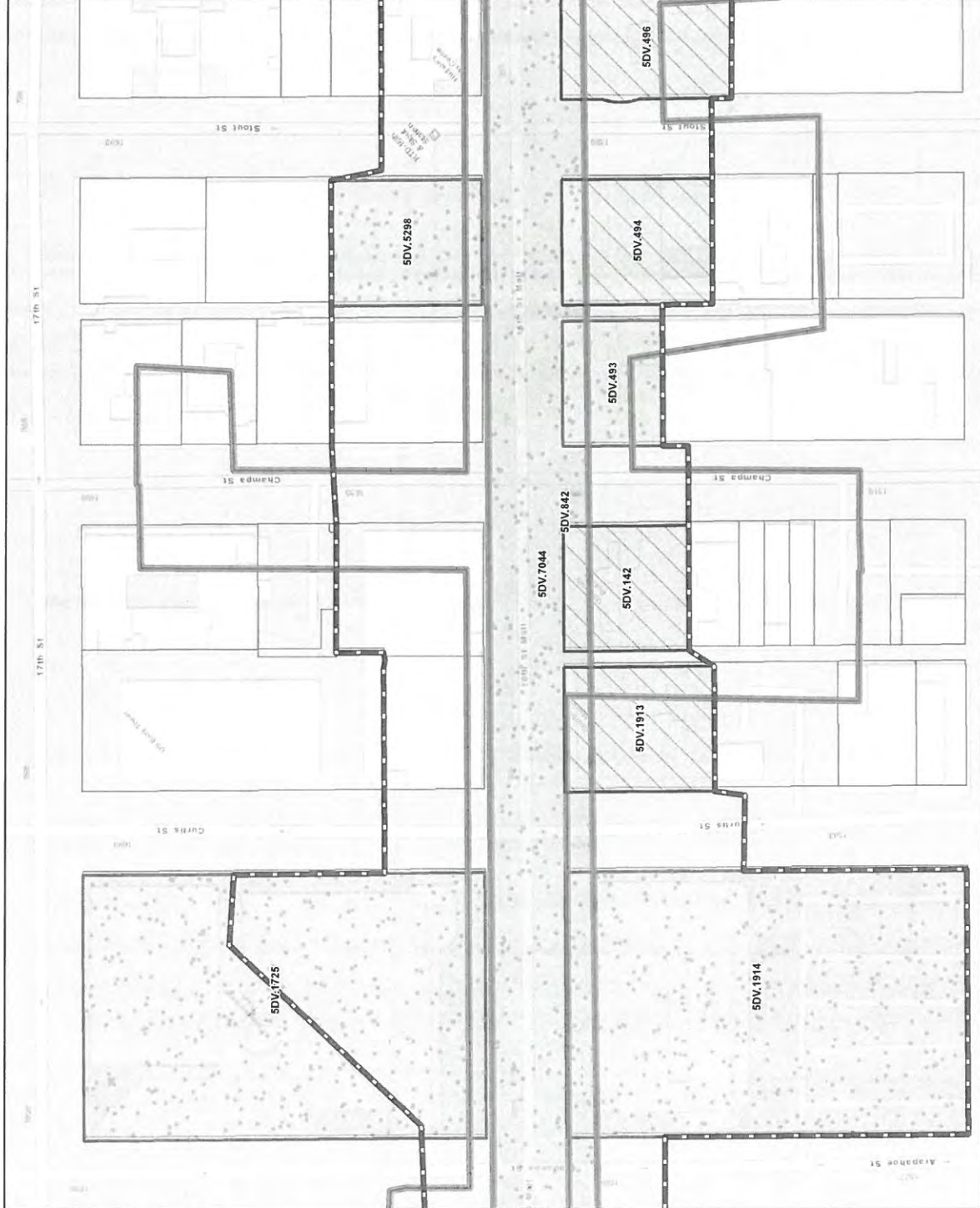
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- Area of Potential Effects
  - Parcel Boundary
  - Historic Properties**
  - NRHP Status**
  - Listed on NRHP
  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
  - Contributes to Historic District



**Map Book 3**  
**Identified Historic Properties**  
 16th Street Mall  
 March 2019



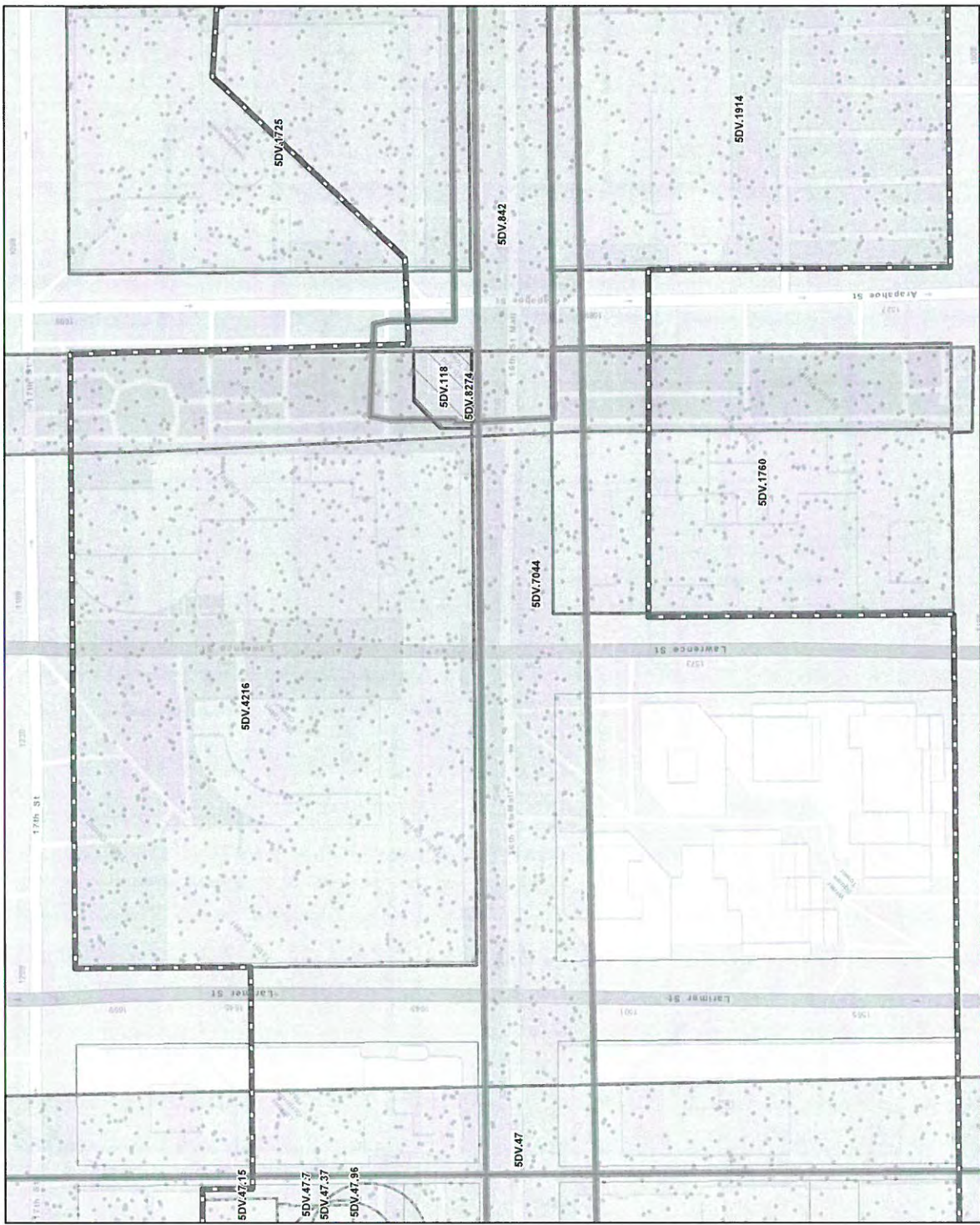
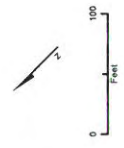
- LEGEND**
- Area of Potential Effects
  - Parcel Boundary
  - Historic Properties**
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  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
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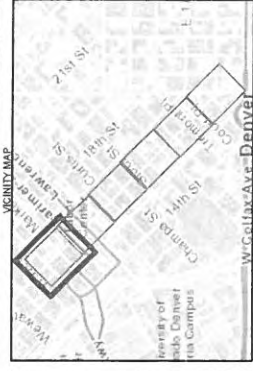
**Map Book 4**  
**Identified Historic Properties**  
 16th Street Wall  
 March 2019



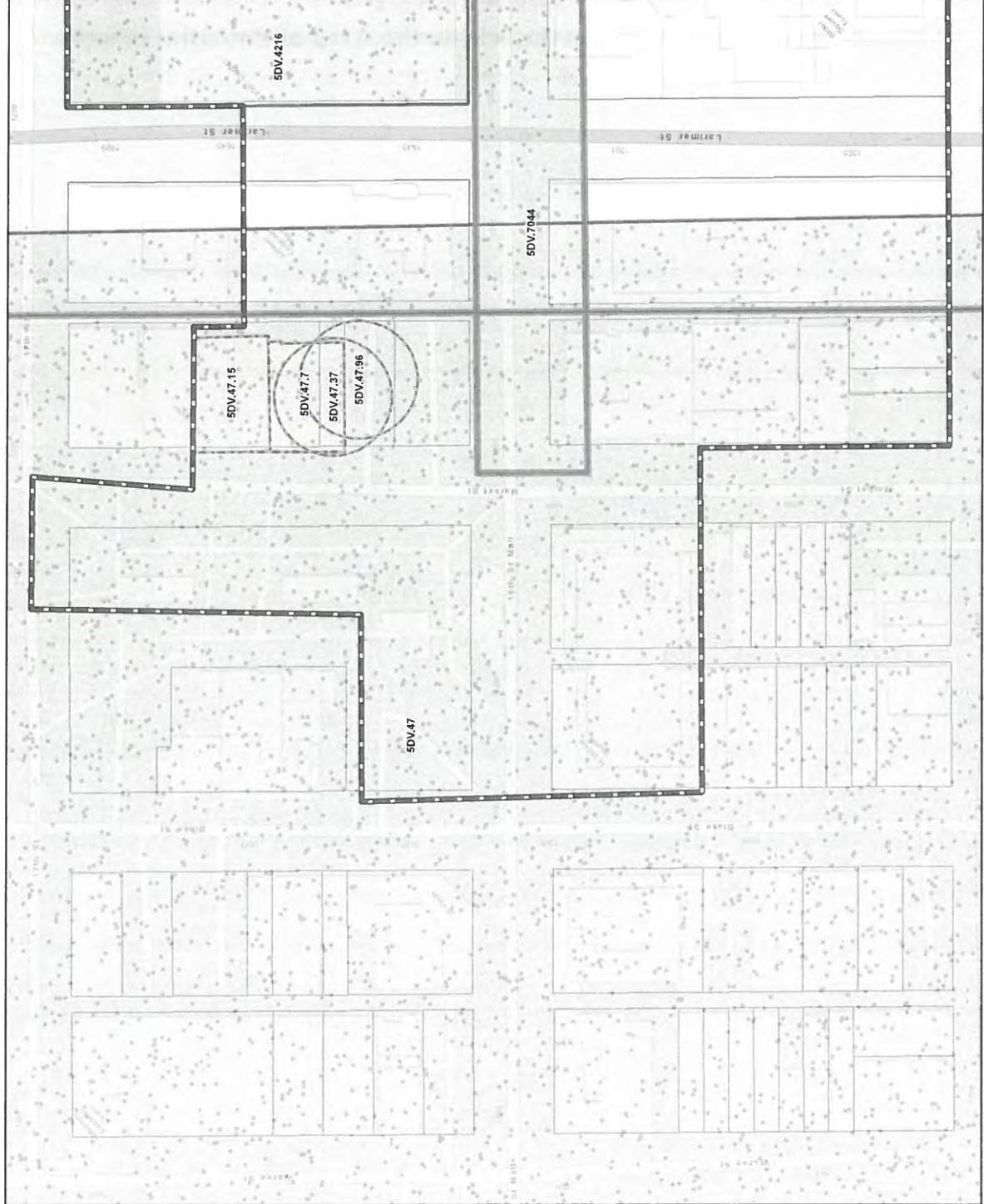
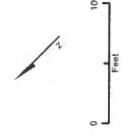
- LEGEND**
- Area of Potential Effects
  - Parcel Boundary
- Historic Properties**
- Listed on NRHP
  - Eligible for NRHP
- Historic Districts**
- Eligible for NRHP
  - Contributes to Historic District



**Map Book 5**  
**Identified Historic Properties**  
 16th Street Mall  
 March 2019



- LEGEND**
- Area of Potential Effects
  - Parcel Boundary
  - Historic Properties**
  - NRHP Status**
  - Listed on NRHP
  - Eligible for NRHP
  - Historic Districts**
  - Eligible for NRHP
  - Contributes to Historic District



**Map Book 6**  
**Identified Historic Properties**  
 16th Street Mall  
 March 2019

**ATTACHMENT 2**  
**Summary of Historic Properties within the Area of Potential Effects**



## ATTACHMENT 2

TABLE OF IDENTIFIED HISTORIC PROPERTIES WITHIN THE AREA OF POTENTIAL EFFECTS

Site ID	Site Name	Address	NRHP Eligibility Status	Finding of Effect
5DV.118	Daniels & Fisher Tower	1101 16th Street; 1601 Arapahoe Street	Listed on NRHP	No Adverse Effect
5DV.135	Denver Dry Goods Company Building	702 16th Street; California Street; and 16th Street	Listed on NRHP	No Adverse Effect
5DV.136	Masonic Temple Building	1614 Welton Street, 535 16th Street	Listed on NRHP	No Adverse Effect
5DV.139	Kittredge Building	511 16th Street	Listed on NRHP	No Adverse Effect
5DV.142	A.C. Foster Building; University Building	910-918 16th Street	Listed on NRHP	No Adverse Effect
5DV.1725	Independence Plaza Prudential Plaza	1001 16th St. 1050 17th St.	NRHP-eligible	No Adverse Effect
5DV.1760	Bridgepoint Plaza; Park Central	1110 16th Street; 1515 Arapahoe Street; 1111 15th Street	NRHP-eligible	No Adverse Effect
5DV.1832	Security Life Building; 1600 Glenarm Place	1616 Glenarm Place	NRHP-eligible	No Adverse Effect
5DV.1854	Hilton Hotel; Radisson Hotel; Adams Mark Hotel	1550 Court Place	NRHP-eligible	No Adverse Effect
5DV.1856	Dome Tower; Great West Plaza; World Trade Center	1625 Broadway	NRHP-eligible	No Adverse Effect
5DV.1877	Zeckendorf Plaza; May D & F Plaza; Hyperbolic Paraboloid	350 16th Street; 1550 Court Place	NRHP-eligible	No Adverse Effect
5DV.1878	Colorado Federal Savings	200 16th Street	NRHP-eligible	No Adverse Effect
5DV.1880	Petroleum Club Building; Petroleum Building; 110 Building	110 16th Street	NRHP-eligible	No Adverse Effect

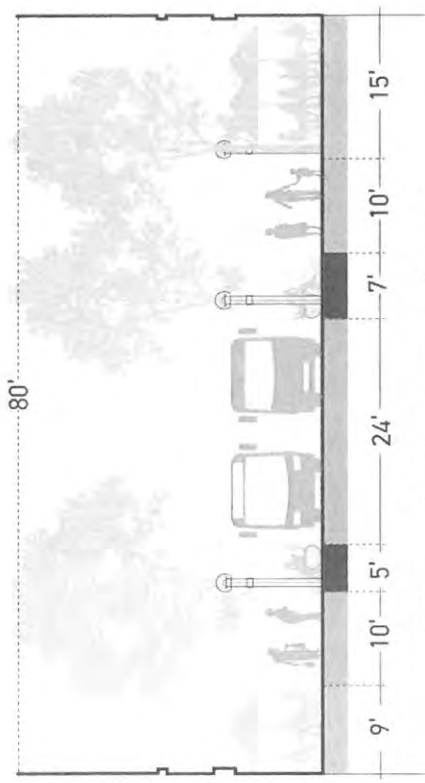
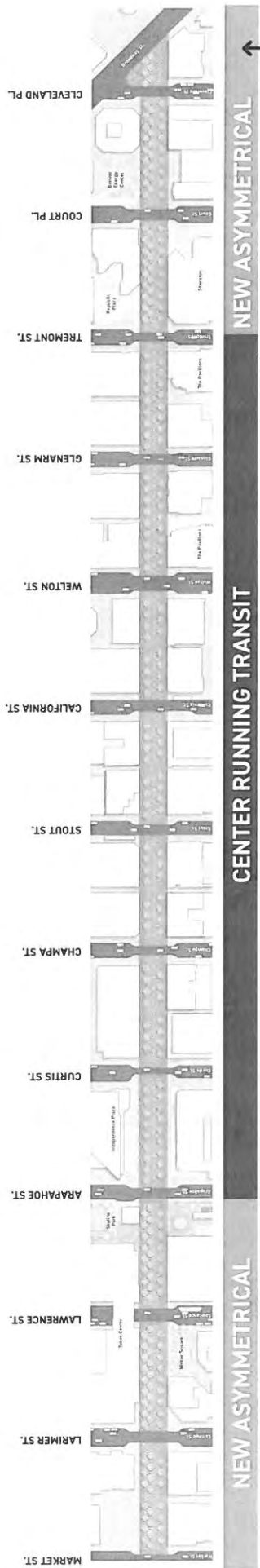
## MEMORANDUM OF AGREEMENT

Site ID	Site Name	Address	NRHP Eligibility Status	Finding of Effect
5DV.1913	Joslin Dry Goods Company Building; Tritch Building; Savoy Grille	934-938 16th Street	Listed on NRHP	No Adverse Effect
5DV.1914	Federal Reserve	1020 16th Street	NRHP-eligible	No Adverse Effect
5DV.47	Lower Downtown Denver Historic District	Multiple	NRHP-eligible	No Adverse Effect
5DV.47.15	Waters Building - Market Center	1642 - 1644 Market Street	Contributes to Lower Downtown Historic District	No Adverse Effect
5DV.47.37	Hitchings Block	1620 Market Street	Contributes to Lower Downtown Historic District	No Adverse Effect
5DV.47.7	Liebardt-Linder Building- Market Center	1624 Market Street	Contributes to Lower Downtown Historic District	No Adverse Effect
5DV.47.96	McCrary Block - Market Center	1628 Market Street	Contributes to Lower Downtown Historic District	No Adverse Effect
5DV.493	Symes Building; F.W. Woolworth Company	820 16th Street	NRHP-eligible	No Adverse Effect
5DV.494	A.T. Lewis and Son Department Store; Holtzman and Appel Block	800-816 16th Street	Listed on NRHP	No Adverse Effect
5DV.496	Neusteter Building	720-726 16th Street	Listed on NRHP	No Adverse Effect
5DV.497	Hayden, Dickinson & Feldhauser Building; Colorado Building	1609-1615 California Street	NRHP-eligible	No Adverse Effect
5DV.499	McClintock Building	1554 California Street	Listed on NRHP	No Adverse Effect

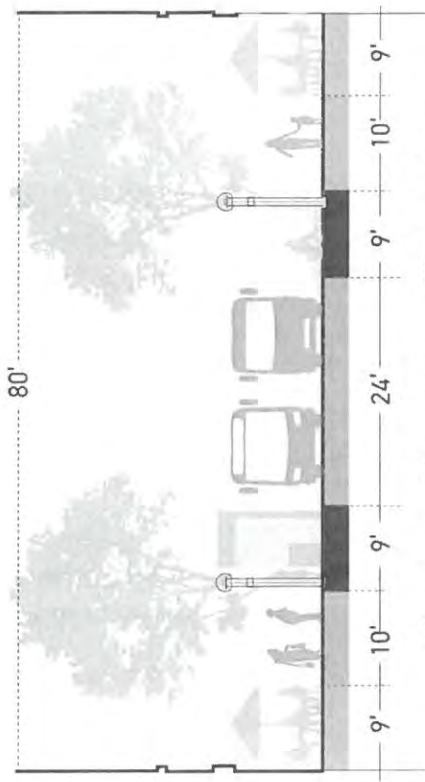
## MEMORANDUM OF AGREEMENT

Site ID	Site Name	Address	NRHP Eligibility Status	Finding of Effect
5DV.500	Steel Building; Fontius Building; Sage Building	1555 Welton; 600 16th Street	Listed on NRHP	No Adverse Effect
5DV.5297	Liebhardt Building; Cottrell Clothing Company	601 16th Street	Listed on NRHP	No Adverse Effect
5DV.5298	Walgreens	801 16th Street	NRHP-eligible	No Adverse Effect
5DV.7044	16th Street Mall	1-1300 16th Street	NRHP-eligible	No Adverse Effect
5DV.8274	Skyline Park	1500-1800 Arapahoe Street	NRHP-eligible	No Adverse Effect
5DV.842	16th Street Historic District	Multiple	NRHP-eligible	No Adverse Effect
5.DV.9217.1	Denver Tramway Trolley Lines archeological site	Broadway	NRHP-eligible	No Historic Property Affected

**ATTACHMENT 3**  
**Design Drawings**

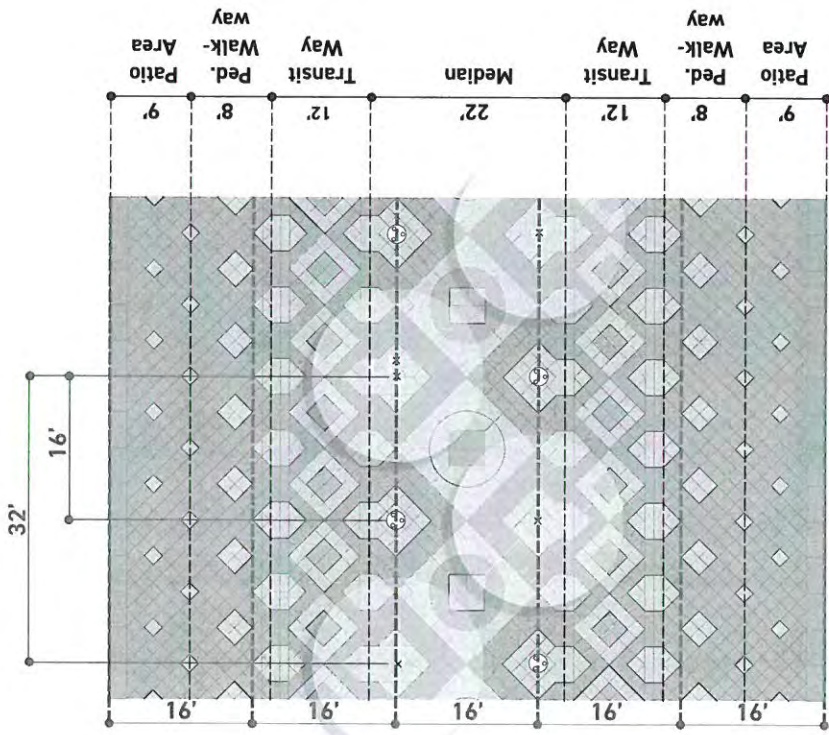


## New Asymmetrical

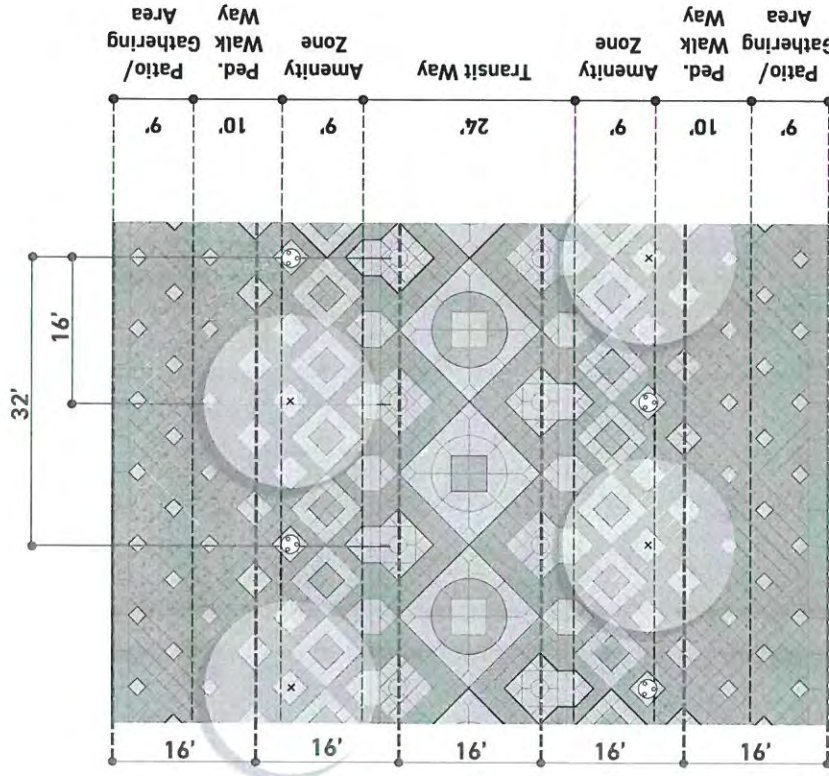


## Center Running Transit

- Legend**
- Transit Way
  - Pedestrian Walkway
  - Amenity Zone
  - Gateway Plaza
  - Patio/Gathering Area



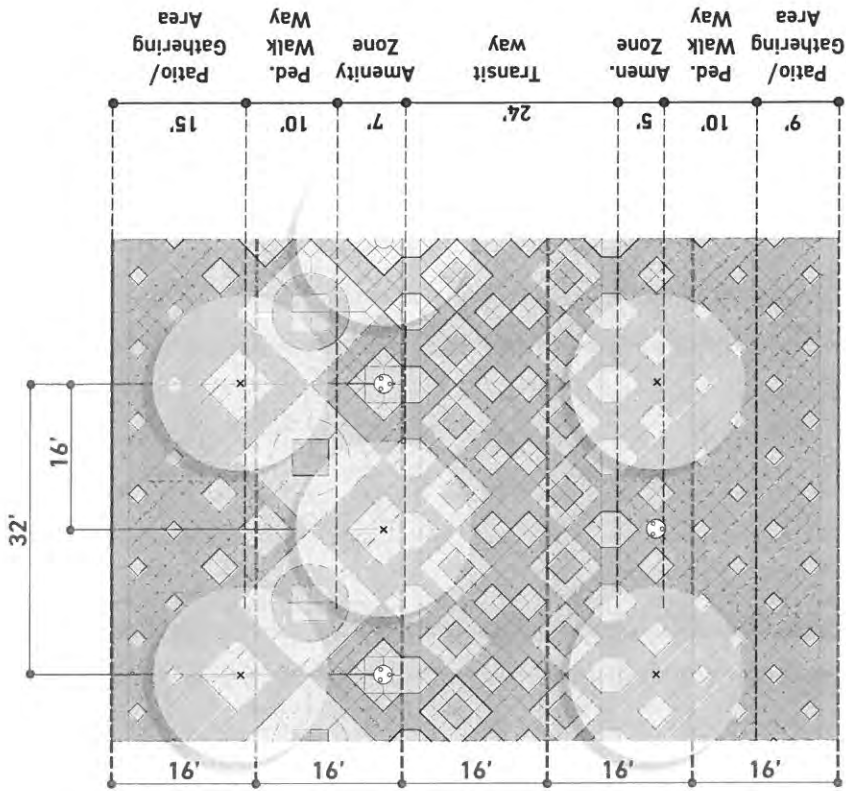
**Existing Median**



**Proposed Center Running**

**Legend**

- 
 Historic Replica Light Standard
- 
 Granite Paver Unit - Diamond (colors vary)
- 
 Granite Special Unit - Abutting Curbs/Drains (colors vary)
- 
 Granite Special Unit - Transit Way Delineation (colors vary)



## Existing Asymmetrical

### Legend



Historic  
Replica Light  
Standard



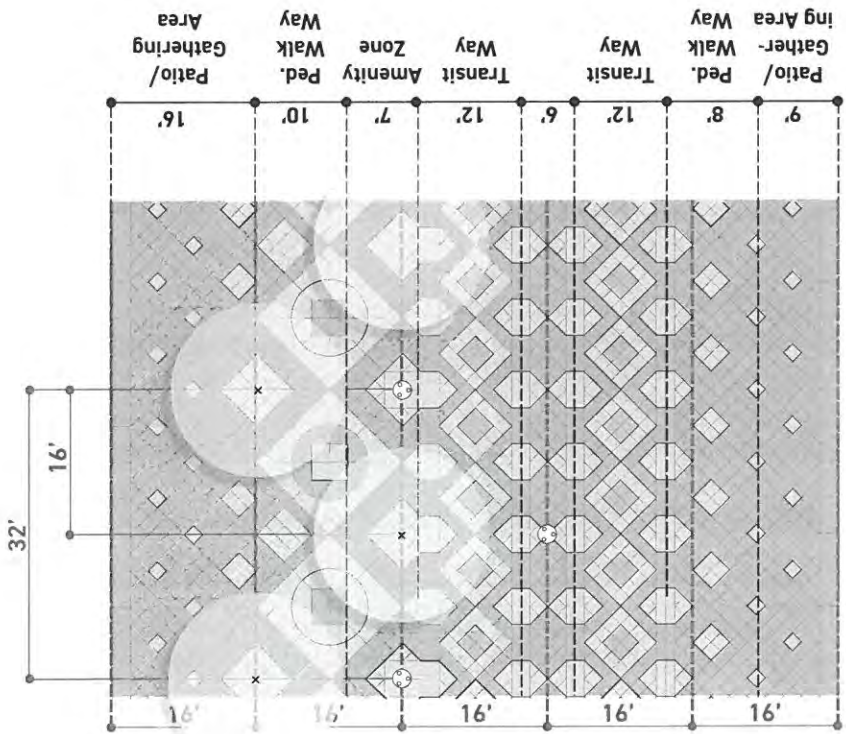
Granite  
Paver Unit  
- Diamond  
(colors vary)



Granite Special  
Unit - Abutting  
Curbs/Drains  
(colors vary)



Granite Special  
Unit - Transit  
Way Delineation  
(colors vary)



## LPA New Asymmetrical

# Locally Preferred Alternative





# Tree Candidates

The tree species listed below are preliminary candidates for future use on the 16th Street Mall, based on design and health/resiliency criteria. The criteria and highlighted trees are subject to change based on design changes, Department of Forestry recommendations, and availability.

## Honeylocust & Similar

ID	Family	Botanical Name	Acceptable Cultivar	Common Name	Hardiness Zone	Moisture Level	Soil Salt Tolerance	Aerosol Salt Tolerance	Water Quality Area	Height @ Maturity	Canopy Spread @ Maturity	Growth Form/Shape	Flowers	Leaf Color - Spring	Leaf Color - Fall	Additional Notes (includes compaction/tolerances/restrictions)
49	Bignoniaceae	Catalpa speciosa		Western Catalpa	5	Xeric to Min	Intermediate	Intermediate	X	50	35	Irregular pyramidal to rounded oval	Large, white flowers in spring to summer; showy	Green	Yellow	Heat, drought, and alkaline soil tolerant. Decay when wounded or as tree ages may be an issue.
15	Fabaceae	Gleditsia triacanthos inermis	Have	Northern Acclaim Honeylocust	3b	Xeric	Tolerant	Tolerant	X	40	30	Broad pyramidal	Insignificant	Green	Yellow	Thornless and fruitless cultivar. Genus overplanted in Denver region.
7	Fabaceae	Gymnocladus dioica	Espresso	Kentucky Coffeetree	4		Tolerant	Tolerant	X			Spreading vase	Greenish-white clusters in late spring	Blue-green	Yellow	Male (fruitless) cultivar. Tolerant of urban growing conditions. No known insect or disease issues. Leaves, seeds, and pulp reported to be poisonous if ingested.
16	Fabaceae	Gleditsia triacanthos inermis	Shademaster	Shademaster Honeylocust	4	Xeric	Tolerant	Tolerant	X	40	30	Vase to rectangular	Insignificant	Green	Yellow	Thornless and fruitless cultivar. Central leader less present than Skyline. Genus overplanted in Denver region.
52	Platanaceae	Platanus occidentalis	Bismarck	Northern Advance American Sycamore	3	Mod	Intermediate	Intermediate	X	75	60	Pyramidal to rounded	Insignificant	Green	Yellow	Cold hardy cultivar of parent species. Large root system requires large tree lawn. HDSU introduced. Availability may be limited.
54	Platanaceae	Platanus x acerifolia	Morton Circle	Exclamation London Planetree	5	Mod	Intermediate	Intermediate	X	50	30	Pyramidal	Insignificant	Green	Yellow	Upper branches display showy bark. Cultivar more resistant to anthracnose than parent species. Large root system requires large tree lawn.
18	Sapindaceae	Koelerutera paniculata		Goldennantree	5	Xeric	Intermediate	Intermediate	X	30	30	Oven, rounded vase	Yellow in summer, very showy	Green	Yellow	Volunteers seedling; could be an issue in mulched areas.
34	Fabaceae	Styphnolobium japonica	Halka	Millstone Japanese Pagodatree	5	Min	Intermediate	Intermediate	X	40	30	Broad oval to rounded	Creamy white in summer, showy	Dark green	Yellow	Tolerant of urban conditions, including heat, drought, and compacted soils. More upright branching habit than parent species. Greatest canker resistance of pagodatree species.
126	Rutaceae	Phellodendron amurense	Marcho	Macho Amur Cori tree	4	Min to Mod	Intermediate	Intermediate	X	40	40	Upright to rounded	Green white in spring, insignificant	Green	Yellow	Male seedless cultivar of parent species. Large, shallow root system requires large tree lawn.

## Shade Trees

ID	Family	Botanical Name	Acceptable Cultivar	Common Name	Hardiness Zone	Moisture Level	Soil Salt Tolerance	Aerosol Salt Tolerance	Water Quality Area	Height @ Maturity	Canopy Spread @ Maturity	Growth Form/Shape	Flowers	Leaf Color - Spring	Leaf Color - Fall	Additional Notes (includes compaction/tolerances/restrictions)
11	Fagaceae	Quercus macrocarpa	JFS KW14	Cobblestone Oak	3	Xeric	Intermediate	Intermediate	X	50	40	Broad oval	Insignificant	Dark green	Yellow	Bark displays more cork-like features than parent species.
130	Fagaceae	Quercus muehlenbergii		Chinkapin Oak	3	Mod	Intermediate	Intermediate		45	50	Upright oval to rounded	Insignificant	Yellow-green	Yellow	Tolerant of alkaline soils. Transplant in spring for best survival. Prune to develop central leader.
31	Ulmaceae	Celtis laevigata	All Seasons, Magnifica	Sugar Hackberry	5	Xeric to Min	Tolerant	Intermediate	X	45	40	Rounded vase to broad oval	Green in spring, insignificant	Dark green	Yellow	Varieties are more hardy than parent species. Magnifica has similar growth habit to elm & improved insect resistance.
47	Ulmaceae	Celtis occidentalis	ChicagoLand	Common Hackberry	3	Xeric to Min	Tolerant	Intermediate to Sensitive	X	45	35	Rounded vase, strong central leader	Green in spring, insignificant	Green	Yellow	Tolerant of urban growing conditions. Nipple gall may be an aesthetic issue. Intolerant of mechanical damage. Transplant in spring (8&8)
25	Ulmaceae	Ulmus americana	Princeton	Princeton American Elm	4	Mod	Intermediate	Intermediate	X	60	45	Upright vase	Insignificant	Dark glossy green	Yellow	Fast growing cultivar. Resistant to Dutch elm disease and elm leaf beetle. Per CSU elm trials, tree may be susceptible to scale. Prune to develop strong branching structure.
30	Ulmaceae	Ulmus (wilsoniana x japonica Accolade) x carpinifolia x glabra	Patriot	Patriot Elm	4	Mod	Tolerant	Tolerant	X	45	35	Upright, narrow vase	Insignificant	Dark green	Yellow	Fast growth rate. Highly resistant to Dutch elm disease. Per CSU elm trials, tree may be susceptible to scale. Not as drought tolerant as other hybrids. Prune to develop strong branching structure.
29	Ulmaceae	Ulmus glabra x carpinifolia	Pioneer	Pioneer Elm	4	Mod	Tolerant	Tolerant	X	50	45	Rounded	Insignificant	Dark green	Yellow	Resistant to Dutch elm disease. Highly susceptible to elm leaf beetle. Per CSU elm trials, tree may be susceptible to scale. Prune to develop strong branching structure.
23	Ulmaceae	Ulmus pumila x japonica x wilsoniana	Morton Glossy	Triumph elm	4	Min to mod	Tolerant	Tolerant	X	50	40	Upright oval to vase	Insignificant	Dark glossy green	Yellow	Cold hardy. Excellent resistance to Dutch elm disease. Resistant to elm leaf beetle. Per CSU elm trials, tree may be moderately resistant to scale. Prune to develop strong branching structure.
24	Ulmaceae	Ulmus japonica x wilsoniana	Morton	Accolade elm	4	Min to Mod	Intermediate	Intermediate	X	60	50	Vase with arching limbs	Insignificant	Dark glossy green	Yellow	Cold hardy. Resistant to Dutch elm disease and elm leaf beetle. Per CSU elm trials, tree shows high scale resistance. Prune to develop strong branching structure.
92	Ulmaceae	Ulmus davidiana var. japonica	Discovery	Discovery Elm	3	Mod	Tolerant	Tolerant		40	30	Upright oval to arching vase	Insignificant	Dark green	Yellow	Slow growing, cold hardy variety. Resistant to Dutch elm disease and elm leaf beetle. Resistance to scale unknown. Large root system requires large tree lawn. Growth habit requires consistent crown-thinning. Prune to develop strong branching structure.
91	Ulmaceae	Ulmus pumila x hollandica x carpinifolia	Homestead	Homestead Elm	5	Min to mod	Tolerant	Tolerant		50	30	Pyramidal to oval	Insignificant	Dark green	Yellow	Fast growth rate. Resistant to Dutch elm disease. Susceptible to elm leaf beetle. Per CSU elm trials, tree may be moderately resistant to scale. Prune to develop strong branching structure.

# Tree Candidates

The tree species listed below are preliminary candidates for future use on the 16th Street Mall, based on design and health/resiliency criteria. The criteria and highlighted trees are subject to change based on design changes, Department of Forestry recommendations, and availability.

## Asymmetrical - Red Oak & Similar

ID	Family	Botanical Name	Acceptable Cultivar	Common Name	Hardiness Zone	Moisture Level	Soil Salt Tolerance	Aerosol Salt Tolerance	Water Quality Area	Height @ Maturity	Canopy Spread @ Maturity	Growth Form/Shape	Flowers	Leaf Color - Spring	Leaf Color - Fall	Additional Notes (includes compactness/tolerances/restrictions)
85	Aceraceae	Acer buergerianum	Streetwise	Trident Maple	5	Min	Tolerant	Intermediate		30	30	707	Oval to rounded	Small green-yellow in spring, insignificant	Dark green	Slow growing. No pests or disease problems at this time. Snow & ice damage may be a concern.
86	Aceraceae	Acer campestre		Hedge Maple	5	Min	Tolerant	Tolerant		30	30	Oval to rounded, dense	Small green-yellow in spring, insignificant	Dark green	Yellow	Tolerates dry soil. Intolerant of soil compaction. Prune to develop strong branching structure and overhead clearance.
3	Aceraceae	Acer miyabei	Morton	State Street Maple	4	Mod	Intermediate	Intermediate	X	45	35	962	Upright pyramidal to rounded	Small green-yellow in spring, insignificant	Green	Cold hardy & drought tolerant, chlorosis resistant; pest free.
101	Hippocastanaceae	Aesculus x Bergeson		Prairie Torch Buckeye	3	Mod	Intermediate	Intermediate		27	27	573	Slightly weeping, globose	White in spring, showy	Dark green	Excellent cold hardiness. Resistant to leaf scorch. Intolerant of drought.
62	Rosaceae	Pyrus calleryana	Glen's Form	Chanticleer Pear	4	Min to Mod	Intermediate	Intermediate	X	30	15	177	Upright pyramidal	White in spring, showy	Glossy green	Greater firelight resistance than other cultivars. Overplanting is a concern. Prune to develop strong branching structure.
118	Fagaceae	Quercus alba		White Oak	3	Mod	Tolerant	Tolerant		60	60	2827	Oval to rounded	Insignificant	Green	Relatively slow growing. May be intolerant of alkaline soils. Chlorosis may be an issue.
115	Fagaceae	Quercus buckleyi		Texas Red Oak	5b	Min	Tolerant	Unknown		35	35	962	Broad rounded	Insignificant	Glossy green	Native of Texas is closely related to shumard oak. Tolerant of alkaline soils and drought. Check seed source for hardiness and soil tolerance.
112	Fagaceae	Quercus robur x alba	Tabor PPT1382	Forest Knight Oak	4	Xeric to Min	Intermediate	Tolerant		45	35	962	Broad oval	Insignificant	Glossy dark green	Columbar hybrid of English and white oak. Tolerant of urban conditions. Kermes scale may be an issue.
121	Fagaceae	Quercus shumardii		Shumard Oak	5	Mod	Intermediate	Intermediate		60	40	1257	Pyramidal to oval	Insignificant	Green	Due to large growth range, source as locally as possible for pH, drought, and hardiness tolerance. Large root system requires large tree lawn. Prune to develop central leader.
96	Fagaceae	Quercus x bimundorum	Midwest	Prairie Sature Oak	3	Min to Mod	Intermediate	Intermediate		45	35	962	Broad pyramidal	Insignificant	Dark green	Cold hardy hybrid of English and white oak. Tolerant of alkaline soils.
120	Ulmaceae	Ulmus davidiana var. japonica	Burgundy Glow	Northern Empress Japanese Elm	3	Mod	Tolerant	Tolerant		28	24	452	Rounded, open	Insignificant	Green	Medium growth rate. Resistant to Dutch elm disease and elm leaf beetle. Resistance to scale unknown. Prune to develop strong branching structure.
4	Ulmaceae	Ulmus parvifolia	Dynasty	Dynasty Elm	5	Mod	Intermediate	Intermediate	X	35	35	962	Vase	Insignificant	Green	Fast growth rate. Resistance to Dutch elm disease, scale, and elm leaf beetle unknown. Prune to develop strong branching structure. Availability may be limited. Improven in Denver region.
63	Ulmaceae	Ulmus parvifolia	Emer II PPT552	Allee Lacebark Elm	5	Mod	Intermediate	Intermediate	X	45	30	707	Upright vase with arching limbs	Insignificant	Green	High resistance to Dutch elm disease and elm leaf beetle. Resistance to scale unknown. Thin, showy bark. Prune to develop strong branching structure.
5	Ulmaceae	Zelkova serrata	Haika	Haika Zelkova	5b	Xeric to Mod	Intermediate	Intermediate	X	50	35	962	Upright vase, open & loose form	Insignificant	Green	Growth rate is fastest of zelkova cultivars. Tolerant of urban conditions. Susceptible to canker from mechanical injury. Plant in spring. Prune in fall to develop strong branching structure.
65	Ulmaceae	Zelkova serrata	Green Vase	Green Vase Zelkova	5b	Xeric to Mod	Intermediate	Intermediate	X	45	30	707	Vase, upright arching branches	Insignificant	Green	Faster growth rate, but less cold hardy than Village Green. Tolerant of urban conditions. Susceptible to canker from mechanical injury. Plant in spring. Prune in fall to develop strong branching structure.
2	Ulmaceae	Zelkova sinica		Chinese Zelkova	5b	Xeric to Mod	Intermediate	Intermediate	X	35	35	962	Vase	Insignificant	Dark green	Resistant to elm leaf beetle. Exfoliating cinnamon-colored bark. Prune in fall to develop strong branching structure. Availability may be limited. Improven in Denver region.

**ATTACHMENT 4**  
**Unanticipated Discoveries Plan**

Unanticipated Discovery Plan  
for 16th Street Mall  
Denver, Denver County, Colorado

July 2019

# Contents

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# Acronyms and Abbreviations

ARPA	Archeological Resources Protection Act
CCD	City and County of Denver
CFR	Code of Federal Regulations
CO	Colorado
Council	Advisory Council on Historic Preservation
CRS	Colorado Revised Statutes
DDP	Downtown Denver Partnership
FTA	Federal Transit Administration
LA	Louisiana
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NHPA	National Historic Preservation Act
NPS	National Park Service
NRHP	National Register of Historic Places
Project	Improvements to the 16th Street Mall, Denver, Colorado
QPA	Qualified Professional Archeologist
RTD	Regional Transportation District
SHPO	State Historic Preservation Officer
UDP	Unanticipated Discovery Plan
U.S.C.	United States Code

# Unanticipated Discovery Plan

The Federal Transit Administration (FTA), as the lead federal agency, has determined that the Improvements to the 16th Street Mall (Project) constitute an Undertaking under 36 Code of Federal Regulations (CFR) 800.16(y), which requires compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 United States Code [U.S.C.] § 306108) and its implementing regulations in 36 CFR Part 800.

FTA, in coordination with the Regional Transportation District (RTD) and the City and County of Denver (CCD), proposes to implement improvements to the 16th Street Mall (Mall), which is the federal Undertaking.

The FTA is the lead federal agency responsible for the Undertaking and for ensuring that the requirements of Section 106 of the NHPA are fulfilled in accordance with 36 CFR Part 800. Following Section 106 consultation with the Colorado State Historic Preservation Officer (SHPO), identified federally recognized tribes, and local consulting parties it was determined that the Mall is eligible for the National Register of Historic Places (NRHP). The FTA has determined that the Undertaking will result in an adverse effect on the 16th Street Mall historic property.

There is a Programmatic Agreement (PA) among the FTA, Advisory County on Historic Preservation (Council), and Colorado SHPO to record the resolution measures to resolve the adverse effect to the Mall; the CCD and RTD are Invited Signatories to the MOA. Stipulation VII of the PA requires that in the event of an unanticipated discovery of cultural resources or historic properties during Project implementation, the CCD will proceed in accordance with the procedures outlined in an Unanticipated Discovery Plan (UDP) and notify the FTA and other signatories. Therefore, this UDP has been developed for use during improvements to the 16th Street Mall and in accordance with the PA.

This UDP will be implemented if new or additional historic properties or cultural resources are encountered during construction, related excavation, or other ongoing activities on the proposed Undertaking. For the purposes of this UDP, cultural resources may include archaeological resources (any site that contains material remains of past human life or activities), historic structures, (any building or structure greater than 50 years of age), linear features (such as a rail line), or other items that possess cultural importance to individuals or a group.

This UDP has been developed through reference to the regulations embodied in the Protection of Historic Properties issued by the Council (revised August 2004, <https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf>). CH2M HILL Engineers, Inc. (CH2M), now part of Jacobs Engineering Group, Inc. (Jacobs), reviewed Colorado legislation (Colorado Revised Statutes CRS 24-80-401-411 and CRS 24-80-1301-1305, as well as 8 Colorado Code of Regulations 1504-7) that was used in the development of this UDP.

## 1.1 Procedure when Cultural Materials are Observed

Termed “unanticipated discovery” or “post-review discovery,” the identification of new or additional cultural resources during implementation of an undertaking typically occurs in the

case of projects that involve excavation or ground-disturbing activities. The following measures will be implemented if an unanticipated cultural resource discovery is made by CCD, RTD, Downtown Denver Partnership (DDP), FTA, Jacobs, any other contractor, or any subcontractor during construction of the proposed Undertaking:

1. Construction activities or related excavation within 30 feet of an unanticipated discovery will be halted and the discovery protected from further disturbance.
2. Within 24 hours of an unanticipated discovery, CCD will notify by telephone the FTA and Colorado SHPO and, in the case of human remains, the Denver County coroner and sheriff.
3. CCD will consult with the FTA and SHPO on the most appropriate course of action for treatment of the unanticipated discovery. This may involve further archaeological study to record, document, or evaluate potential NRHP-eligibility of the inadvertently discovered cultural resources.
4. Specific FTA and SHPO instructions concerning an unanticipated discovery resulting from the notification as previously described will be followed by an Qualified Professional Archaeologist (QPA) or will be under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's Professional Qualification Standards (48 CFR §§44738-44739) in those areas in which the qualifications are applicable for the specific work performed.
5. At a minimum, sufficient archaeological work will be performed on the unanticipated discovery location to stabilize deposits, protect deposits from scavengers or looters, and collect readily available samples (for example, for radiocarbon dating), which may help pinpoint the age of deposits.
6. FTA will also consult with any consulting Indian tribes that may ascribe traditional cultural and religious significance to affected historic properties.
7. If neither the SHPO, consulting parties, nor consulting tribes submit any objection to FTA's plan for addressing the discovery within 48 hours, FTA may carry out the requirements of 36 CFR 800.13, and the Council need only be notified in the event there is an adverse effect.
8. Construction activities will remain halted in the area of the unanticipated discovery until the FTA and SHPO indicate that it may proceed in the area of a specific unanticipated discovery and the requirements of 36 CFR 800.13 have been fulfilled.

## 1.2 Procedure for Discovery of Human Remains

In the case of an unanticipated discovery of human remains and/or cultural items (such as funerary objects, sacred objects, or objects of cultural patrimony) that are subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001-3013, 18 U.S.C. § 1170) and the Archeological Resources Protection Act (ARPA) (16 U.S.C. § 470aa Remains and Funerary/Sacred Objects), the CCD and Jacobs propose to follow all relevant state and federal laws and recommendations regarding treatment of human remains as referenced in Section 1.1. The CCD recognizes the importance of providing careful and respectful treatment for human remains recovered as an unanticipated discovery or as part of an archaeological investigation. In the event of an unanticipated discovery of human remains, CCD will consult with the FTA and SHPO as to the appropriate federally recognized tribes or other groups with



which to consult. In coordination with the FTA, SHPO, and other interested parties, a decision will be made for the treatment of the remains (for example, reburial, preservation in place, scientific study, sacred ritual, or a combination thereof). Pursuant to CRS 24-80-1302, this protocol includes the following:

1. If human remains are encountered, work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance. During construction activity, the area is to be marked off with clear evident means, such as flagging or tape.
2. All human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
3. The county coroner and medical examiner, local law enforcement, the FTA, the SHPO, and appropriate Indian tribes will be notified immediately. The coroner will conduct an onsite examination within 48 hours of notification to determine whether skeletal remains are human and the degree of their forensic value. If the coroner is unable to make these determinations, local law enforcement, the FTA, or the coroner may request the forensic anthropologist of the Colorado Bureau of Investigation to assist.
4. If the remains are determined to be human but have no forensic value, the coroner will notify the Colorado State Archaeologist of the discovery, who will in turn recommend security measures for the discovery location.
5. The Colorado State Archaeologist will facilitate the remains to be examined by a QPA who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's Professional Qualification Standards (48 CFR §§44738-44739). The QPA will determine if the remains are more than 100 years old, evaluate the integrity of their archaeological context, and complete necessary documentation within a timely manner.
6. If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. The State Archaeologist will notify the Colorado Commission of Indian Affairs (Commission). The FTA will consult with the SHPO, Commission, and federally recognized tribal groups to develop a plan of action that is consistent with the NAGPRA guidance.
7. If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated in consultation with the National Park Service (NPS), the SHPO and other appropriate parties. Historic research and consultation with local authorities and historic experts will be conducted by a QPA to try to determine the possible identity and affiliation of the remains and determine if there are any lineal descendants who should be consulted concerning the treatment of the remains. Notice of the discovery will be published in local media outlets for at least 3 days to assist in identification of lineal descendants.

# Federal, State, and Local Agency Information

**Table 2-1** identifies the agency representatives to be contacted in case of unanticipated discoveries.

**Table 2-1. Contact List**

<b>Name</b>	<b>Title/Agency</b>	<b>Phone</b>	<b>Address</b>	<b>Email</b>
<b><i>City and County of Denver</i></b>				
Steve Coggins	Program Implementation Mgr	720-865-3043 303-500-9030 cell	201 W. Colfax Ave. Dept 506 Denver, CO 80202	Steven.coggins@denvergov.org
John McGrath	City Attorney	720-913-8408	201 W. Colfax Ave., Dept 506 Denver, CO 80202	John.McGrath@denvergov.org
<b><i>Regional Transportation District</i></b>				
Susan Wood	Environmental Project Manager	303-299-2467	1560 Broadway, Ste 700 Denver, CO 80202	Susan.wood@rtd-denver.com
<b><i>Federal Transit Administration</i></b>				
Cindy Terwilliger	Regional Administrator	303-362-2400	1961 Stout Street, Ste 13301 Denver, CO 80294	Cindy.terwilliger@dot.gov
<b><i>Colorado State Historic Preservation Officer</i></b>				
Steve Turner	State Historic Preservation Officer	303-866-3355	History Colorado 1200 Broadway, Denver, CO 80203	steve.turner@state.co.us
Holly Norton	State Archaeologist Deputy SHPO	303-866-2736	History Colorado 1200 Broadway, Denver, CO 80203	holly.norton@state.co.us
<b><i>Denver County Coroner</i></b>				
	Office of the Medical Examiner	303-866-2736	500 Quivas Street Denver, CO 80204	medcomments@denvergov.org
<b><i>Local Law Enforcement</i></b>				
	Denver Police Department	720-913-2000	1331 Cherokee Street Denver, CO 80204-4507	dppio@denvergov.org
<b><i>Colorado Commission of Indian Affairs</i></b>				
Ernest House	Executive Director/ Colorado Commission of Indian Affairs	303-866-5470	Office of the Lt. Governor 130 State Capitol, Denver CO 80203	ernest.house@state.co.us
<b><i>Jacobs</i></b>				
Amy C. Favret	Senior Archaeologist/ Principal Investigator	513-595-5642	1880 Waycross Road Cincinnati, Ohio 45240	amy.favret@jacobs.com
Sara S. Orton	Cultural Resources Specialist	504-810-0017	3330 W. Esplanade Ave, #612 New Orleans, LA 70002	sara.orton@jacobs.com
<b><i>Contractor (TBD)</i></b>				

**Certifiable Item List Report**  
**Kiewit Infrastructure Group**  
**I-225 LRT Corridor Project: 102004**

Complete form in detail. If more space is needed, use another sheet. Attach pertinent information such as test reports, delivery slips, and references.

1. Location:	<u>Area G2</u>	4. Inspector:	<u>Andy Stainbrook</u>
2. CIL:	<u>CIV03</u>	5. Responsible:	<u>Courtney O'Conor</u>
3. Date:	<u>11/18/2016</u>	6. Weather:	<u>N/A</u>

**6. Construction Work Performed Today and Location of Work**

Observation
<p>Constructed per design.</p> <p>The design of curb cuts and curb ramps shall be in strict accordance with the applicable provisions of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Walkway, highblock and structural access ramps shall not exceed 4.75%. &lt;3.4.8&gt;</p> <p>Verification provided during Stations Flatwork Punchlist walk. Stations meet CIV03 requirements.</p> <p>See Fitzsimons Station Flatwork Punchlist Aconex # I225-KIE-ARC-PNL-000006</p>

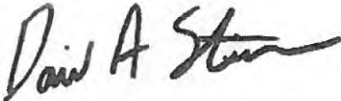
**7. Description of Deficiencies Discovered Today and Location. Proposed Remedial Action, and Expected Date Rework will be Completed.**

N/A
-----

Refer to Report No.	Complies with P&S		8. Rework Completed This Date
	Yes	No	

**9. Contractors Certification.**

*This report is complete and correct. All materials and equipment used as well as work performed during this reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as noted above.*



Signature of QA Representative: \_\_\_\_\_

**RTD I-225 LIGHT RAIL PROJECT**

Design  
 Construction

**SAFETY AND SECURITY CERTIFICATION FORM**  
 Contract No: 12DH015 Revision: 0  
 Checklist Type:  Master List  Sub-List

Certifiable Element: Civil  
 Sub-element: Civil - Area G2

**STATUS**  
 C = Compliance  
 N = Noncompliance  
 P = Partial Compliance

**MEANS OF VERIFICATION - DESIGN**  
 PS = Plans & Specifications  
 S = Submittal  
 CN/CO = Change Notice/Order  
 D = Design

**MEANS OF VERIFICATION - CONSTRUCTION**  
 M = Measurement  
 T = Test  
 V = Visual Inspection (Photo)  
 S = Submittal

**LOCATION:**  
 SEGMENT 2 - Area G2 (STA 1163+00.00 to 1210+06.00)

Item No.	Reference	Description	Design Cross Reference	Design		Means of Verification		Construction		Means of Verification	
				Status	Initial	Date	Status	Initial	Date		
CIV03	DC 3.4.8	Curb Ramps and Curb Cuts - The design of curb cuts and curb ramps shall be in strict accordance with the applicable provisions of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Walkway, highblock and structural access ramps shall not exceed 4.75%.	C-9400, C-9401, C-9402, A-1300, A-1423, A-1424, A-9101, A-9410, A-9800, A-9801	C	TWT	8/19/14	PS	C	AS	11-14-16	PS
CIV04	DC 3.4.9	Guardrail and Roadside Barriers - Where required, guardrail, roadside barriers (e.g. type 7 concrete or other type as approved by RTD) and appropriate attenuators shall meet the requirements and details of the CDOT Standard Specifications for Road and Bridge Construction and Standard Plans, M & S Standards, current edition. Guardrail and roadside barrier placement in conjunction with clear zone provisions should follow the guidelines of the AASHTO Roadside Design Guide.	C-2275 C-2276 C-2277 C-2278	C	TWT	8/19/14	PS	C	AS	11-14-16	PS

**Final Design Verification**  
 Name: David Hous Signature: [Signature] Date: 8/10/15  
 Organization: AECOM  
 Approved By: [Signature]

**Final Construction Verification**  
 Name: John Howell Signature: [Signature] Date: 11/23/16  
 Organization: KIEWIT  
 Approved By: [Signature]

**Notes or Restrictions:**  
 CIV03 - Highblock slopes approach 8% and do not conform to CIL requirements. RTD will develop a waiver memo to allow the higher ramp slope (max 1:12) in the highblock area.

**"Agreement Parameters**

Therefore, understanding the position of RTD as described in this Board Report, the Board authorizes the General Manager to negotiate and execute one or more agreements with CCD concerning funding, design, construction and maintenance of the Project within the following parameters:

- CCD will arrange for the design, construction and maintenance of the Project consistent with the EA approved by the FTA, in compliance with all applicable federal, State, City, and RTD requirements, by no later than the conclusion of 2022. The parties will cooperate and where necessary, give RTD approval rights, to ensure the safe and compliant provision of transit services.
- RTD will maintain continuing control of the Transitway in a manner satisfactory to RTD for its useful life and have exclusive use to operate its transit vehicles in a manner substantially similar to the transit services provided currently.
- RTD will make available federal grant funds allowed by the FTA to CCD as a subrecipient, pursuant to the Bus Livability grant and the DRCOG STP-Metro grant. RTD's financial contribution to the capital costs of the Project is limited to 1/3 of the local match for those two grants not to exceed \$1,064,834.
- CCD will be responsible for all maintenance costs of the Project; provided that, RTD will pay 30% of incurred maintenance costs up to \$100,000; and \$100,000 per year during the warranty period into a maintenance reserve account."



## EXHIBIT E

### FEDERAL REQUIREMENTS

The City shall comply with and perform its obligations under the IGA, and when applicable, shall require each of its consultants, contractors and their respective subcontractors to perform Project work under this IGA in accordance with the following requirements set forth in this Exhibit E. For the purposes of this Exhibit E, "Contractor" shall refer to the City and any Third Party Participant.

#### FTA 1 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

The City agrees to include the Required Clauses in Third Party Contracts set forth in the FTA Master Agreement Section 16(e) in each Third Party Contract financed in whole or in part with Federal assistance provided by FTA and to ensure the inclusion of such clauses in all Third Party Contracts at any tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### FTA 2 FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD

- A. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution or performance of the underlying work, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract work or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on Contractor, to the extent the Federal Government deems appropriate.

- C. Contractor agrees to include the above two clauses in each Third Party Contract financed in whole or in part with Federal assistance provided by FTA and to require its D/BC to include the same in any Third Party Contracts. It is further agreed that the clauses shall not be modified, except to identify the subcontractor(s) who will be subject to the provisions.

### **FTA 3 ACCESS TO THIRD PARTY CONTRACT RECORDS**

Contractor agrees to require, and assures that each of its Third Party Participants will require, its Third Party Participants at each tier provide:

- A. For a period of three years following contract closing, the Contractor shall maintain, preserve and make available to RTD, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of Contractor which are directly pertinent to the work for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. § 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to Contractor's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(3)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
- B. The Contractor shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of the Project work. This right of examination shall include inspection at all reasonable times of the Contractor's offices engaged in performing the Project work.
- C. If a contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- D. "Access to Records and Reports" applies with equal force and effect to any subcontractors hired by the Contractor to perform Work under this contract. The Contractor shall insert this provision in all subcontracts under this Contract and require subcontractor compliance therewith.

### **FTA 4 CHANGES TO FEDERAL REQUIREMENTS**

All applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between RTD and FTA, shall be in effect as they may be amended or promulgated from time to time during the term of this contract.

### **FTA 5 CIVIL RIGHTS (TITLE VI, ADA, EEO)**

The requirements for this section are set forth in Exhibit H to the IGA.



## **FTA 6 DISADVANTAGED BUSINESS ENTERPRISES (DBE)s**

A. The requirements for this section are set forth in Exhibit H to the IGA.

## **FTA 7 INCORPORATION OF FTA TERMS**

The provisions of this Contract include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. 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. The incorporation of FTA terms has unlimited flow down.

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**Provision 8 applies to AWARDS EXCEEDING \$10,000**

**FTA 8 TERMINATION**

- A. Per Section 11. A. of the IGA.
  
- B. Suspension of Work. 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 pursuant to "Termination for 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 under this Article 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.

**Provision 9 applies to AWARDS EXCEEDING \$25,000**

**FTA 9 DEBARMENT AND SUSPENSION**

- A. If this Contract is valued at \$25,000 or greater, it is a covered transaction for purposes of 2 C.F.R. Part 180. As such, Contractor is required to verify that none of Contractor, its principals, as defined at 2 C.F.R. Part 180.995, or affiliates, as defined at 2 C.F.R. Part 180.905, are entered into or listed on the governmentwide exclusions in the System for Award Management (SAM) in accordance with the OMB guidelines at 2 C.F.R. Part 180 that implement Executive orders 12549 (31 U.S.C. Section 6101) and 12689 (31 U.S.C. Section 6101).
- B. Contractor is required to comply with 2 C.F.R. Part 180, Subpart C and must include the requirement to comply with 2 C.F.R. Part 180, Subpart C in any lower tier covered transaction it enters into.
- C. By accepting this Contract, Contractor is certifying as follows:
  - 1. The certification in this clause is a material representation of fact relied upon by RTD. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to RTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C throughout the period of this Contract.
  - 2. Contractor further agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
    - a) Complies with federal debarment and suspension requirements; and
    - b) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with USDOT regulations, 2 C.F.R. part 1200.

**Provisions 10 through 11 apply to AWARDS EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD (\$150,000)**

**FTA 10 BUY AMERICA**

**(for Rolling Stock, Construction and Materials/Supplies)**

The Buy America requirements apply to all contracts for construction, the acquisition of goods, or the acquisition of rolling stock that are valued at more than \$150,000.

The Contractor agrees to comply with 49 U.S.C. § 5323(j), as amended by MAP-21, and 49 C.F.R. Part 661, to the extent consistent with MAP-21, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 65 percent domestic content. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

**FTA 11 RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

A. Except as otherwise provided in this Contract, any dispute arising hereunder concerning a question of fact that is not disposed of by agreement shall be decided by RTD's General Manager, or his or her delegate. Contractor will be notified of the decision in writing. To the extent allowable by law, any such decision shall be final, conclusive, and not subject to judicial review unless shown to be fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith.

B. This Article does not preclude judicial consideration of questions of law. Nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

C. All costs, expenses and attorney fees incurred by the Contractor in connection with any appeal, suit or claim regarding a dispute that is brought by the Contractor shall be paid by the Contractor.

D. The duties, obligations, rights, and remedies provided by the Contract shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

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

**Provision 12 applies to AWARDS EXCEEDING \$100,000 BY STATUTE**

**FTA 12 LOBBYING**

Contractors and all subcontractors who apply or bid for an award of \$ 100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to RTD. Contractor should contact RTD for the appropriate certification or retrieve a copy from the FTA Best Practices Manual at [http://www.fta.dot.gov/documents/BPPM\\_fulltext.pdf](http://www.fta.dot.gov/documents/BPPM_fulltext.pdf).

**Provisions 13 through 14 apply to AWARDS EXCEEDING \$150,000 BY STATUTE**

**FTA 13 CLEAN AIR**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to RTD and understands and agrees that RTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**FTA 14 CLEAN WATER**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. Contractor agrees to report each violation to RTD and understands and agrees that RTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
  - B. Contractor also agrees to include these requirements in each subcontract exceeding \$ 150,000 financed in whole or in part with Federal assistance provided by FTA.
-

**Provisions 15 and 16 apply for the TRANSPORT OF PROPERTY OR PERSONS**

**FTA 15 CARGO PREFERENCE**

**(Rolling Stock, Construction and Materials/Supplies)**

**The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.**

The Contractor agrees:

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

**FTA 16 FLY AMERICA**

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

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Provisions 17 through 21 apply to CONSTRUCTION ACTIVITIES

**FTA 17 CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT**

**(Awards that exceed \$2,000)**

Compliance with the Davis -Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148), as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week. Contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation for Project work. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

**FTA 18 CONSTRUCTION EMPLOYEE PROTECTIONS – CONTRACT WORK HOURS & SAFETY STANDARDS ACT**

**(for construction contracts that exceed \$150,000)**

Compliance with 40 U.S. C. Section 3701-3708, as supplemented by Department of Labor regulations, 29 C.F.R., part 5.

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

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

(3) Withholding for unpaid wages and liquidated damages - The RTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the

Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

#### **FTA 19 CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT**

Compliance with Copeland "Anti-Kickback" Act ("Act") requirements - Contractor shall comply with the following requirements:

(a) Section 1 of the Act, as amended, 18 U.S.C. § 874, applies to all Contracts:

- (i) Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both;

(b) Section 2 of the Act, as amended, 40 U.S.C. § 3145, applies to construction and repair Contracts exceeding \$2,000:

- (i) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.
- (ii) Application.— The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001; and

(c) U.S. DOL regulations "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 C.F.R. Part 3, which are incorporated by reference in this contract.

(d) For additional requirements of the Act not specified in this Article, see preceding Article FTA 17 – Construction Employee Protections – Davis Bacon Act.



## **FTA 20 BONDING FOR CONSTRUCTION ACTIVITIES EXCEEDING \$150,000**

Contractor agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:

(1) Construction. As provided in federal regulations and modified by FTA guidance, for activities implementing Project work that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

(2) Activities Not Involving Construction. For activities Project work not involving construction, the Contractor will not impose excessive bonding and will follow FTA guidance.

## **FTA 21 SEISMIC SAFETY**

If this Contract for professional services involves the design of a new building or addition to an existing building, the Contractor agrees that any such 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. The 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.

## **FTA 22 VETERANS EMPLOYMENT**

As provided in 49 U.S.C. § 5325(k), to the extent practicable, Contractor agrees and assures that each of its Third Party Participants:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a Third Party Contract in connection with a Project work supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Provision 23 applies to NONCONSTRUCTION ACTIVITIES**

**FTA 23 NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT**

**(for all turnkey, rolling stock and operational contracts {except transportation services contracts and open market contracts} exceeding \$150,000.)**

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provision Applicable to Nonconstruction Contracts Subject to the Contract Work hours and Safety Standards Act)," 29 C.F.R. Part 5.

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Provisions 24 through 28 apply to TRANSIT OPERATIONS

**FTA 24 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS**

Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

- (1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.
- (2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority sub recipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.
- (3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms

and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

#### **FTA 25 CHARTER BUS OPERATIONS**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. Chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

#### **FTA 26 SCHOOL BUS OPERATIONS**

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. Chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

#### **FTA 27 DRUG USE AND TESTING**

The Contractor agrees to establish and implement a drug testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31<sup>st</sup> of every year and to submit the Management Information System (MIS) reports no later than February 15<sup>th</sup> of every year to the Substance Abuse Testing Department, Regional Transportation District, 1660 Blake Street, Denver, CO 80202-1399. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## FTA 28 ALCOHOL MISUSE AND TESTING

The Contractor agrees to establish and implement an alcohol testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31<sup>st</sup> of every year and to submit the Management Information System (MIS) reports no later than February 15<sup>th</sup> of every year to the Substance Abuse Testing Department, Regional Transportation District, 1660 Blake Street, Denver, CO 80202-1399. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

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**Provisions 29 through 30 apply to PLANNING, RESEARCH, DEVELOPMENT, AND  
DEMONSTRATION PROJECTS**

**FTA 29 PATENT RIGHTS**

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire rights when the Recipient (RTD) or third party participant produces a patented or patentable invention, improvement, or discovery.
- (2) The Federal Government's rights arise when the patent or patentable information is conceived under the Project, or reduced to practice under the Project.
- (3) When a patent is issued or patented information becomes available as described in the preceding paragraph A(1) of this Article, the Recipient agrees to notify FTA immediately, and provide a detailed report satisfactory to FTA.

B. Federal Rights. The Recipient agrees that:

- (1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.
- (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in 35 U.S.C. 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401).

C. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except for compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and as FTA determines otherwise in writing.

**FTA 30 RIGHTS IN DATA AND COPYRIGHTS**

A. Definition of Subject Data. As used in this Article, "Subject Data" means recorded information that:

- (1) Copyright. Are copyrighted or not copyrighted,
- (2) Delivery. Are delivered or specified to be delivered by the underlying Agreement, and

(3) Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information.

(4) Exceptions. "Subject data" do not include financial reports, cost analyses, or other similar information used for Project administration.

B. General. The following restrictions apply to all Subject Data first produced in the performance of the underlying Agreement:

(1) Prohibitions. The Recipient (RTD) may not publish or reproduce Subject Data in whole or in part, or in any manner or form, or permit others to do so.

(2) Exceptions. The restrictions on publication of Subsection B(1) of this Article do not apply to publications or reproductions for the Recipient's own internal use, to an institution of higher learning, to the portion of the data that the Federal Government has previously released or approved for release to the public, or to the portion of the data that has the Federal Government's prior written consent for release.

C. Federal Rights in Data and Copyrights. The Recipient agrees as follows:

(1) License Rights. The Recipient must provide the Federal Government a license to "Subject Data" that is royalty-free, non-exclusive, and irrevocable.

(2) Uses. The Federal Government's license must permit it to reproduce the Subject Data, publish the Subject Data, otherwise use the Subject Data, and permit others to use the Subject Data for Federal Government purposes.

(3) Federal Government Purposes. As used in this Article, "for Federal Government purposes" means that the Federal Government may use its license only for its own direct purposes, and the Federal Government may not provide or otherwise extend to other parties, without the copyright owner's consent, its license to any Subject Data developed and funded at any tier through the underlying Agreement, and any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

D. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its third party participants. Therefore, the Recipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet.

- (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request.
- (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its third party participants at any tier of the Project, either FTA's copyright to the Subject Data or a copy of the Subject Data, except as FTA determines otherwise in writing.
- (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
- (5) Incomplete Project. If the project is not completed for any reason whatsoever, all data developed under the Project becomes "subject Data" and must be delivered as the Federal Government may direct.
- (6) Exception. This Subsection D does not apply to an adaptation of automatic data processing equipment or program that is both for the Recipient's use, and acquired with FTA capital program funding.

E. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

- (1) License fees and royalties for copyrighted material or trademarks derived from the Project are program income.
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees and royalties, except for compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and as FTA determines otherwise in writing.

F. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

- (1) Violation by Recipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government's officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,
  - (a) If it willfully or intentionally violates any Proprietary rights, Copyrights, or Right of privacy,
  - (b) Occurring from any of the following uses of Project data: Publication, Translation, Reproduction, Delivery, Use, or Disposition.
- (2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding paragraph F(1) caused by the wrongful acts of Federal employees or agents.

G. Restrictions on Access to Patent Rights. Nothing in this Article pertaining to rights in data either:



- (1) Implies a license to the Federal Government under any patent, or
  - (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- H. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.
- (1) Protections. paragraphs A, B, C, and D of this Article do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.
  - (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- I. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:
- (1) The Freedom of Information Act, 5 U.S.C. § 552,
  - (2) Another Federal law requiring access to Project records,
  - (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or
  - (4) Other Federal regulations requiring access to Project records.
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Provision 31 applies ONLY to States and Organizations that are being funded directly by the State with FTA grant funds.

FTA 31 SPECIAL NOTIFICATION REQUIREMENT FOR STATES

N/A

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## **MISCELLANEOUS SPECIAL REQUIREMENTS**

### **FTA 32 ENERGY CONSERVATION**

**(applies to all contracts)**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan, if any, issued in compliance with the Energy Policy and Conservation Act.

### **FTA 33 SOLID WASTES/PROCUREMENT OF RECOVERED MATERIALS**

**(Contracts when procuring \$10,000 or more per year of items designated by EPA)**

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, procuring solid waste management services in a manner that maximizes energy and resource recovery and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **FTA 34 CONFORMANCE WITH NATIONAL ITS ARCHITECTURE**

**(Contracts and solicitations for ITS projects)**

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

### **FTA 35 ADA ACCESS**

**(Contracts for rolling stock or facilities construction/renovation)**

A. RTD 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.

#### **FTA 36 ASSIGNABILITY CLAUSE**

##### **(Procurements through assignments)**

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

#### **FTA 37 ARCHITECTURAL ENGINEERING AND RELATED SERVICES**

When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the RTD Awards to be administered under 49 U.S.C. chapter 53, Contractor agrees to comply and assures that each of its Third Party Participants will comply with 49 U.S.C. § 5325(b).

#### **FTA 38 DESIGN BUILD PROJECTS**

As provided in 49 U.S.C. § 5325(d), Contractor may use a design - build procurement to carry out its Project, provided that it complies with applicable federal laws, regulations, and requirements, and follows federal guidance.

#### **FTA 39 AWARD TO OTHER THAN THE LOWEST BIDDER**

As permitted under 49 U.S.C. § 5325(c), Contractor may award a third party contract to other than the lowest bidder, if that award furthers an objective (for example, improved long-term operating efficiency and lower long- term costs) consistent with the purposes of 49 U.S.C. chapter 53 and any implementing federal regulations, requirements, or guidance that FTA may issue.

#### **FTA 40 AWARD TO RESPONSIBLE THIRD PARTY CONTRACTORS**

Contractor agrees to award Third Party Contracts only to contractors able to carry out the procurement successfully, as provided in 49 U.S.C. § 5325(j), and before awarding a Third Party Contract, it will consider the proposed contractor's integrity, compliance with public policy, past performance, and financial and technical resources.

#### **FTA 41 ELECTRONIC AND INFORMATION TECHNOLOGY**

Contractor agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194.

#### **FTA 42 ACQUISITION BY LEASE**

Contractor agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with 49 U.S.C. chapter 53 and section 3019 of the FAST Act

#### **FTA 43 BID PROTESTS**

City agrees to provide to RTD, as part of RTD's annual or quarterly Milestone Progress Report to the FTA, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. Contractor also should be mindful of the requirement in Section 39, Disputes, that the RTD must promptly notify the FTA Chief Counsel, or FTA Regional Counsel 8, of significant current or prospective legal matters that may affect the Federal Government.



**EXHIBIT F**

**Applicability of Third-Party Contract Clauses – per FTA Master Agreement 26 (10/01/19)**

CLAUSE	TYPE OF PROCUREMENT						Y/N
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies	RTD Clause Number	
No federal government obligations to third-parties (by use of a disclaimer)	All	All	All	All	All	FTA 1	Y
False statements or Claims and Criminal Fraud	All	All	All	All	All	FTA 2	Y
Access to Third Party Records	All	All	All	All	All	FTA 3	Y
Changes to Federal Requirements	All	All	All	All	All	FTA 4	Y
Termination Provisions	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000	FTA 8	Y
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All	FTA 5	Y
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All	FTA 6 (Also see Exhibit H)	Y
Prompt Payment and Return of Retainage	All	All	All	All	All	FTA 6(C) (Also see Exhibit H)	Y
Incorporation of FTA Terms	All	All	All	All	All	FTA 7	Y
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000	FTA 9	Y
Buy America			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, or manufactured products)	FTA 10	Y
Resolution of disputes, breaches, or other litigation	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	FTA 11	Y
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000	FTA 12	Y
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	FTA 13	Y
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000	FTA 14	Y

CLAUSE	TYPE OF PROCUREMENT						Y/N
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies	RTD Clause Number	
Cargo Preference			Involves property transported by ocean vessel	Involves property transported by ocean vessel	Involves property transported by ocean vessel	FTA 15	y
Fly America	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	FTA 16	y
Davis Bacon Act				>\$2,000 (including ferry vessels)		FTA 17	y
Contract Work Hours & Safety Standards Act		>\$2,500 (excludes transportation services)	>\$2,500	>\$2,000 (including ferry vessels)		FTA 18 (construction) or FTA 23 (for non-construction)	y
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)		FTA 19	y
Bonding				>\$150,000		FTA 20	y
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions		FTA 21	y
Veterans Employment				All		FTA 22	y
Transit Employee Protective Arrangements		Transit Operations				FTA 24	y
Charter Service Operations		All				FTA 25	y
School Bus Operations		All				FTA 26	y
Drug Use and Testing		Transit Operations				FTA 27	y
Alcohol Misuse and Testing		Transit Operations				FTA 28	y
Patent Rights	Research & Development					FTA 29	y
Rights in Data and Copyrights requirements	Research & Development					FTA 30	y



CLAUSE	TYPE OF PROCUREMENT						
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies	RTD Clause Number	Y/N
TVM Certification			All			FTA 39	N
Bus Testing			All				N
Pre-Award and Post-Delivery Audit Requirements			All				N
<u>Notification of Federal Participation for States</u>	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States	FTA 31 (N/A to RTD)	N
Energy Conservation	All	All	All	All	All	FTA 32	Y
Recycled Products (Solid Waste / Procurement of Recovered Materials)		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year	FTA 33	Y
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects	FTA 34	Y
ADA Access	Architectural & Engineering	All	All	All		FTA 35	Y
Assignability Clause	All	All	All	All	All	FTA 36	Y
<u>Architectural Engineering and Related Services</u>	Architectural and Engineering	All		All		FTA 37	Y
<u>Design Build Projects</u>	All	All		All	All	FTA 38	Y
<u>Award to other than Lowest Bidder</u>	All	All	All	All	All	FTA 39	Y
<u>Award to Responsible Third Party Contractors</u>	All	All	All	All	All	FTA 40	Y
<u>Electronic and Information Technology</u>	All	All	All	All	All	FTA 41	Y
<u>Acquisition by Lease</u>		Acquisition of property by lease	All	All	All	FTA 42	Y
<u>Bid Protests</u>	Contracts over \$500k	Contracts over \$500k	Contracts over \$500k	Contracts over \$500k	Contracts over \$500k	FTA 42	Y



**EXHIBIT G**

**Required Certifications, Reports and Forms – as of 10/01/18 per FTA MA-25**

CATEGORIES OF FEDERAL REQUIREMENTS	COMMENTS	MASTER AGREEMENT 25 REFERENCES 10/01/18	
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§16(n)	N
Transit Vehicle Manufacturer (TVM) DBE Certifications	All rolling stock procurements	§12(e)(3)(i)	N
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$150,000	§15(a)	Y
Pre-Award Audit	Rolling stock procurements exceeding \$150,000	§16(n)	N
Pre-Award Buy America Certification	Rolling stock procurements exceeding \$150,000	§16(n)	Y
Pre-Award Purchaser's Requirement	Rolling stock procurements exceeding \$150,000	§16(n)	Y
Post-Delivery Audit	Rolling stock procurements exceeding \$150,000	§16(n)	Y
Post-Delivery Buy America Certification	Rolling stock procurements exceeding \$150,000	§16(n)	Y
Post-Delivery Purchaser's Requirement	Rolling stock procurements exceeding \$150,000	§16(n)	N
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles	§16(n)	Y
Federal Motor Vehicles Safety Standards (Pre-Award and Post-Delivery)	Motor vehicle procurements (49 CFR §571)	§16(n)	N
System for Acquisition Management (SAM, aka EPLS) Search	Procurements exceeding \$25,000	§16(d) and §16(e)(8)	Y
Lobbying Certification	Procurements exceeding \$100,000	§4(c)(1) and §16(e)(9)	Y
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	§4(c)(2) and §16(e)(9)	Y



**EXHIBIT H**

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

## **EXHIBIT H**

The City shall perform its obligations and shall ensure Third Party Participants, regardless of the tier, perform their respective obligations under any Third Party Contract in accordance with the requirements set forth in this exhibit. The City shall insert this EXHIBIT H - Part A in its entirety and all flow-down provisions from Part B, Section 4, into its Design/Build Contract and ensure the D/BC includes the same in each Third Party Contract, regardless of the tier.

For the purposes of this **EXHIBIT H**, the term "Contractor" shall refer to the City, D/BC or any Third Party Contractor for the applicable agreement when not expressly named.

### **PART A – CIVIL RIGHTS**

#### **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 Project work:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which 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 Project work. 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, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

**During the performance of Project work, Contractor:**

(i) Will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or age. 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. 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 Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability or age. 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 performance this agreement as a USDOT assisted contract. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the awards and administration of USDOT assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the Direct Recipient (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.

Contractor shall not discriminate on the basis of age in the performance of the USDOT assisted contract under the Age Discrimination Act of 1975, 42. U.S.C. 6101.

## **EXHIBIT H - PART B**

### **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS**

#### **1. DEFINITIONS**

Unless the context requires otherwise, capitalized terms used in this Part B - DBE Contract Requirements shall have the meanings given to them in the herein. . However, if there is a conflict, the definitions the IGA 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 the City.

***Contract 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 Project 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 \$1,320,000. 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 \$23.98 million (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, and



- (v) Whose firm is certified as a “Disadvantaged Business Enterprise” in the state’s Unified Certification Program.

**DBE Enclosures** means the forms provided in Appendix B of this DBE Contract Requirements.

**DBE Goal** means the Contract Goal(s) detailed in Section 9.b of the IGA.

**DBE Liaison** means a representative of the the City or the D/BC with direct and independent access to the D/BC’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 Office for all reporting, submission of properly completed forms/documents, and for responding to any compliance related issues/matters.

**DBE Participation Report** has the meaning given to it in Section 10 of this DBE Contract Requirements.

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

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

## 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 for Project work. Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the administration and performance of Project work. 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 this 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. 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 \$23.98 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 \$1,320,000 (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 this Project or the commitments to the percentage of certified DBE utilization made by the City, 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 Commercially Useful Function. D/BC should also be sure that the DBE is certified as of the date that D/BC receives a 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. A bidder/proposer who fails or refuses to complete and return the required enclosures to

this 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 this contract will be stated in the DBE Affidavit (Enclosure 1A). All extensions, amendments, change orders and options for Project work 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 Project work 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 the IGA, Section 9.a (18% for design and 17% for construction). Bidders/proposers must make adequate good faith efforts to meet this DBE Goal in order to be deemed as a responsive and responsible bidder. 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 this contract. The bidders/proposers can meet this requirement in one of two ways:
  - a. First, the bidder/proposer can meet the DBE participation goal assigned to this contract by demonstrating and documenting their commitments for participation by DBEs for at least the total percentage of the DBE goal assigned to this Project work, or a percentage that exceeds the DBE 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 the City under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures:
    - i. The names and addresses of DBE firms that will participate in the Project work; (please include DBE current certification letters issued by the Colorado UCP);
    - ii. 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 2 – DBE Schedule of Participation and Enclosure 3 - DBE Letter of Intent, also please include DBE current certification letters issued by the Colorado UCP);
    - iii. The dollar amount of the participation of each DBE firm participating; (This is included on RTD Enclosure 2 - DBE Schedule of Participation and Enclosure 3 - DBE Letter of Intent);
    - iv. Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and (this is covered under RTD Enclosure 1A or 1B – DBE Affidavit as well as Enclosure 3 - DBE Letter of Intent);

- v. 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 3 - DBE Letter of Intent).
- b. 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 Project work. 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 Project 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 Project work items into economically feasible units to facilitate DBE participation, even when the City 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 Project 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 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 Design Build 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 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 the City awards the D/BC Contract, RTD will, though the City, 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 Manager to the reconsideration official(s). If the bidder/proposer wishes to appeal, they must do so in writing to the RTD Senior Manager of Materials Management within 5 business days of being informed of the decision of the RTD SBO Manager that their submission was non-compliant. 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.

- b. If the decision of the SBO Manager is appealed in writing, within the 5day submission window, the reconsideration official(s) will review the documentation initially submitted by the contractor – and no other information under this Section to decide whether the DBE requirements have been satisfied through “good faith efforts”. The reconsideration official will be a member of RTD staff who did not take part in the initial “good faith efforts” decision.
- c. If the written appeal request is received after the 5 business day submission window, it will be disallowed and the determination of the RTD SBO Manager that the submission was non-compliant will stand.
- d. 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.
- e. 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.
- f. The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- g. The reconsideration official will review the documentation initially submitted – and no other information - under this Section to decide whether the DBE requirements have been satisfied through good faith efforts.

**B. MULTI-YEAR DESIGN BUILD AND OTHER ALTERNATIVE METHOD DBE (CMGC, CM AT RISK, ETC.) PROJECT REQUIREMENTS**

In a design-build or other alternative method procurement, 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 and or other multi-year or other alternative method procurement projects, 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 method project process in its DBE Plan, specifically identifying certified DBE firms that will be performing services or providing supplies in the first year of the design/build or other alternative method contract (in both the design and construction phases, as applicable) and DBE Contract Requirements enclosures or make a good faith effort to attain the goal. The documentation evidencing good faith efforts shall be submitted with the bid/proposal. At a minimum, the bidder/proposer must identify the value of both the design and construction services to be spent during the first year (unless a greater timeframe is specified/required) in the instructions to bidders/proposers. If awarded the Design Build Contract, the DB/C will be required to make good faith efforts to fulfill their commitment to DBE participation/utilization throughout the duration of the Design Build Contract.

**C. OTHER MULTI-YEAR DBE PROJECT REQUIREMENTS**

Does Not Apply.

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

Does Not Apply.

**E. DBE PLAN**

The DBE Plan is the proposer's written approach and strategy to the overall administration of their DBE Program (including the expectations of the lower tier DBE contractors). Proposers will be required on all turnkey, Multi-Year Design/Build projects, alternative methods contracts, other Multi-Year projects, On-Call or Task-Order Contracts as well as other specified projects to submit a comprehensive detailed DBE Plan & Program with their proposal. The DBE Plan is subject to the 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 Project work and will be required to cover each phase (i.e. design and construction phases, base contract) of the project.

If the proposer is selected as the D/BC, the successful D/BC 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 the City. The DBE Plan must be reviewed and approved by the RTD SBO. Thereafter, the D/BC 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 Design Build Contract bids and proposals, 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 DBE Liaison Officer 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 this Exhibit H 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 & Program Annual Update Process;
- x. Describing the debriefing process, how bid selections are made and keeping record of each;
- xi. Describing the 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

- xiii. inconsistent with federal regulations;
- xiii. Ensuring that the DBE Plan is signed and dated by the D/BC contractor; and
- xiv. Describing the monthly reporting relationship with RTD's SBO and compliance with overall reporting requirements.

**F. DBE LIAISON**

The City shall include in its RFP that a D/BC designate a DBE Liaison. The DBE Liaison shall be responsible for the following:

- i. Day-to-day operational components of the DBE Plan;
- 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 execution of a Third Party Contract (however, no DBE shall 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 the 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 form (Form E); as well as submitting DBE Participation Reports;
- vii. Ensure all contractual requirements of the DBE program inclusive but not limited to non-discrimination clause, prompt payment, termination/substitution/replacement/reduction of scope, changes, non-discrimination are complied with and in their subcontract agreements with all of their subcontractors regardless of tier;
- viii. Carrying out or implementing technical assistance activities so that the playing field is level for DBEs;
- ix. A representative of the D/BC having management responsibility for implementing, managing and reporting on achievement of the DBE Goals, communicating subcontracting, business development and supportive services activity at all tiers, ensuring compliance with the non-discrimination provisions and the affirmative action and equal employment opportunity provisions;
- x. Monitoring lower tier subcontractors and suppliers to ensure that they comply with the DBE Program requirements and the DBE Plan submitted by the D/BC; and
- xi. The DBE Liaison shall schedule monthly meetings between the D/BC and SBO to provide status updates and address goal attainment, issues or concerns.

**G. COUNTING DBE PARTICIPATION**



The DBE Goal applies to the total value of all Project work 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, the proposed DBE(s) must be certified as a DBE(s) with the City and County of Denver or CDOT under the appropriate NAICS code that coincides with the scope of work that they will execute on the project/contract. Additionally, the DBE firm must be certified as a DBE and perform a "commercially useful function" as defined in this 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:

- i. DBE proposers can count themselves for self-performance toward meeting the DBE goal, but only for the scope of work that they are certified in as a DBE and at a percentage level they will be actually performing themselves with their own forces;
- ii. Work actually 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;
- iii. The entire fee or commission charged by a DBE, if reasonable and not excessive, will be counted;
- iv. Each DBE must perform a CUF 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 CUF;
- v. 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 lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. 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.
- vi. 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 toward DBE goals.
- (2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. Manufacturers' representatives and packagers shall be counted in the same manner as brokers; and
- (3) In utilizing the DBE participation of a broker, only the bona fide fees and or commissions earned by them for their performance of a commercially useful function will count toward meeting the project goals. The Proposer must separate the bona fide brokerage fees and or commissions from the actual cost of the supplies or materials provided to determine the actual dollar amount of participation that can be counted towards meeting the goal.

#### H. JOINT VENTURES

- i. 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 the 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 IGA between RTD and City, the City is responsible to ensure that every contractor of every tier be held to all the requirements of the IGA. With that understanding, the City is advised to ensure its Design Build Contractor conform all subcontracts to the terms and conditions found in the IGA. Contractor must include the following provisions in their Third Party 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 and Part B Sections 5., Prompt Payment provisions; 6., Joint Check Utilization; 7., DBE Removal/Termination/Substitution/Reduction of Scope provisions; and 8., Changes.**

The contractor will be required to submit to the RTD Small Business Office all DBE subcontracts/purchase orders within 30 days of the execution of its contract with RTD or issuance of the notice to proceed (whichever occurs first). Throughout any Design Build Contract, if the D/BC makes good faith efforts and engages or subcontracts with additional DBEs, the D/BC must get approval from RTD if the D/BC intends to count DBE participation from those additional DBEs.

To count DBE participation toward the DBE Goal established for this IGA or commitments made by the City 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 City shall ensure that this information flows down to all tier contractors that intend to subcontract with DBEs.

**5. PROMPT PAYMENT OF SUBCONTRACTORS:**

**A. DBE CONTRACTORS: THE CONTRACTOR SHALL ENSURE THAT:**

i) The D/BC shall pay its DBE contractor(s) any undisputed amounts for the satisfactory performance of their work within 30 days of the DB/C's receipt of the DBE contractor's invoice, regardless of whether the City has paid the D/BC for such invoice;

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

iii) Within 30 days after a DBE contractor's work has been satisfactorily completed and accepted by RTD's Project Manager or by the DB/C, whichever is earlier, the D/BC shall make full payment to the DBE contractor of any retainage the D/BC has kept related to such work, unless a claim is filed against the DBE Contractor related to such work;

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 D/BC's DBE contractor(s) is satisfied, unless RTD has given prior written approval to the D/BC for the delay or postponement of payment(s): (1) instruct the City to withhold payments to the D/BC; (2) assess sanctions against the City; (3) assess the DBE contractor's indirect or consequential damages against the City; (4) disqualify the D/BC or City from future bidding on RTD contracts *as non-responsible*; (5) enforce the payment bond against the Contractor; (6) pay the DBE contractor(s) directly and deduct this amount from any retainage owed to the City; (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 contractor(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 5 is a material breach of the IGA;

v) It shall ensure that tiered Third Party Participants comply with this Section 5 and that provisions (i), (ii), and (iii) of this Section 7 are inserted into all lower-tiered Third Party Contracts with DBE firms; and

vi) On a monthly basis, it shall submit a report of its payments to its DBE subcontractors, using Form E, and a report of its payments to its non-DBE subcontractors, using Form F. The Contractor shall ensure that its DBE subcontractors at every tier submit a monthly report of their receipt of payments from the Contractor, using Form E-2, and that its non-DBE subcontractors at every tier submit a monthly report of their receipt of payments from the Contractor, using Form F-2. All report forms are attached to the Contract and shall be submitted to the RTD Small Business Office, 1660 Blake Street – BLK-31, Denver, Colorado 80202 or by email to RTD SBO's designated compliance officer for this Contract.

**B. NON-DBE CONTRACTORS: THE CONTRACTOR SHALL ENSURE THAT:**

- i) It shall pay its Third Party Participants any undisputed amounts for the satisfactory performance of their Project work within seven days of the City's receipt of payment from RTD for such Project work;
- ii) Within 30 days after a Third Party Participant's Project work has been satisfactorily completed and accepted by RTD's Project Manager or by the City, whichever is earlier, the D/BC shall make full payment to the Third Party Participant of any retainage the D/BC has kept related to such Third Party Participant's Project work, unless a claim is filed against the Third Party Participant related to such Project work;
- 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 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; (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 5 is a material breach of the IGA;
- iv) It shall ensure that tiered Third Party Participant comply with this Section 5 and that they insert provisions (i) and (ii) of this Section 5 B .into all lower-tiered Third Party Contract; and
- v) On a monthly basis, it shall submit a report of its payments to its non-DBE subcontractors, using Form F. The D/BC shall ensure that its non-DBE subcontractors at every tier submit a monthly report of their receipt of payments from the D/BC, using Form F-2. All report forms are attached to the contract and shall be submitted to the RTD Small Business Office, 1660 Blake Street – BLK-31, Denver, Colorado 80202 or by email to RTD SBO's designated compliance officer for this Contract.

For federally funded contracts with a DBE goal, see the DBE Contract Requirements' provisions on prompt payment of DBE subcontractors (Section 5 A), which include monthly reporting requirements. The DBE Contract Requirements shall control in the event of a conflict with this Section 5 B.

**6. JOINT CHECK UTILIZATION**

A joint check is a two party check between a DBE, a prime contractor and a regular dealer of materials/supplies. All joint check arrangements with DBE subs 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.

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

A Contractor must have good cause to remove/terminate/substitute/replace a DBE contractor and such removal/termination/substitution requires the prior consent and approval of RTD's SBO. This section also includes reductions to a DBE contractor's scope of services and/or commitment values. The City shall ensure that its D/BC does not contain a "termination for convenience" clause/provision in a DBE subcontract 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 contractor/supplier (regardless of the tier), the D/BC or lower tier contractor/subcontractor must do the following:

- i) Before transmitting to RTD's SBO its request to terminate and/or substitute a DBE contractor, the D/BC must give notice in writing to the DBE contractor and provide RTD SBO with a contemporaneous copy of such notice. 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 D/BC must submit a copy of the notice and support documentation to RTD's SBO at the time the original letter is sent to the DBE contractor;
- ii) The D/BC must give the DBE contractor 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 contract and why the SBO should not consent the D/BC's action;
- iii) RTD's SBO will then open a formal investigation inclusive of review of all documentation, conduct interviews and site visits, if necessary. The D/BC carries the burden of proof to demonstrate good cause for the termination and/or substitution;
- iv) If RTD's SBO determines the D/BC has good cause to terminate the DBE firm, the SBO will provide written consent of DBE removal and the requirements to substitute work to another DBE firm. If RTD's SBO finds that good cause does not exist to terminate the DBE firm, the SBO will provide a written denial of the request to terminate/replace the DBE contractor and will immediately request a corrective action plan from the D/BC. Please note that if the D/BC elects to terminate, substitute and or reduce the scope of work initially committed to a DBE without the approval or consent of the RTD SBO, this constitutes a material breach of a IGA, which may result in the termination of the IGA or such other remedy as the recipient/RTD deems necessary as set forth under 49 C.F.R. §26.13.
- v) For purposes of good cause to remove, replace, or terminate a DBE the following circumstances should exist: (1) failure or refusal by the DBE contractor to execute a written contract without good cause, (2) failure or refusal by the DBE contractor 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 contractor to meet the contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness by the DBE contractor that creates a risk for the contract, (5) ineligibility by the DBE contractor 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 contractor is terminated with the approval of RTD SBO, or fails to complete its work on the contract for any reason, the D/BC is required to make good faith efforts to find another DBE contractor to substitute for the original DBE.
- vii) The D/BC must show that it took all necessary and reasonable steps to find another DBE contractor to perform at least the same amount of Project work 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 D/BC for DBE utilization/participation. 49 CFR Part 26.53 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 Goal.
- viii) The good faith efforts shall be documented by the D/BC. If RTD SBO requests documentation under this provision, the D/BC shall submit the documentation to RTD SBO 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 D/BC stating whether or not good faith efforts have been demonstrated.
- ix) The D/BC is required to comply with good faith efforts procedures as defined under 49 CFR Part 26.53 and detailed under this Section 7. The D/BC is required to comply with this section of the DBE requirements or any DBE program requirements and failure by the D/BC to carry out the requirements of this part as they administer Project work is a material breach of contract, which may result in remedies, including those set forth under 49 C.F.R. §26.13.

The City shall ensure that its D/BC require its DBE tiered subcontractors comply with this Section 7 and insert the provisions of this Section 7 into all DBE lower tiered subcontractor agreements, regardless of their certification status.

## **8. CHANGES**

- i) The DBE Goal shall apply to the performance/dollar value of all obligations under this IGA, including any changes, modifications, amendments and change orders whether initiated by the City or the D/BC. Post award requests for partial waivers may be considered by RTD's SBO, but a final determination shall not be rendered until the Project work has been substantially completed and the City demonstrates lack of ability to satisfy the DBE participation goal.
- ii) Changes to the value or scope of work committed to a DBE must be pre-approved by the RTD SBO and must be for good cause as set forth in the termination, substitution, replacement provisions set forth in this Part B - DBE Contract Requirements.

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

The D/BC must complete and return all applicable Enclosures in the forms set out in this Part B - DBE Contract Requirements with each DBE bid/proposal. All enclosures must also be submitted with each DBE 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 D/BC will be responsible for revising the initial Schedule of DBE Participation any time a new DBE is added to the Project. The D/BC 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 Design Build Contract, the D/BC 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 Design Build Contract.
- iii) The D/BC 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 D/BC submits their bid/proposal to the City and is reviewed by RTD, unless otherwise stated in the bid or proposal.

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

**Failure to submit all required DBE Enclosures may result in a bid or proposal being deemed non-responsive by RTD. Modification of any DBE Contract Requirements Enclosures prior to the official award of the contract may result in your proposal being deemed Non-Responsive. Inconsistencies within the following Enclosures: Enclosure 1A, Enclosure 1B, Enclosure 2 and Enclosure 3 may also result in your proposal being deemed Non-Responsive.**

**Periodically, after award of the contract, RTD's SBO in conjunction with the City 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 D/BC as an additional requirement.**

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

- i) The Contractor(s) are required to submit a report to RTD SBO on a monthly basis, on a form designated as the DBE Participation Report/Form E (*Form of DBE Participation Report*). The Contractor shall submit each completed DBE Participation Report to RTD's SBO.
- ii) Contractor acknowledges that the RTD SBO has the right to independently confirm the information contained in the submitted DBE Participation Reports by soliciting such information from each DBE contractor as may be required to verify payments received, distribution of payments received, subcontracting practices, participation credit, and sharing of resources/personnel. Contractor shall not attempt to dissuade any such DBE contractor from disclosing any such information or cooperating in any investigation initiated by the SBO.
- iii) Contractor shall submit to RTD's SBO a Subcontractors' Participation and Payment Form documenting all payments made to all DBEs and non-DBEs on a form provided/approved by RTD's SBO.
- iv) The DBE contractor shall submit to RTD's SBO a summary of payments received from its contractor, regardless of their lower tier, on a form approved by RTD's SBO.

- v) By committing to working on this RTD project which is subjected to DBE requirements set forth under 49 CFR Part 26, all DBE contractors participating in this Project are required to undergo a Commercially Useful Function review or a DBE compliance review 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 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 CUF is purposed to verify the amount of DBE participation credit, to ensure that work is actually performed by the DBE consistent with the DBE Program requirements and/or to ensure that there is no activity engaged in by the DBE that would be inconsistent with the intent and objectives of the DBE Program. The CUF review is more formal and will be initiated with an orientation/explanation process and closed out with a briefing and determination. The DBE contractor may be subjected to an informal compliance review by RTD's SBO or its designee with or without notice. The informal compliance review will generally be conducted at the work site where RTD actually observes and assesses the services/supplies being provided by the DBE.
- vi) The D/BC 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 by RTD with written notice and instructions sent to the D/BC or its major subcontractor. The process will conclude with a close-out interview or debriefing where the D/BC 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 D/BC 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 Goal for the Project work.
- vii) All DBEs are required to participate in the RTD's SBO DBE Orientation Program if awarded a contract, subcontract or purchase order for Project work before commencing Project work or providing supplies on the Project. Failure to participate in the DBE orientation program may result in a denial of DBE participation credit for the Project. For good cause, the orientation may be delayed if pre-approved by RTD. DBEs may be required to repeat the orientation if there are changes to the DBE Program requirements, changes in the DBE regulations, changes in the DBE personnel, or if the DBE is experiencing challenges in complying with the reporting requirements.
- viii) If Project work 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 per Section 6, monthly reporting as stipulated by the RTD SBO will also be required.
- ix) All contractors that perform Project work are required to retain all records of participation on this project for three (3) years from the completion of the Project. This requirement flows down to all tier contractors and must be included their subcontract agreements.



## APPENDICES to EXHIBIT H

### B. DBE Enclosures

- Enclosure 1A DBE Affidavit
- Enclosure 1B DBE Affidavit
- Enclosure 2 Schedule of DBE Subcontractor Participation
- Enclosure 3 Letter of Intent to Perform as a Subcontractor
- Enclosure 4 Solicitation Statistics
- Enclosure 5 Employer Certification of Workforce
- Enclosure 6 Disadvantaged Business Outreach
- Enclosure 7 DBE Unavailability Certification
- Form E Monthly DBE Participation Report

## **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 2 and Enclosure 3 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.

### **[ ] 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 2: 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 this contract. It must contain the following information: names and addresses of certified DBE firms, the scope of work they are to perform in this 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 this 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 do we 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 this contract, the prime contractor must submit this form with each additional new DBEs added to this contract.

### **[ ] Enclosure 3: 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 this 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 this 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 this contract, the prime contractor must submit this form with each additional new DBEs added to this contract.

**Enclosure 4: Solicitation Statistics**

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.

**Form E Monthly DBE Participation Report**

This form must be submitted monthly by all prime contractors throughout the entire duration of the contract. This form will not be required to be submitted with your bid/proposal. If you are selected as the successful bidder/proposer, you will be instructed and advised as to whom within the RTD SBO you will be submitting this report on a monthly basis.

**APPENDIX B- DBE ENCLOSURES  
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.**

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

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

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

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

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

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

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

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

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

**APPENDIX B – DBE ENCLOSURES**  
**ENCLOSURE 2 – SCHEDULE OF [DBE] PARTICIPATION**

NAME OF CONTRACTOR:

RTD Contract No.

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

DBE FIRM NAME	ADDRESS	TYPE OF WORK (ELECTRICAL, PAVING, ETC.) 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 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 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

**APPENDIX B, ENCLOSURE 3 – 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 corporation  
 \_\_\_\_\_ a partnership                                      \_\_\_\_\_ 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 Commencement 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                                      TITLE                                      DATE                                      DATE

**APPENDIX B, ENCLOSURE 4 – SOLICITATION STATISTICS**

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

Firm Name: \_\_\_\_\_

Firm Address (Office Reporting): \_\_\_\_\_

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

DBE \_\_\_\_\_ Non-DBE \_\_\_\_\_

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

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

U.S. \$5 Million to U.S. \$10 Million \_\_\_\_\_ U.S. \$10 Million to U.S. \$23.98 Million \_\_\_\_\_ Above U.S. \$23.98 Million \_\_\_\_\_

Age of the firm: \_\_\_\_\_

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

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

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

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



Contract # \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Contract Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Appendix B, 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				
Officials & Managers																	
Professionals																	
Technicians																	
Sales																	
Office & Clerical/Admin Support																	
Craft Workers (skilled)																	
Operatives (semi-skilled)																	
Service & Maintenance																	
Service Workers																	
<b>TOTAL</b>																	

## 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

**APPENDIX B, ENCLOSURE 6 – DISADVANTAGED BUSINESS OUTREACH**

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

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

RTD Contract Name and Number:

Contract No. (the *Contract*).

Proposer:

---

Subcontractor – if applicable:

---

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

---

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

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

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

Currently Sponsored Disadvantaged Business Outreach Activities:

---

---

---

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

---

---

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

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

---

**APPENDIX B, 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, we feel that we have made good faith effort to attain the DBE Goals.

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

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









# SUBRECIPIENT TITLE VI COMPLIANCE GUIDE



**RTD**

2019

Equitable distribution of transit service is a core principle of the Regional Transportation District. This document describes the measures taken to promote equitable transit service as stipulated by Title VI of the Civil Rights Act of 1964 and Executive Order 12898 (Environmental Justice).

By The Transit-Oriented Communities Division

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Title VI Program: Policy Statement

Title VI Program: Investigation, Lawsuits and Complaints

Title VI Program: Public Participation Plan

Title VI Language Assistance Plan

## BACKGROUND

### Title VI and Environmental Justice

Equity is a core principle of the Regional Transportation District's (RTD) mission to provide mass transit service in the Denver Metro Area. An equitable mass transit system fairly distributes the benefits and adverse effects of transit service without regard for race, color, national origin, or low-income status. This principle is detailed and reinforced by Title VI of the Civil Rights Act of 1964 and Executive Order 12898 pertaining to environmental justice.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance. Specifically, Title VI states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In 1994, President Clinton issued Executive Order 12898, which states that each federal agency "shall make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."



The Federal Transit Administration's (FTA) Circular 4702.1B provides its recipients of FTA financial assistance with instructions for achieving compliance with Title VI and Environmental Justice. In this circular, the FTA requires that RTD document measures taken to comply with U.S. Department of Transportation's (DOT's) Title VI regulations by submitting a Title VI Program to their FTA regional civil rights officer once every three years or as otherwise directed by FTA.

Subrecipients of federal financial assistance are also required to comply with Title VI and Environmental Justice requirements.

### Subrecipients

As the regional transit provider for the Denver Metro area, RTD is a designated and primary recipient for FTA grant funding. An organization becomes a subrecipient of federal funding when RTD enters into an Intergovernmental Agreement (IGA) which extends federal funding to (e.g. federal grants, loans, real estate). Per federal Title VI regulations, primary recipients must monitor their subrecipients for compliance with the regulations. If a subrecipient of RTD is not in compliance with Title VI requirements, then RTD as the primary recipient is also not in compliance.

Accordingly, all RTD IGAs that extend federal funding state "This Agreement and all subgrants, third party contracts and subcontracts are therefore subject to the FTA Master Agreement and all other applicable federal transit regulations..."

RTD has developed this compliance guide to aid subrecipients in fulfilling applicable Title VI requirements.

## TITLE VI PROGRAM

Subrecipients are required to submit a Title VI Program to RTD. In the Title VI Program, subrecipients describe the scope of the federally funded program, project or activity and how the subrecipient will ensure non-discrimination throughout the entire program. Subrecipient's must demonstrate compliance with DOT's Title VI regulations, by providing within their Title VI Programs, documentation, including records and reports.

**RTD encourages subrecipients to adopt our notice to beneficiaries, complaint procedures and complaint forms, public participation plan, and language assistance plan where appropriate.**

Subrecipients must submit their first Title VI Program **within six months** of the execution of the applicable intergovernmental agreement (or any other contract mechanism).

After the first submission, subrecipients must submit a Title VI Program Update annually for the life of the agreement. The update should include any recent activities Title VI Program Updates are due by December 1<sup>st</sup> of each year.

A Title VI Program must include the following to demonstrate Title VI compliance.

### **Title VI Policy Statement**

Subrecipients must provide a Title VI Policy Statement affirming a commitment to complying with Title VI of the Civil Rights Act of 1964 and ensuring nondiscrimination in the applicable programs, policies and activities of the intergovernmental agreement with RTD. The policy statement should be signed by the same signatory of the intergovernmental agreement and included with in the Title VI Program.

### **Title VI Compliant Form, Complaint Procedures and Public Notice**

Subrecipients must develop a Title VI complaint form, allowing the public to submit a Title VI complaint. Subrecipients must also develop Title VI complaint procedures for investigating and tracking Title VI complaints filed against them. The form and procedure for filing a complaint shall be available on the subrecipient's website.

Subrecipients are required to prepare and maintain a complaint log, listing any of the following that allege discrimination on the basis of race, color, or national origin: active investigations conducted by entities other than FTA; lawsuits; and complaints naming the subrecipient. This list shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient in response, or final findings related to, the investigation, lawsuit, or complaint.

## Complaint Log Example

No.	Investigation/ Lawsuits/ Complaint	TVI Basis	Complaint Method	Receipt Date	Status	Action Taken
1	Complaint	Color	Letter	Friday, September 20, 2013	Closed	No violation found. Response letter issued.
2	Lawsuit	Race, Color	Complaint Form	Wednesday, July 31, 2013	Closed	Settlement Reached

Subrecipients are required to provide information to the public regarding the subrecipient's obligations under DOT's Title VI regulations and apprise members of the public of the protections against discrimination afforded to them by Title VI. At a minimum, subrecipients shall disseminate this information to the public by posting a Title VI notice on their website and in public areas such as the subrecipient's office(s), including the reception desk, meeting rooms, etc.

The public notice must include the following:

1. A statement that the subrecipient operates programs without regard to race, color, or national origin.
2. A description of the procedures that members of the public should follow in order to request additional information on the subrecipient's Title VI obligations.
3. A description of the procedures that members of the public shall follow **in order to file** a Title VI discrimination complaint against the subrecipient.

To the extent that it is appropriate, RTD encourages subrecipients to adopt RTD's complaint form, procedures, and public notice or select elements from each document (see appendix).

## Public Participation Plan

Subrecipients must create a public participation plan demonstrating how they intend to authentically engage low-income and minority populations with respect to the project, program or activity. Plans should include how subrecipients offer continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed decisions. Subrecipients are offered great latitude in their ability to tailor their approach considering their unique programs, projects or activities and blend of cultures among their beneficiaries.

To the extent that it is appropriate, RTD encourages subrecipients to adopt RTD's Public Participation Plan or select elements from the plan (see appendix).

## Meaningful Access for Limited English Proficiency Plan (LEP)

In order to ensure that beneficiaries have access to benefits, services, information, and vital documents. Subrecipients will need a Language Assistance Plan for LEP persons, failure to provide language assistance for LEP person may result in discrimination. Subrecipient's can do this by conducting a Four Factor Analysis; FTA requirement, this will assist in determining what specific languages would be appropriate to provide. The Four Factor Analysis is an individualized assessment that balances the following four factors:

- I. Identify the number and proportion of LEP persons likely to be encountered by the subrecipient.
- II. Determine the Frequency of contact with which LEP persons come into contact with the subrecipient.
- III. Determine the Nature and Importance of the program, activity, and/or service provided.
- IV. Identify the resources available to the subrecipient and the costs.

#### Safe Harbor Provisions:

The safe harbor threshold assists agencies with determining when it is necessary to translate vital documents. DOT adopted the Department of Justice's (DOJ) Safe Harbor Provision which stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that makes up five percent (5%) or 1,000 persons, whichever is less, of the total population of person eligible to be served, encounter or affected by your service.

For more in-depth information for the Four Factor LEP analysis and developing a Language Assistance Plan, check out the US DOT's LEP Guidance [here](#).

Once the four factor analysis has been completed the subrecipient can determine what language assistance services are required.

To the extent that it is appropriate, RTD encourages subrecipients to adopt RTD's Language Assistance Plan or select elements from the plan (see appendix).

## Inclusive Advisory and Planning Boards

Subrecipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, must:

- Provide a table depicting the racial breakdown of the membership of those committees.
- A description of efforts made to encourage the participation of minorities on such committees or councils.
- Ascertain racial breakdown through self-reporting from members (do not guess).

The racial breakdown table and the description of efforts to include minorities should be included within the subrecipients Public Participation Plan.

## Determining Site or Location of a Facility

In determining the site or location of facilities, subrecipients may not make site selections that subject people to discrimination on the grounds of race, color, or national origin. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with Title VI:

- a. Subrecipients shall complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Subrecipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.
- b. When evaluating locations of facilities, recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result. Analysis should be done at the Census tract or block group where appropriate to ensure that proper perspective is given to localized impacts.

- c. If the subrecipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the subrecipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. Subrecipients must show how both tests are met; it is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

## OTHER REQUIREMENTS

### Title VI Coordinator

Subrecipients must designate a Title VI Coordinator who is responsible for managing and monitoring Title VI compliance, providing Title VI Program updates and serves as the point of contact for RTD's Transit-Oriented Communities Division.

### Requirement to Provide Additional Information

RTD may request, at its discretion, information other than that required by this guide from a subrecipient's in order for RTD to investigate complaints of discrimination or to resolve concerns about possible noncompliance with DOT's Title VI regulations.

## TECHNICAL ASSISTANCE

Subrecipients in need of technical assistance in complying with any of the requirements set forth in this document should contact RTD's Transit-Oriented Communities Division.

The Regional Transportation District, Planning Department  
Transit-Oriented Communities Division  
1560 Broadway, FAS-73  
Denver, CO 80202

Michael Washington, Transit Equity Manager  
303.299.2436  
[michael.washington@rtd-denver.com](mailto:michael.washington@rtd-denver.com)

Kimberly Ford, Transit Equity Specialist  
303.299.2184  
[Kimberly.ford@rtd-denver.com](mailto:Kimberly.ford@rtd-denver.com)

# TITLE VI PROGRAM CHECKLIST

Below is a checklist summarizing the requirements stated above.

- Title VI Policy Statement:** The policy statement should be signed by the signatory of the intergovernmental agreement and included with your agency's Title VI Program and Title VI Program Updates.
- Title VI Public Notice:** A copy of the subrecipient's Title VI notice to the public that indicates the recipient complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI. Include a list of locations where the notice is posted.
- Title VI Complaint Form & Procedures:** A copy of the subrecipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form.
- Title VI Complaint List:** A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the subrecipient since the time of the last submission. This list should include only those investigations, complaints, or lawsuits that pertain to allegations of discrimination on the basis of race, color, and/or national origin in transit-related activities and programs.
- Title VI Public Participation Plan:** A public participation plan that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission. A subrecipient's targeted public participation plan for minority populations may be part of efforts that extend more broadly to include other constituencies that are traditionally underserved, such as people with disabilities, low-income populations, and others.
- Language Assistance Plan:** A copy of the subrecipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance.
- Inclusive Advisory and Planning Boards:** Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, must:
  - Provide a table depicting the racial breakdown of the membership of those committees.
  - A description of efforts made to encourage the participation of minorities on such committees or councils.
  - Based on self-reporting not guessing
- Determining Site or Location of a Facility:** If the subrecipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., the recipient shall include a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility.





# Appendix

Title VI Program: Policy Statement

Title VI Program: Investigation, Lawsuits and Complaints

Title VI Program: Public Participation Plan

Title VI Language Assistance Plan

# TITLE VI PROGRAM UPDATE

## APPENDIX: PUBLIC ENGAGEMENT PLAN

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Regional Transportation District

| Transit-Oriented Communities Division



## TITLE VI AND ENVIRONMENTAL JUSTICE

Equity is a core principle of the Regional Transportation District's (RTD) mission to provide mass transit service in the Denver Metro Area. An equitable mass transit system fairly distributes the benefits and adverse effects of transit service without regard for race, color, national origin, or low-income status. This principle is detailed and reinforced by Title VI of the Civil Rights Act of 1964 and Executive Order 12898 pertaining to environmental justice.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance. Specifically, Title VI states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In 1994, President Clinton issued Executive Order 12898, which states that each federal agency "shall make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

The Federal Transit Administration's (FTA) Circular 4702.1B provides its recipients of FTA financial assistance with instructions for achieving compliance with Title VI and Environmental Justice. In this circular, the FTA requires that RTD document measures taken to comply with DOT's Title VI regulations by submitting a Title VI Program to their FTA regional civil rights officer once every three years or as otherwise directed by FTA.

Included in this Title VI Program Update are a revised Public Participation Plan. This plans detail how RTD engages minority populations, low-income populations, and populations that are LEP. The Public Participation Plan also describes RTD's approach to achieving diversity on its non-elected advisory committee(s).

## PUBLIC ENGAGEMENT OVERVIEW

As a federally funded public transit agency, the **Regional Transportation District (RTD)** works to ensure that we are engaging our stakeholders in an authentic manner. We understand that many of our riders are transit depend and rely solely on the service we provided. Our intention is to meet the riders where they are, where they live and where they work, a tenet of RTD. As an agency, we are collectively moving in a direction that meets stakeholders where they are so that we can fully understand their needs, to provide the best service with the most benefit. We will do this by

engaging all stakeholders, specifically our most vulnerable and underserved populations, in the public decision-making process. As an agency, we want to ensure that we are moving in a direction that builds, establishes and maintains trust amongst all our stakeholders. Our future is in the direction of equity in transit, to be a catalyst for leadership in the engagement of minority and low-income populations.

As an agency, RTD works to incorporate effective, responsive public engagement into its core mission of providing safe, clean, efficient, affordable and reliable bus and rail service to all passengers. Our 15-member Board of Directors, senior managers and employees play a critical role in responding as quickly as possible to the questions, concerns and transit needs of the entire region. Engaging effectively with riders, stakeholders and the public through our decision-making processes and day-to-day services are important goals.

The agency's objective is to establish a more robust public engagement strategy with the ultimate goal of forging positive new relationships and strengthening existing relationships with riders and stakeholders.

Each year, RTD sees nearly 105 million passenger boardings in a 2,340-square-mile service area—one of the largest in the United States—and serves 2.87 million citizens in 40 municipalities in the diverse counties of Boulder, Broomfield, Denver, Jefferson, Adams, Arapahoe, Douglas and Weld. Our riders and stakeholders depend on us to keep them informed of new technology, proposed service changes and major policy decisions.

Involved in this agency-wide effort are bus and train operators; fare enforcement officers; service planners; marketing executives; urban planners; project engineers; sustainability strategists; customer care agents; other civil rights managers (Americans with Disabilities Act, Equal Employment Opportunity); event planners; public relations staff; senior managers and the RTD Board of Directors.

RTD's Title VI program will also play a leading role in this effort by identifying, reaching out to and working with transit-dependent communities, including low-income riders, communities of color and limited English proficiency (LEP) communities living and working in all eight counties served by the RTD transit system.

This document outlines our target audiences, departments responsible for informing and engaging with the public, and existing and desired public outreach strategies we hope to implement over the next several years.

## RTD'S TARGET AUDIENCES

- Everyday Transit Users
- Bus and train operators
- Business community, including small (SBE) and disadvantaged (DBE) business enterprises
- Community groups
- Industry partners
- Local governments
- Neighborhood associations
- News media
- Nonprofits
- Prime contractors and subcontractors
- Prospective program participants
- RTD Board of Directors
- Salaried and represented staff
- School districts and colleges
- Senior leadership team
- Stakeholder groups
- Transportation management associations (TMAs) and organizations (TMOs)
- Underserved, low-income, LEP and communities of color

## EXISTING PUBLIC OUTREACH

### PUBLIC RELATIONS AND COMMUNITY ENGAGEMENT DIVISION

Public Relations responds to formal (open record) and informal requests for information from the news media, the general public, elected officials and other stakeholders about RTD operations. The department takes the lead on strategic communication and public outreach to advance the RTD name, brand and reputation and develops crisis communication strategies. Public Relations and Community Engagement plan, organize and staff dozens of annual and special public events and gives public presentations around the Denver metro region. They produce magazine stories for transportation trade publications; newspaper op-ed pieces; speeches; talking points for media spokespeople; fact sheets; communication plans; news releases; media advisories; blog columns; web content; e-blasts; invitations; video scripts and storytelling; newsletters; and other communication collateral designed to relay essential messages to employees, board directors,

senior managers, stakeholders, riders and the general public. They also act as communication liaisons for all RTD divisions—including public engagement support for Civil Rights and the Transit-Oriented Development Divisions.

## MARKETING

The RTD Marketing department oversees the creation of all advertising, marketing and public outreach materials for PR, PI and other departments, and develops effective messaging to keep the public, stakeholders, employees and the RTD Board of Directors apprised of all important agency initiatives. Marketing is also highly involved in promotional special events related to RTD anniversaries, rider appreciation events, station parties along new transit corridors and the openings of new transit facilities. It oversees customer satisfaction and market research, and leads efforts to improve RTD's Nonprofit Program, which provides millions of dollars' worth of free and reduced fares for nonprofits serving low-income, homeless and other transit-dependent riders. Marketing account executives work closely with other RTD departments to produce or order brochures, posters, maps, fliers, promotional giveaways and other print materials that help the agency keep the public informed of all initiatives. The department also leads digital marketing efforts such as the maintenance and updating of the RTD website, blogs, and the agency's social media channels, communicates directly with riders and stakeholders through a database, and leads public communication efforts on technology rollouts.

## CUSTOMER CARE

Customer Care oversees RTD's telephone information center, where dozens of employees answer telephone calls every day from riders and others seeking information about the agency's fares, services and policies. Customer Care agents are available 6 a.m. to 8 p.m., Monday through Friday, and 9 a.m. to 6 p.m. on weekends and holidays. The agency's customer service representatives are at the frontline of RTD's efforts to keep the public informed of its operations, FasTracks projects, technology, service hours and many other issues.

## SERVICE PLANNING

Service Planning oversees the scheduling of all bus and rail operations for the RTD system. The division reaches out to the public three times a year (and more when new transit corridors open) when it is planning system-wide and targeted service changes. Federal regulations require that RTD notify the public of proposed service changes when they affect 25 percent or more of a service route's hours. Service Planning's approach to public engagement entails public meetings in communities where service changes are under consideration. The division also schedules meetings at RTD headquarters at noon and again at 6 p.m. to give citizens who work in the downtown area opportunities to offer input on proposed service changes. RTD is required to advertise public meetings two weeks before they take place. RTD is required to notify the public of service changes six weeks before they go into effect. Upon request, Service Planning provides interpretation for Spanish speakers and the deaf and hard-of-hearing. The division works closely with marketing to publicize public meetings in local newspapers and via trans-flux window clings hung in all RTD vehicles. The division also notifies local municipalities of proposed service changes, which is a requirement of Federal Transit Administration (FTA) regulations.

## SPECIAL SERVICES

This department within the Service Planning Division is responsible for working with the public to ensure RTD meets the needs of passengers with disabilities through its Access-a-Ride and Call-n-Ride services. The Special Services manager engages with the public regularly and proactively and upon request by advocacy groups that want to ensure RTD is complying with federal ADA requirements.

## BUS STOP PROGRAM

This program works with a coalition of groups advocating for the blind when it comes to ensuring that signs posted at bus stops and stations are ADA compliant. Program managers vet proposed new signs with these groups and incorporate their feedback into new designs before RTD posts signs for existing and new services.

## TRANSIT-ORIENTED COMMUNITIES DIVISION

This Planning Department engages in public engagement through its Transit-Oriented Communities (TOC) Division to ensure RTD is compliant with federal regulations designed to incorporate the needs and viewpoints of communities of color and low-income and LEP



communities. Staff members excel at articulating public impact issues surrounding the planning, construction and implementation of new transit corridors and are highly involved with policy development and other efforts geared toward layering public input into their decision-making process. As an example, the Planning Division oversaw RTD's most recent Pass Program Study, which included management of the Pass Program Working Group and the development of the final fare change proposal. Included in that process was a robust public engagement process that included numerous public meetings in every quadrant of the RTD region.

## CIVIL RIGHTS DIVISION

The Civil Rights Division is highly involved with **public engagement** through its Small Business Office (SBO) and its Americans with Disabilities Act (ADA) Manager's Office. The SBO oversees the division's monthly Disadvantaged and Small Business Enterprise Advisory Council (DBEAC) meeting, where RTD staff network with the small businesses that are contractors on projects and/or provide maintenance services to RTD through its procurement office. Civil Rights staff attends local, regional and national networking events to stay abreast of industry trends, issues and regulations and hosts its own events to keep the community informed of RTD's efforts to support and advance the success of small businesses—and communities and individuals in the process—across the district. The division's ADA Manager's Office oversees RTD's compliance with Title's I & II of the Americans with Disabilities Act (ADA). In addition to these efforts the ADA office also assists with proactive efforts through public information and collaboration, complementary paratransit service, and accessibility to vehicles/facilities/transit. This includes the newly created RTD Advisory Committee for People with Disabilities and Access-a-Ride Paratransit Advisory Committee. As members for these committees are selected, RTD will seek to recruit a diverse representation of the community.

## BOARD OF DIRECTORS OFFICE

The RTD Board of Directors is a publicly elected governing board whose members serve four-year terms up to two terms in a row. Members represent RTD's 15 districts across the eight-county Denver metropolitan region. The board interacts with the public regularly during its weekly public meetings, at special events and on a one-on-one basis with community, business and trade groups, stakeholders and individual constituents. Members also submit op-ed pieces to local newspapers, give speeches at special events, and respond to public inquiries at board meetings

## RTD ADVISORY BOARDS AND COMMITTEES

RTD believes in and is committed to the public involvement process including the use of community advisory committees, panels and boards. Each advisory group is tailored to meet the specific needs of its program or activity. During the formation of these advisory groups, RTD consistently seeks participation from minorities by directly soliciting organizations which represent minorities. Currently, RTD appoints members of the public to the following advisory groups/committees.

### CITIZENS ADVISORY COMMITTEE (CAC)

The RTD Citizens Advisory Committee (CAC) monitors and provides region-oriented advice on the FasTracks Plan and RTD's strategic plan. It represents citizen and community perspectives on transit issues, and promotes public awareness of RTD's programs, services and projects. The 17-member volunteer committee represents a cross-section of the region's population and holds monthly work sessions in pursuit of the following:

1. Continue to monitor and provide input on the improvements for each corridor in the FasTracks Plan.
2. Become familiar with the District's strategic plan and long-term vision.
3. Provide region-oriented advice to RTD regarding the implementation of the strategic plan, its strategies and initiatives.
4. Represent the citizen perspective on behalf of a wide range of stakeholder interests and community organizations
5. Gather information from community members to share with the agency.
6. Share information with community members to promote public awareness of the agency's programs and projects.
7. Other tasks as assigned by the RTD Board of Directors

Recruitment for committee members is publicly advertised through the RTD Web site, local publications, and stakeholder e-mail distributions. Applicants submit a one-page letter stating their interest in being considered for membership, specific qualifications for serving on the committee, and highlights of related experience and expertise, along with a resume if available.

A five-member nominating committee reviews the applications and forwards a slate of candidates to the Board of Directors for appointment. The nominating committee consists of the following positions:

1. RTD Board Chairman or Board member designee
2. RTD FasTracks Monitoring Committee Chair or Board member designee
3. RTD General Manager or staff designee
4. RTD Assistant General Manager for Planning or staff designee
5. RTD Public Information/Public Involvement Consultant liaison (will provide administrative support and serve as a non-voting member of the nominating committee.)

Appointment are made to ensure a broad representation of stakeholder interests, to achieve diversity, and to provide geographical representation within the district. Selection criteria to be considered by the nominating committee includes, but is not limited to, a demonstrated interest in public transit and/or the FasTracks Plan, previous community service, experience in working with local jurisdictions on regional issues, and professional experience.

Vacancies are also filled using the above process for the remainder of the unexpired term, which, if it is longer than one and one-half years, shall be considered a full term.

**TABLE – CITIZENS ADVISORY COMMITTEE RACIAL BREAKDOWN**

Race/Ethnicity	Percentage of Representation
African American/Black	18%
Asian/ Pacific Islander	12%
Caucasian/White	59%
Hispanic/Latino	12%
Native American/ American Indian	0%
Other	0%

## PASS PROGRAM WORKING GROUP

In September of 2015 the Board of Directors instructed Staff to form a Pass Program Working Group (PPWG) to help comprehensively review and recommend changes to pass programs in collaboration with the Affordable Fares Taskforce. The working group included members of RTD staff and external stakeholders representing schools, businesses, municipalities, neighborhood groups and advocacy organizations. The Board approved the following guiding principles to focus the working group: brand loyalty, convenience, cost-effectiveness, equitable access, increased ridership, an ability to meet strategic budget plan targets, revenue certainty and simplifying rider-operator interactions.

RTD convened 12 full working group meetings in twelve months. RTD advertised each working group meeting to the public, inviting public comment at the beginning of each meeting to help inform the working group as they developed their recommendations.

The group formulated several options, all of which were modeled by a consultant for their impact on total fare revenue and ridership. After reaching consensus, staff provided an overview of the group's recommendation to the Board in March of 2018.

Working group members were selected for their connection to region-wide questions/interest groups/constituencies and their ability to bring a big-picture view of the pass program questions. They were selected for their level of interest in these questions and the depth of their experience with RTD. They were selected for their ability to work collaboratively, seek collective impact and build consensus. Moreover, RTD sought a group that reflects the diversity of the region.

TABLE – PASS PROGRAM WORKING GROUP RACIAL BREAKDOWN

Race/Ethnicity	Percentage of Representation
African American/Black	18%
Asian/ Pacific Islander	5%
Caucasian/White	64%
Hispanic/Latino	14%
Native American/Indian	0%
Other	0%

## RTD PUBLIC ENGAGEMENT: NEXT STEPS

It is an exciting time for RTD as we pursue new and innovative transportation solutions to meet the needs of the region. New long-range planning initiatives (Transportation Transformation), adaptations to FlexRide operations, and partnerships with private and public transportation interests are great initiatives catalyzing major changes for RTD. These initiatives also come with the risk of unintentional and unjustifiable, exclusion based on race, color, national origin and income status. RTD will mitigate this risk by developing a practice of inclusive decision-making.

The Planning Department will lead the development of an Inclusive Decision-Making Framework. This framework will establish a policy and set of practices that seek to include and consult the full spectrum of the public before the district makes critical decisions. Critical decisions include policies, projects, and any activity that has the potential to significantly impact (beneficially or adversely) the communities we serve.

Through an Inclusive Decision-Making Framework, we can reap the following benefits:

1. Collective Understanding – The community and RTD empathize with one another, understanding an initiative from both perspectives, beyond the limitations of quantitative data

2. Managed Expectations – The community learns the limitations of RTD and understand how well specific solutions may address community needs
3. Better Decisions – Collective understanding allows RTD to better tailor actions to the exact needs of the community
4. Community Buy-In – Communities can support, promote, defend, and fund solutions they took part in developing
5. Legal Risk Mitigation – We limit the opportunity for unintended discriminatory actions when vulnerable communities participate in the decision-making process.
6. Increased Public Satisfaction – The public can find satisfaction with actions they help tailor to their needs

Most immediately, this framework will aid RTD's decision-making in the following initiatives:

- Transportation Transformation/Systems Optimization Plan
- Ongoing Service Changes
- 2022 Fare Change Assessment



# TITLE VI PROGRAM UPDATE

## APPENDIX: LANGUAGE ASSISTANCE PLAN

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## BACKGROUND

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted Title VI regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on Limited English Proficient (LEP) persons because such conduct constitutes national origin discrimination.

Individuals, who have a limited ability to read, write, speak, or understand English are Limited English Proficient, or "LEP." Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," reprinted at 65 FR 50121, August 16, 2000 directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive Order states that recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

The U.S. Department of Transportation published revised guidance for its recipients on December 14, 2005. This document states that Title VI and its implementing regulations require that DOT recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP) and that recipients should use the DOT LEP Guidance to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are LEP.

The Federal Transit Administration (FTA) references the DOT LEP guidance in its Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients," which took effect on October 1, 2012. Chapter III part 9 of this Circular reiterates the requirement to take responsible steps to ensure meaningful access to benefits, services, and information for LEP persons and suggests that FTA recipients and sub recipients develop a language implementation plan consistent with the provisions of Section VII of the DOT LEP Guidance.

RTD's provision of language assistance to persons with limited in English proficiency in a competent and effective manner will help ensure services are safe, reliable, convenient, and accessible to those persons. These efforts may attract riders who would otherwise be excluded from utilizing services because of language barriers and, ideally, will encourage riders to continue using the system after they are proficient in English and/or have more transportation options.

Providing language assistance to LEP persons may also help increase and retain ridership among the RTD's broader immigrant communities in two important ways:

1. Reaching out to recent immigrant populations in order to conduct a needs assessment and prepare a language implementation plan (pursuant to the DOT LEP Guidance) will send a positive message to these persons that their business is valued.
2. Community outreach designed to identify appropriate language assistance measures can also assist RTD in identifying the transportation needs of immigrant and linguistically isolated populations ensuring that transit routes, hours and days of service, and other service parameters are responsive to the needs of these populations.

Additionally, conducting outreach to LEP persons can increase the potential for recruiting bilingual employees to better serve the needs of the RTD service area. In summary, serving the needs of LEP persons is not only a good business decision; it fulfills the mission of the district to serve the public.

Regional Transportation District (RTD) supports the goals of the DOT LEP Guidance to provide meaningful access to its services by LEP persons. RTD has devoted significant resources to provide oral and written language assistance services to LEP individuals. A substantial effort to provide meaningful access to LEP populations has been underway for several years. This document describes how RTD will continue to provide meaningful access to its transit services.

## MONITORING AND UPDATING THE LAP

The DOT guidance also states that recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP community and their employees. RTD believes that the size of the service area, consistent changes in demographics and frequency of changes to transit services warrants annual reassessment of the LAP.

RTD is revising a basic information webpage so LEP persons can access vital documents such as safety information, fare purchase information, service changes, and safety and security information. Additionally, RTD is in the process of creating "How to Ride" guides which will explain how to utilize RTD's services in a step-by-step manner. The guides will be created in multiple languages and available to the public to ensure meaningful access by LEP persons.

RTD intends to explore the provision of cultural competency training for staff to address the potential for harm to LEP persons due to linguistic and cultural barriers. Trainings will target topics such as cultural competency and implicit bias to prevent discrimination on the basis of national origin.

## Title VI Program Update 2019

In 2019 RTD will conduct a Customer Satisfaction Survey which will estimate the percentage of boardings represented by LEP persons. Through the survey, riders who speak a language other than English at home also rate how well they speak English.

As previously mentioned, continued market research is essential to the effectiveness of this plan. On an annual basis, RTD will revisit the demographic information from the U.S. Census Bureau, the State of Colorado, community organizations and LEP persons in an effort to remain in tune with the needs of LEP populations.

## FOUR FACTOR ANALYSIS

Per DOT Guidance, transit providers must determine the language assistance needs of the LEP persons they serve. DOT guidance also requires that recipients utilize a four-factor analysis to make this determination. The assessment involves the following factors:

- I. Identify the proportion of LEP Persons in RTD's Service Area
- II. Determine the Frequency of Contact by LEP Persons with RTD Services
- III. Determine the Nature and Importance of Transit
- IV. Assess the Current Resources and the Costs to Provide Language Assistance Services

RTD has conducted the Four-Factor analysis using a combination of market research resources which consists of an evaluation of data from the U.S. Census Bureau, interviews with RTD staff, consultation with Colorado State agencies, consultation with community organizations and direct interactions with people limited in English proficiency. The results of this analysis will be used as the criteria for the development of the appropriate mix of language assistance measures to be employed by RTD.

### FACTOR I. IDENTIFICATION OF LEP INDIVIDUALS IN RTD SERVICE AREA WHO NEED LANGUAGE ASSISTANCE

**DOT Guidance:** *"There should be an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters pursuant to the first two factors in the four-factor analysis.*

An assessment of the number or proportion of LEP individuals eligible to be served by RTD is an important first step. According to the U.S. Census Bureau, of the 2.8 million people in the RTD service area, approximately 228,180, over 8% of the RTD service area population, speaks English "less than very well"<sup>1</sup>. The following points identify other notable findings from the assessment of the number and proportion of LEP persons in the RTD Service Area:

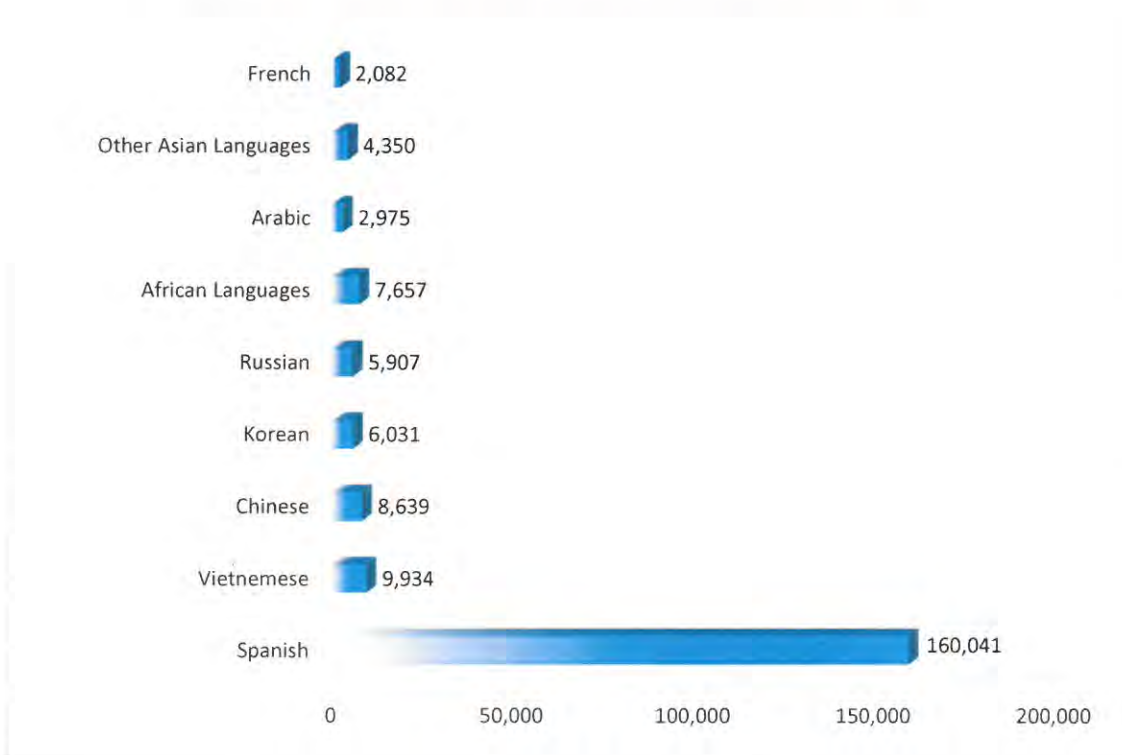
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<sup>1</sup> American Community Survey B16001 – Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over

- Approximately 329,000 persons, over 11% percent of the RTD service area population, are foreign born.
- Approximately 486,000 persons, over 17% of the RTD service area population, speak a language other than English at home.
- West Denver, CO, East Lakewood, CO and Northwest Aurora, CO have the highest concentrations of LEP persons, containing multiple census tracts with LEP Populations exceeding 2,000.
- Overwhelming, Spanish speakers represent the largest population of LEP persons in the RTD Service Area and the State of Colorado.
- High rates of refugee resettlement are increasing the population of LEP persons and diversity of languages spoken in the RTD service area.

Overall, this assessment has revealed an increase in the amount of languages reaching the Safe Harbor Threshold of 1,000 LEP persons. Accordingly, RTD will translate its vital documents into each language reaching the Safe Harbor Threshold, as specified in the DOT LEP guidance. The chart below displays those LEP populations, by language, with populations  $\geq 1,000^2$ .

CHART 1 -LANGUAGES WITH LEP POPULATIONS  $\geq 1,000$



<sup>2</sup>American Community Survey B16001 – Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over

FIGURE 1: DISTRIBUTION OF ALL LIMITED ENGLISH PROFICIENT\* SPEAKERS (AGE 5+)\*ENGLISH SPOKEN LESS THAN "VERY WELL"

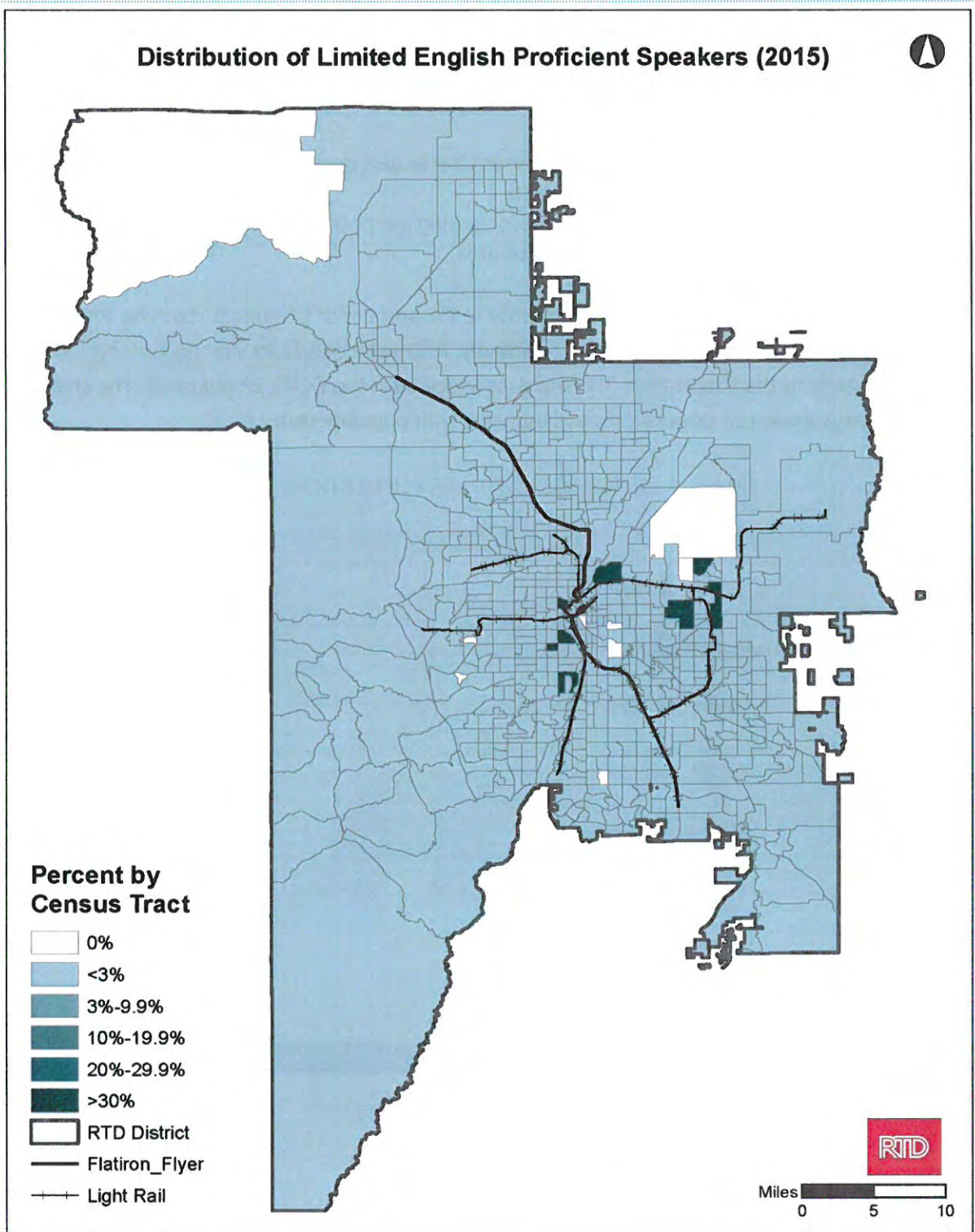
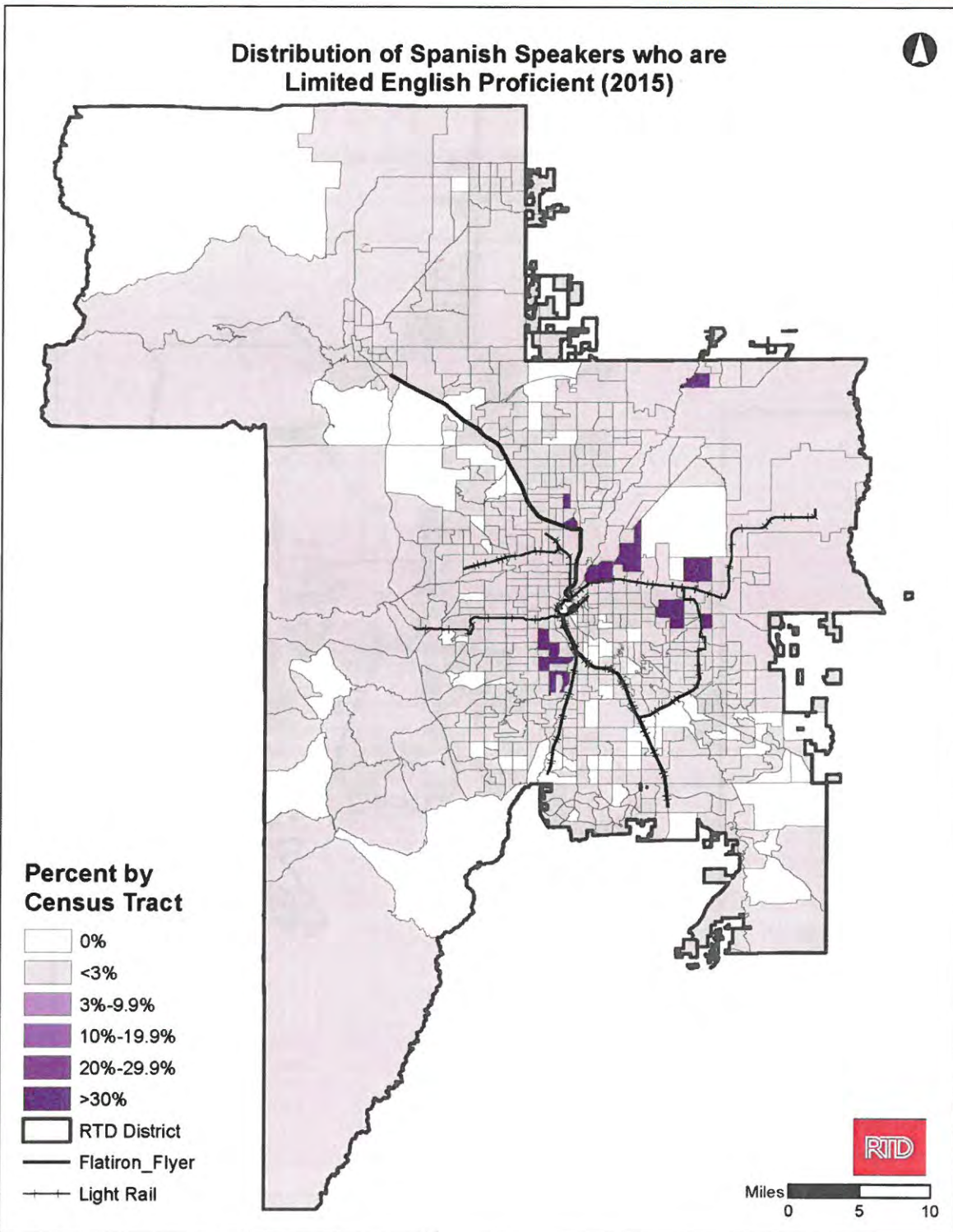
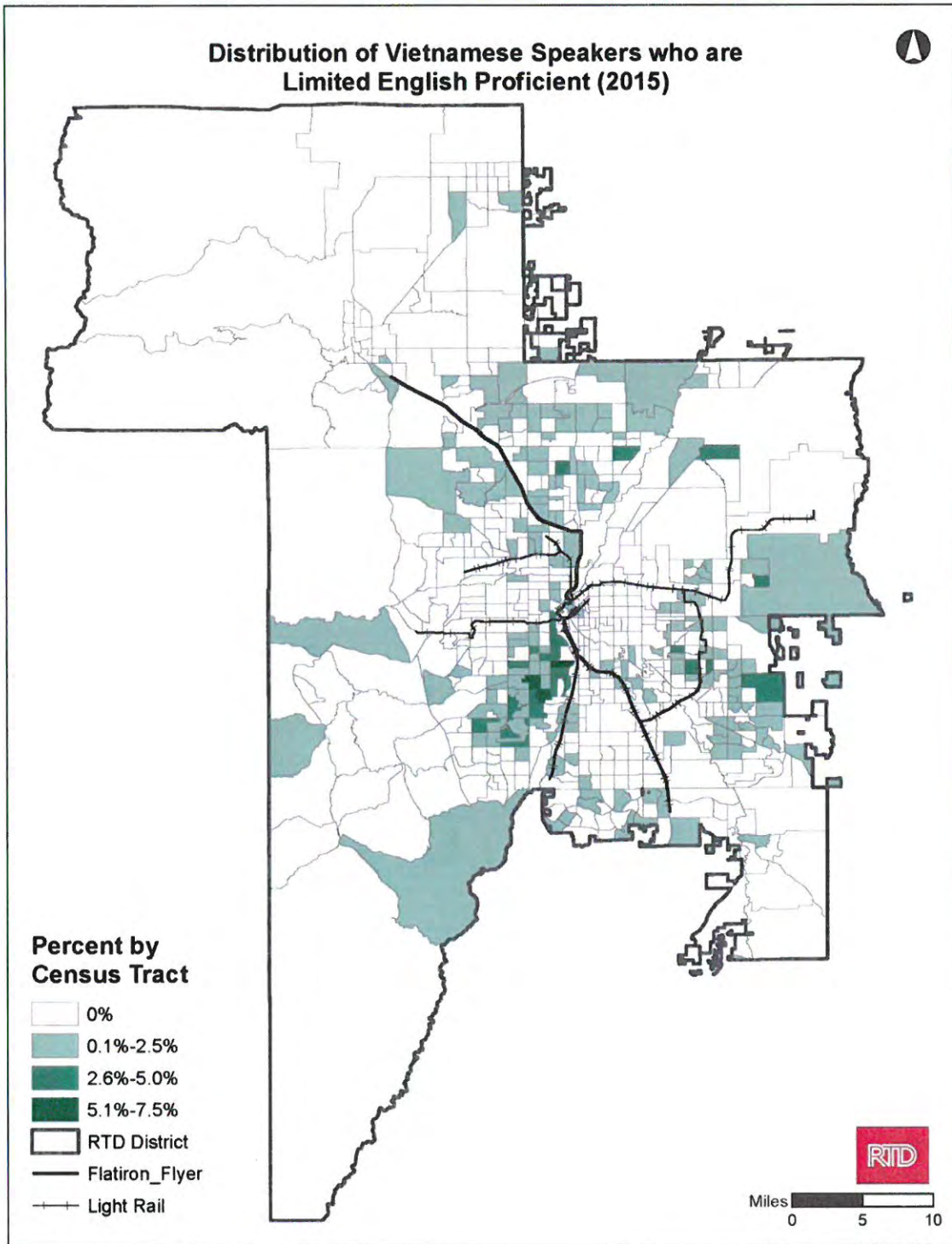


FIGURE 2: DISTRIBUTION OF SPANISH SPEAKERS (AGE 5+) WHO ARE LIMITED ENGLISH PROFICIENT



\*English spoken less than "very well"

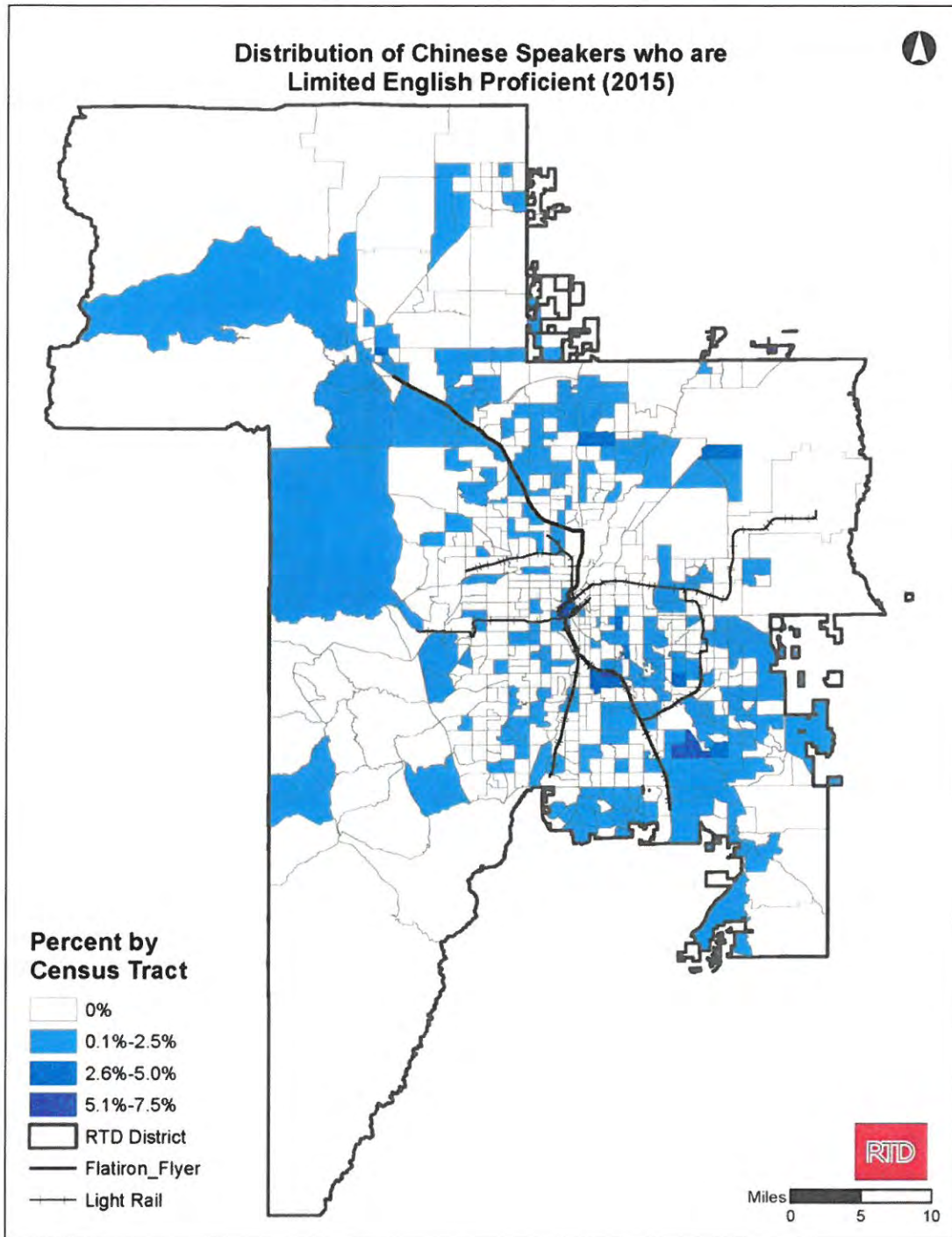
FIGURE 3: DISTRIBUTION OF VIETNAMESE SPEAKERS (AGE 5+) WHO ARE LIMITED ENGLISH PROFICIENT



\*English spoken less than "very well"

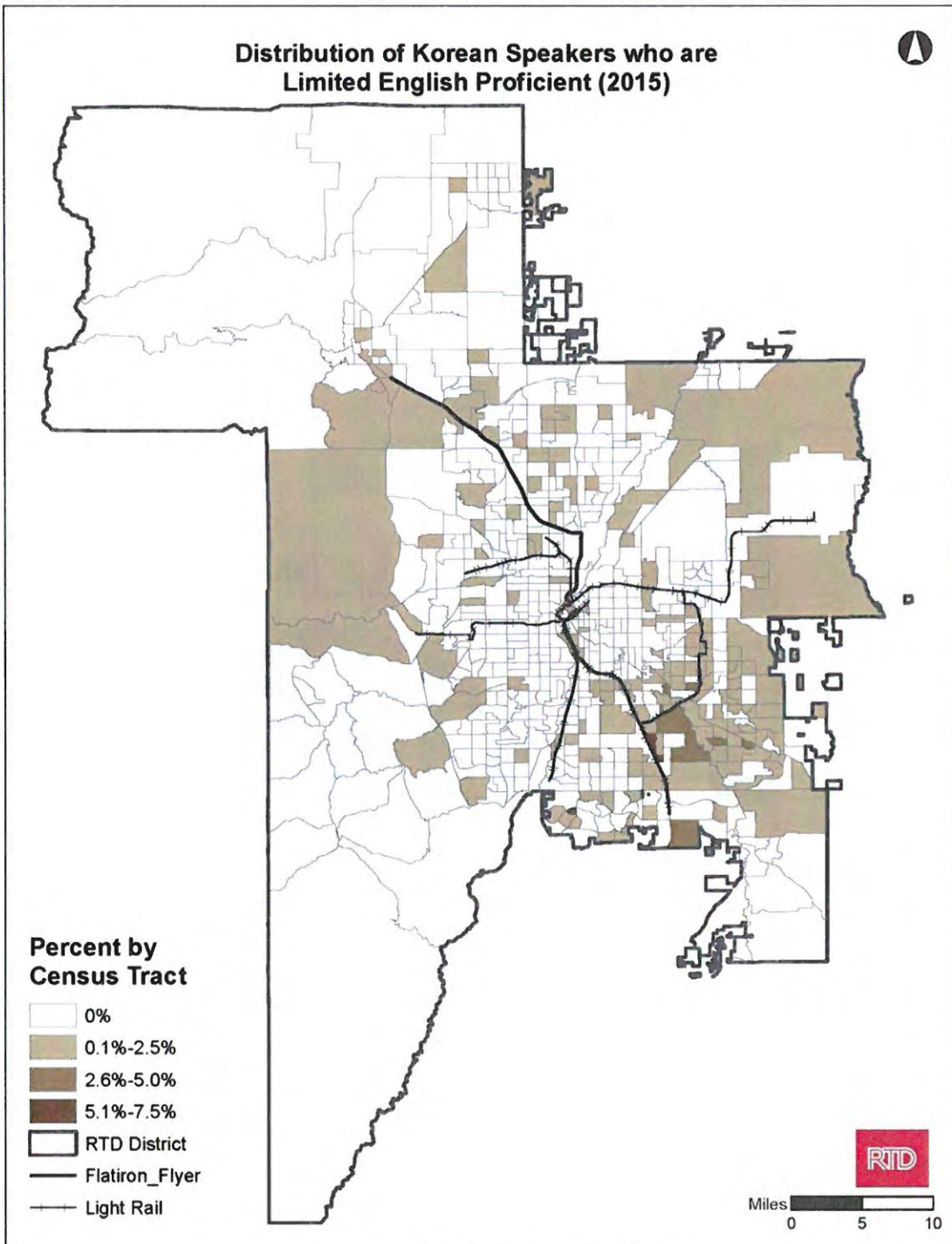


FIGURE 4: DISTRIBUTION OF CHINESE SPEAKERS (AGE 5+) WHO ARE LIMITED ENGLISH PROFICIENT



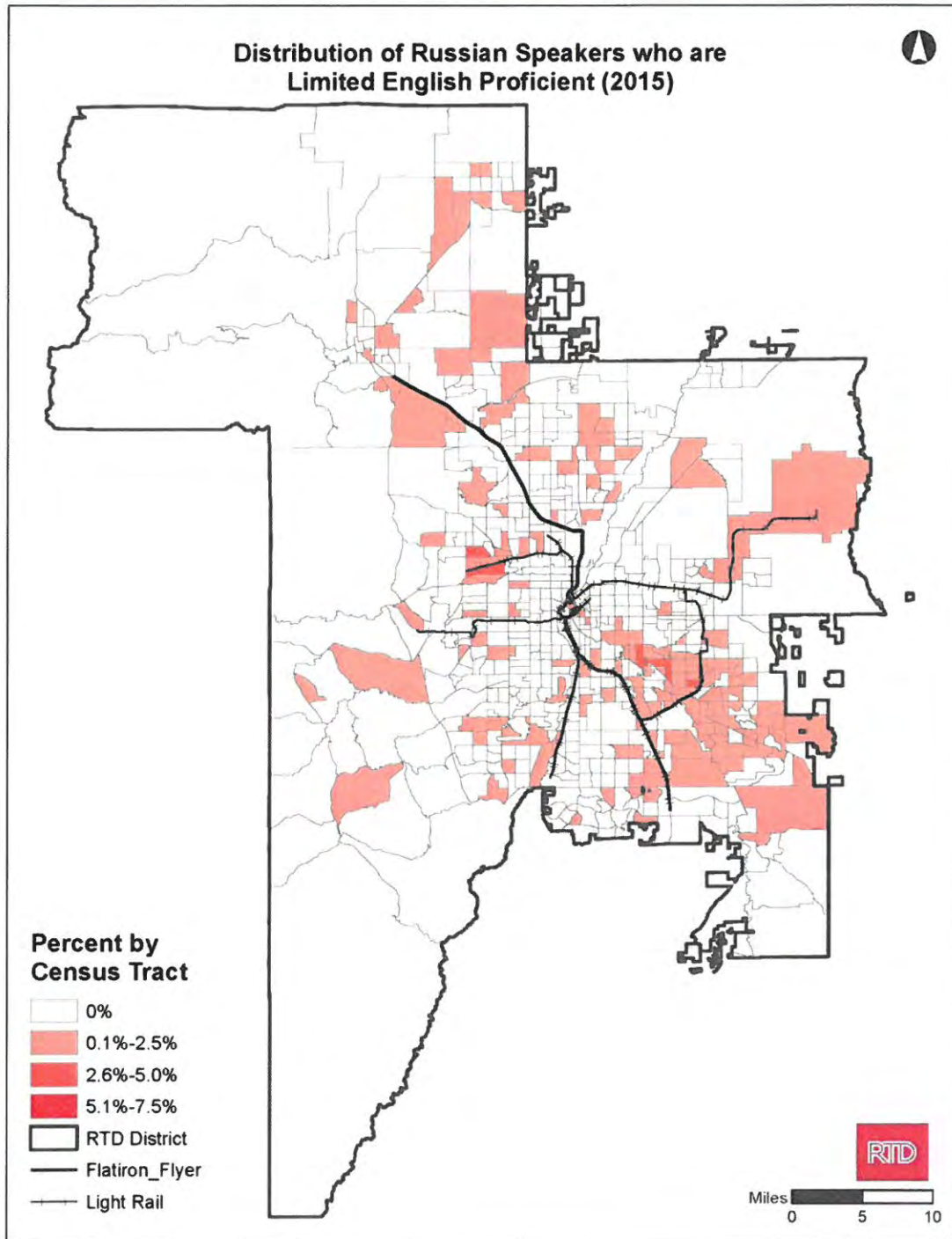
\*English spoken less than "very well"

FIGURE 5: DISTRIBUTION OF KOREAN SPEAKERS (AGE 5+) WHO ARE LIMITED ENGLISH PROFICIENT



\*English spoken less than "very well"

FIGURE 6: DISTRIBUTION OF RUSSIAN SPEAKERS (AGE 5+) WHO ARE LIMITED ENGLISH PROFICIENT \*



\*English spoken less than “very well”

## FACTOR II. FREQUENCY OF CONTACT BY LEP PERSONS WITH RTD'S SERVICES

**DOT Guidance:** “Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily.

RTD has collected general information regarding the frequency in which LEP individuals come in contact with RTD services. For purposes of this assessment, the following data sources were used to estimate the frequency of encounters by LEP persons with RTD services:

- Customer Satisfaction Survey Data
- Telephone Information Center Data
- Website Visitation Data
- LEP Survey

### RTD TELEPHONE INFORMATION CENTER DATA

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RTD’s Telephone Information Center (TIC) is one of many ways RTD fulfills its commitment to providing quality customer service to all of its potential transit users. RTD’s TIC has 47 full-time Information Specialists answering incoming calls from customers requesting route information, filing complaints, making suggestions and comments for response by e-mail, telephone and/or mail.

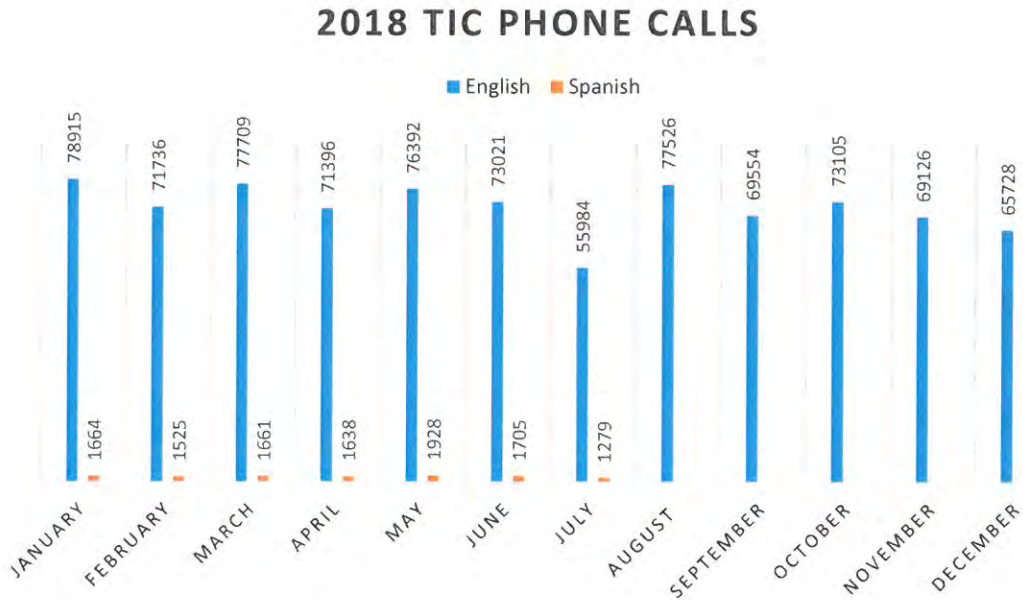
Presently, TIC has experienced a limited demand for language assistance. TIC does accommodate LEP Spanish speakers by staffing 20 full-time bilingual Information Specialists. However, the demand for language assistance from Spanish speakers seems low, given the proportion of LEP Spanish speakers in the RTD service area.

In 2018, the TIC received 871,592 calls, but approximately 19,540 (2.24%) of those calls required language assistance for Spanish speakers. In July 2018 RTD’s TIC converted to Pure Cloud, a new call queue system which does not track the number of calls received in Spanish. It is estimated the calls from August to December stayed relatively the same. RTD is currently investigating new methods to track called received in Spanish.

CHART 2 – PHONE CALLS RECEIVED IN ENGLISH AND SPANISH

ENGLISH		SPANISH *	
Month	Calls	Month	Calls
Jan-18	78,915	Jan-18	1,664
Feb-18	71,736	Feb-18	1,525
Mar-18	77,709	Mar-18	1,661
Apr-18	71,396	Apr-18	1,638
May-18	76,392	May-18	1,928
Jun-18	73,021	Jun-18	1,705
*Jul-18	55,984	*Jul-18	1,279
Aug-18	77,526	Aug-18	
Sept-18	69,554	Sept-18	
Oct-18	73,105	Oct-18	
Nov-18	69,126	Nov-18	
Dec-18	65,192	Dec-18	

\*Converted to PureCloud on July 27<sup>th</sup> 2018 (partial July number)



## RTD WEBSITE VISITATION DATA

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In 2015 we had a total of 47 million page views, 16.5 million sessions, and 5.7 million users on the RTD website ([www.RTD-denver.com](http://www.RTD-denver.com)). Over the same period of time we had 5,500 translations of the website using our Google Website Translator tool, or about 0.03% of sessions.

Below is a breakdown of the languages the RTD website was translated to. These percentages are based on a sampling of the total website sessions and only .03% of those sessions actually used translate.

1. Spanish: 70%
2. Japanese: 15%
3. Taiwanese Mandarin: 5%
4. German: 5%
5. French: 2.5%
6. Vietnamese: 2.5%
7. Italian: 0%
8. Korean: 0%
9. Russian: 0%

Spanish represents the bulk of the translations, while Italian, Korean and Russian had very little evident usage.

Most web browsers have started offering in-browser website translation tools. Thus it's quite likely that there are many more users who are viewing a translated version of the website through their browser. Consequently, we're unable to track all translated sessions. We expect this trend to continue. We are able to see what default language the user's browser is set to, providing some indication of the amount of in-browser translation. Here's a breakdown of our user's browser language settings:

1. English: 99.02%
2. Spanish: 0.65%
3. Taiwanese Mandarin: 0.14%
4. German: 0.1%
5. French: 0.1%
6. Japanese: 0.08%
7. Korean: 0.04%
8. Italian: 0.03%
9. Russian: 0.03%
10. Vietnamese: <0.01%

The portion of users with a non-English language configured in their browser (1% of sessions) is significantly higher than the portion of users that used our Google Website Translation tool (0.03%

of sessions). These users are most likely using their in-browser translation tools as opposed to the Google Website Translate tool.

## LEP SURVEY

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In order to assess the frequency of RTD patrons with Limited English Proficiency (LEP), RTD fixed route bus operators were asked to record the number of interactions with customers where language presented an obstacle to understanding or fulfilling the customers' request during the week of August 5<sup>th</sup>, 2013. There was excellent participation in this effort among operators, with 82.4% of the survey cards distributed to operators being returned (1347 survey cards returned of 1635 survey cards distributed).

This exercise indicated that 2.62% of passenger boardings are interactions between a passenger with Limited English Proficiency (LEP) and an RTD bus operator. The larger percentage of those that speak English less than well using RTD services than are indicated in the ACS data may show that those with Limited English are drawn to RTD's services. However, the much lower rate of LEP passenger and bus operator interactions, 2.6%, may indicate that despite having Limited English Proficiency, customers are able to utilize RTD services.

While results may not be reliable at the route level, there seems to be a relationship between the count of Limited English Proficiency passenger interactions and the degree to which the specific route passes through areas identified in the most recent American Community Survey as having a high rate of residents born outside the U.S. While being born outside the U.S. is not equivalent to the rate of Limited English Proficiency, density of individuals may be indicative of Limited English Proficiency resident density.

## FACTOR III. NATURE AND IMPORTANCE OF TRANSIT

Police, fire and medical emergency services are essential; however public transit is a key means of achieving mobility for many LEP persons. To obtain a better understanding of the nature and importance of RTD services and programs to LEP persons, various government agencies and community organizations were consulted. Government agencies consulted was the Colorado Refugee Services Program (CRSP) and community organizations like Colorado Progressive Coalition (CPC) have provided significant anecdotal information.

Through consultation with various organizations RTD has found the trends of immigrants in Colorado to be consistent with nationwide trends amongst immigrants. Many immigrants desire to switch from public transit to automobile use because personal vehicles are a symbol of assimilation and cars can provide greater mobility or access to economic and social opportunities that are beyond a transit system's service area. Recent immigrants might elect to continue using public

transit for at least a portion of their trips if their experience is positive. For transit agencies seeking to increase their “choice riders,” it may be easier to retain riders who have past, positive impressions of the system than to attract those persons who have never or rarely used transit. Catering to LEP persons may help to increase and retain ridership among RTD’s immigrant communities.

Direct consultation with LEP persons has shown that LEP persons who use transit are substantially dependent upon fixed route bus service. In fact, the areas with the highest concentrations of LEP persons are densely populated and heavily served by RTD Local Bus Service.

#### FACTOR IV. AVAILABLE RESOURCES AND COSTS OF PROVIDING LANGUAGE ASSISTANCE SERVICES

***DOT Guidance:*** *A recipient’s level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, “reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits.*

RTD is committed to assuring that resources are used to reduce the barriers that limit access to its information and services by LEP persons. To date, RTD has taken many steps to provide language services. Unfortunately, all costs associated with the provision of language assistance haven’t been tracked, but a general assessment has allowed for RTD to determine the approximate amount of related LEP related expenditures.

RTD roughly estimates that it spends \$2,500 on the translation of documents, translation of marketing material and accommodation of requests for oral translation. Written and oral translation services are relatively inexpensive for Spanish, French and Russian; while Korean, Mandarin, Vietnamese and African Languages are generally more costly.

#### FURTHER MARKET RESEARCH

RTD is committed to increasing its awareness of its interaction with LEP communities within the RTD service area through further focused market research. In 2019, RTD will be conducting another Customer Satisfaction Survey, where physical and web-based surveys will be offered in multiple languages. Additionally, RTD is attempting to identify funding to conduct focus groups to obtain a more detailed perspective of large LEP populations (5,000 or more).



## LANGUAGE ASSISTANCE MEASURES EMPLOYED BY RTD

**DOT Guidance:** *“An effective LEP plan would likely include information about the ways in which language assistance will be provided.”*

RTD supports the goals of the DOT LEP Guidance to provide meaningful access to its services by LEP persons. Accordingly, will immediately begin the implementation of its Language Assistance Plan, using tools and resources currently available and develop new mechanisms to assist in the provision of meaningful access to RTD services to LEP communities as needed. RTD currently offers a number of language assistance services, including, but not limited to:

- Interpretation Services
- Written Translations
- Public Outreach and Communications

### NOTIFICATION OF OFFERED LANGUAGE ASSISTANCE SERVICES

Advertising the availability of language assistance services will be key to ensuring LEP persons are able to meaningfully access RTD services. RTD will notify LEP communities by posting signage at all major passenger transfer stations, RTD’s administrative offices, and other RTD properties with high volumes of pedestrian traffic. Furthermore, RTD will utilize its website and the relationships developed with community organizations that assist LEP persons, to propagate the offering of language assistance services by RTD.

### TRAINING STAFF

The DOT guidance states that employees should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. RTD intends to include training to ensure that:

- Staff knows about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient’s custody) is trained to work effectively with in-person and telephone interpreters.

As noted in the Four-Factor Analysis, RTD mainly encounters LEP persons byway of its Local Bus Service. RTD’s vehicle operator training courses do provide general skills for handling LEP persons. Fortunately, RTD’s workforce well reflects the diversity of the community it serves, as many operators are multilingual and can often assist LEP persons directly.

It’s reasonable to anticipate that more complex interaction with LEP persons will occur with receptionists, sales associates, transit security and other frontline staff. These frontline employees will have more detailed procedures and sophisticated tools for managing interactions with LEP persons to include, but not limited to:

- Census "I Speak" cards
- Written translations of vital and frequently requested documents
- A contact list of bilingual employees
- Pictograms

As RTD gains a greater perspective of the needs of the LEP community, enhancement to training materials, tools and resources will be provided.

## TRANSLATION OF VITAL DOCUMENTS

Whether or not a document (or the information it solicits) is "vital" will depend on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not accurate or timely disseminated. For instance, applications for a bicycle safety course would not generally be considered vital, although summaries of major service changes will be vital documents. Other vital documents include but are not limited to:

- Title VI Public Notice
- Title VI Complaint Procedures
- Bus and Rail schedules
- Summaries and notices of public hearings regarding proposed:
  - Transportation plans
  - Service impacting construction activities
  - Major service changes
  - Fare changes.
- Emergency transportation information

RTD will consistently work with community organizations and the LEP populations they serve to evaluate which documents are "vital" to the meaningful access to RTD services and programs.



# TITLE VI PROGRAM UPDATE

## APPENDIX: COMPLAINT SUMMARY

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## OVERVIEW

Federal recipients are also required to directly accept, log and investigate complaints of discrimination. Further, recipients are required to notify the public of their right to complain and the procedures for processing their complaint. Below is a copy of the Title VI public notice placed on all RTD vehicles, a copy of complaint procedures, a table summarizing complaints received and the status of those complaints (open, closed, etc.).

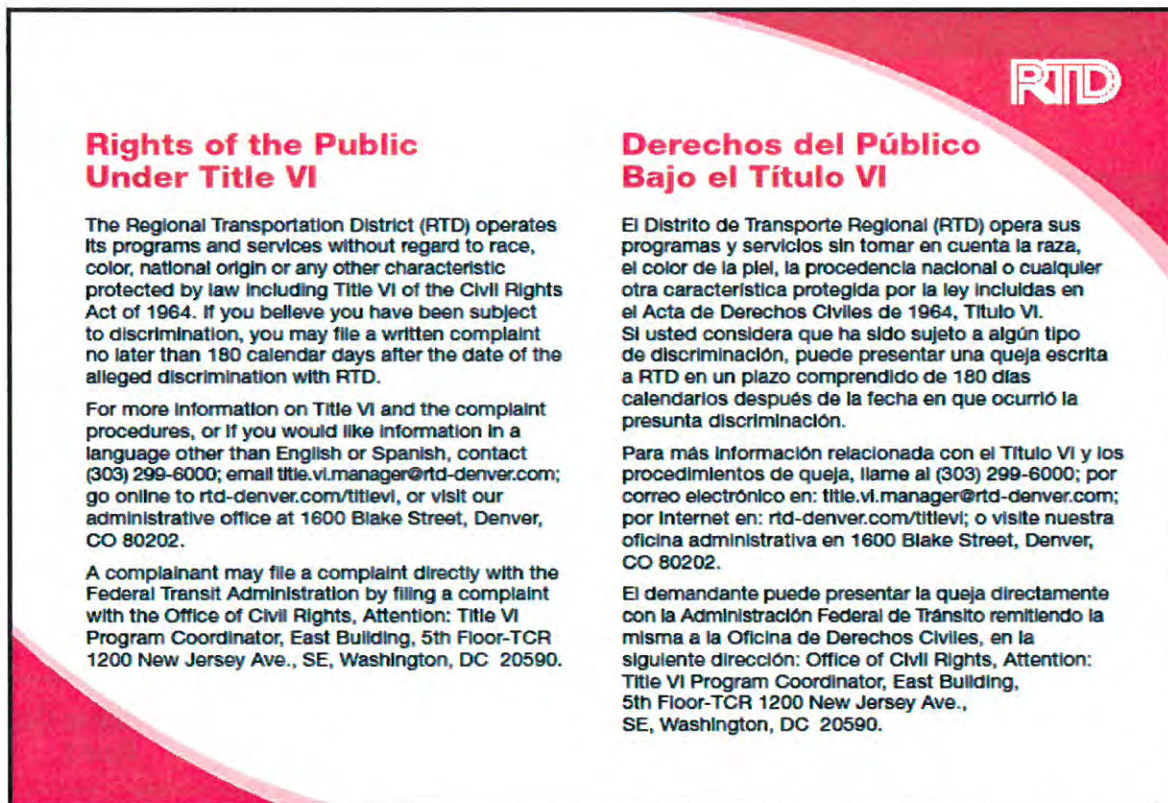
## COMPLAINTS

### LIST OF INVESTIGATIONS, LAWSUITS, AND COMPLAINTS

No.	Investigation/ Lawsuit/ Complaint	TVI Basis	Receipt Date	Status	Action Taken
1	Complaint	Race	November 01, 2017	Closed	No violation found.
2	Complaint	Race, Color	December 04, 2017	Closed	No violation found.
3	Complaint	Race, Color	January 03, 2018	Closed	No violation found.
4	Complaint	Race	January 05, 2018	Closed	No violation found.
5	Complaint	Race, Color, National Origin	January 25, 2018	Closed	Probable Cause found.
6	Complaint	Race, Color, National Origin	June 11, 2018	Closed	No Probable Cause found.
7	Complaint	Race, Color, National Origin	July 31, 2018	Closed	No Probable Cause found.
8	Complaint	National Origin	August 17, 2018	Open	Under further investigation
9	Complaint	National Origin	January 11, 2019	Closed	Probable Cause found.
10	Complaint	Race, Color, National Origin	January 14, 2019	Closed	No Probable Cause found.
11	Complaint	National Origin	March 01, 2019	Closed	No Probable Cause found.

RTD posts its Title VI Public Notice on its website, fixed-route vehicles and sales outlets. Below is a copy of the notice placed on RTD's fixed-route vehicles, complaint form, complaint procedures displayed on the RTD's website. Each of these documents are available in other languages via the RTD website.

FIGURE 1 – TITLE VI PUBLIC NOTICE



The graphic is a rectangular box with a white background and a red curved border on the right and bottom. In the top right corner, the RTD logo is displayed in white on a red background. The text is organized into two columns, one in English and one in Spanish, each with a bolded heading.

**Rights of the Public Under Title VI**

The Regional Transportation District (RTD) operates its programs and services without regard to race, color, national origin or any other characteristic protected by law including Title VI of the Civil Rights Act of 1964. If you believe you have been subject to discrimination, you may file a written complaint no later than 180 calendar days after the date of the alleged discrimination with RTD.

For more information on Title VI and the complaint procedures, or if you would like information in a language other than English or Spanish, contact (303) 299-6000; email [title.vi.manager@rtd-denver.com](mailto:title.vi.manager@rtd-denver.com); go online to [rtd-denver.com/titlevi](http://rtd-denver.com/titlevi), or visit our administrative office at 1600 Blake Street, Denver, CO 80202.

A complainant may file a complaint directly with the Federal Transit Administration by filing a complaint with the Office of Civil Rights, Attention: Title VI Program Coordinator, East Building, 5th Floor-TCR 1200 New Jersey Ave., SE, Washington, DC 20590.

**Derechos del Público Bajo el Título VI**


El Distrito de Transporte Regional (RTD) opera sus programas y servicios sin tomar en cuenta la raza, el color de la piel, la procedencia nacional o cualquier otra característica protegida por la ley incluidas en el Acta de Derechos Civiles de 1964, Título VI. Si usted considera que ha sido sujeto a algún tipo de discriminación, puede presentar una queja escrita a RTD en un plazo comprendido de 180 días calendario después de la fecha en que ocurrió la presunta discriminación.

Para más información relacionada con el Título VI y los procedimientos de queja, llame al (303) 299-6000; por correo electrónico en: [title.vi.manager@rtd-denver.com](mailto:title.vi.manager@rtd-denver.com); por Internet en: [rtd-denver.com/titlevi](http://rtd-denver.com/titlevi); o visite nuestra oficina administrativa en 1600 Blake Street, Denver, CO 80202.

El demandante puede presentar la queja directamente con la Administración Federal de Tránsito remitiendo la misma a la Oficina de Derechos Civiles, en la siguiente dirección: Office of Civil Rights, Attention: Title VI Program Coordinator, East Building, 5th Floor-TCR 1200 New Jersey Ave., SE, Washington, DC 20590.

FIGURE 2 – COMPLAINT FORM

## Title VI Complaint Form



---

**Title VI of the Civil Rights Act of 1964 states "No person in the United States shall, on the ground of race, color or national origin, be excluded from, participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."**

Please provide the following information necessary in order to process your complaint. Assistance is available upon request. Complete this form and mail or deliver to:

Regional Transportation District, Transit Equity Manager, 1660 Blake Street FAS-73, Denver, CO 80202.

You can reach our office Monday-Friday from 8-5 at 303-299-6000, or you can email our office at [titlevicomplaints@rtd-denver.com](mailto:titlevicomplaints@rtd-denver.com).

---

1. Complainant's Name: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
4. Telephone (home/business): \_\_\_\_\_ Email: \_\_\_\_\_
5. Person discriminated against (if other than complainant)  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
6. What was the discrimination based on? (Check all that apply)  
 Race                       Color                       National Origin
7. Date of incident resulting in discrimination: \_\_\_\_\_
8. Describe how you were discriminated against. What happened and who was responsible?  
For additional space, attach additional sheets of paper or use back of the form.  
  
\_\_\_\_\_  
  
\_\_\_\_\_
9. What RTD representatives were involved?  
  
\_\_\_\_\_
10. Where did the incident take place? Please provide location, bus number, drivers name, etc.  
  
\_\_\_\_\_

776-488 - Title VI Complaint Form    Mac Server    6/13

*(Continued on reverse.)*

**Title VI Complaint Form (page 2)**



**11. Witnesses? Please provide their contact information.**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone Numbers: (Home) \_\_\_\_\_ (Business): \_\_\_\_\_  
Email: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone Numbers: (Home) \_\_\_\_\_ (Business): \_\_\_\_\_  
Email: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone Numbers: (Home) \_\_\_\_\_ (Business): \_\_\_\_\_  
Email: \_\_\_\_\_

**12. Did you file this complaint with another federal, state, or local agency; or with a federal or state court?**

(Check the appropriate space)  Yes  No

If answer is yes, check each agency complaint was filed with:

- |   |  |                                       |
|---|--|---------------------------------------|
| <input type="checkbox"/> Federal Agency | <input type="checkbox"/> Federal Court | <input type="checkbox"/> State Agency |
| <input type="checkbox"/> State Court    | <input type="checkbox"/> Local Agency  | <input type="checkbox"/> Other        |

**13. Provide contact person information for the agency you also filed the complaint with:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Date Filed: \_\_\_\_\_

**Sign the complaint in space below. Attach any documents you believe supports your complaint.**


\_\_\_\_\_  
Complainant's Signature

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



FIGURE 3 – COMPLAINT PROCEDURES

5/1/2019 RTD | Title VI



## TITLE VI POLICY

Protecting your rights

### RTD'S TITLE VI POLICY STATEMENT

The Regional Transportation District (RTD) operates its programs and services without regard to race, color, national origin or any other characteristic protected by law including Title VI of the Civil Rights Act of 1964.

Every department, division, and employee of RTD is responsible for carrying out RTD's commitment to non-discrimination, including the requirements of Title VI. This includes:

- Ensuring the level and quality of transportation services are provided to all;
- Identifying and addressing, as appropriate the human health, social, economic, and environmental effects of RTD's programs and activities on all populations;
- Promoting full and fair participation in transportation decision making;
- Providing meaningful access to RTD's programs and services by person with limited English proficiency

For additional information on Title VI, please contact RTD's Transit Equity Manager at 303.299.6216.

### TITLE VI COMPLAINT PROCEDURE

Any person who believes he or she has been excluded from participation in or denied the benefits of RTD's programs, activities, or services due to discrimination on the basis of race, color or national origin may file a complaint with RTD. The written complaint must be filed within 180 days from the date of the alleged discrimination.

**To file a complaint:**

- Fill out a [Title VI complaint form \(PDF\)](#).
- **By mail** addressed to: Title VI Complaints, 1660 Blake St - FAS-73, Denver, CO 80202
- **By fax** addressed to: Transit Equity Manager at 303.299.2452
- **By email** sent to [titlevicomplaints@rtcd-denver.com](mailto:titlevicomplaints@rtcd-denver.com)
- Should a complainant choose to **not** use the [complaint form](#), the written statement should minimally include the following:
  1. Complainant name, address, telephone number and any other contact information (email, fax, etc.)
  2. The basis of the complaint (race, color, national origin)
  3. Date(s) on which the alleged discriminatory event(s) occurred
  4. Details of the incident(s)
  5. Names and contact information of witnesses
  6. Other agencies where a complaint was filed regarding the same incident(s)

Call 303.299.6000 to request additional information about RTD's Title VI Policy.

Once a complaint is filed, RTD will review the complaint and determine if we have jurisdiction. The complainant will receive a letter acknowledging receipt of the complaint and steps toward resolution.

### TITLE VI RESOURCES

For additional information please contact:

303.299.6216  
303.299.2452 (fax)  
[titlevicomplaints@rtcd-denver.com](mailto:titlevicomplaints@rtcd-denver.com)

RTD, Attn: Transit Equity Manager,  
1660 Blake St - FAS-73, Denver, CO 80202

[Title VI complaint form](#)

[www.rtd-denver.com/TitleVI.shtml](http://www.rtd-denver.com/TitleVI.shtml) 1/2

RTD permits the use of a representative to file a complaint on behalf of the complainant. All communication following the complaint will be directed to the complainant's representative primarily and the complainant secondarily.

The investigator may interview any individuals named as witnesses and any other individuals who may have information. The investigator may review relevant documentation. Failure of the complainant to respond to requests for information from the investigator may result in an administrative closure of the complaint.

Although RTD strives to promptly resolve complaints, this process will differ depending on the complexity of the complaint, the individuals involved, and other factors. Once the investigation has concluded, the complainant will receive a final written response to the complaint.

### **Title VI Complaint to the U.S. Department of Transportation**

Individuals or organizations who believe they have been denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color or national origin may submit a complaint to the U.S. Department of Transportation:

**Federal Transit Administration's Office of Civil Rights**  
Attention: Title VI Program Coordinator  
East Building, 5th Floor - TCR1200  
New Jersey Ave., SE Washington, DC 20590

Further information, including the complaint form, is available at [fta.dot.gov](http://fta.dot.gov).

Regional Transportation District  
1650 Blake Street  
Denver, CO 80202

*RTD provides bus and rail service in the Denver metro area*

# Title VI Policy Statement

**[Insert Agency Name]** is committed to ensuring that no person shall, on the grounds of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 (PL 100.259), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, whether those programs and activities are federally funded or not. **[Insert name and title of Title VI Coordinator]** is responsible for initiating and monitoring Title VI activities, preparing required reports, and other responsibilities as required by Title 49 CFR Part 21.

---

Signature of Authorizing

---

Official Date

---

Printed Name and Title



**EXHIBIT J  
REGIONAL TRANSPORTATION DISTRICT  
INSURANCE REQUIREMENTS  
CONSTRUCTION CONTRACTS**

**General**

All defined terms contained in this Exhibit J shall have the same meaning ascribed to them in the IGA.

The City shall ensure its D/BC purchase and continuously maintain in full force and effect for the IGA period specified herein, all insurance policies specified in this *Exhibit J*. The D/BC shall forward updated certificates of insurance and endorsement(s) when policies are renewed or changed.

The insurance required hereunder shall not be interpreted to relieve the City of any obligations under the IGA and liability of the D/BC and Third Party Contractors under this *Exhibit J* shall not be limited to coverage provided under said insurance policies. The D/BC and Third Party Contractors shall remain solely and fully liable for all deductibles / Self-Insured Retentions (SIR's) and amounts in excess of the coverage actually realized.

**Commercial General Liability Insurance**

The City shall ensure that the D/BC provide and maintain Commercial General Liability Insurance (broad form coverage) insuring against claims for bodily injury, property damage, personal injury and advertising injury. By its terms or appropriate endorsements such insurance shall include the following coverage: Bodily Injury, Property Damage, Fire Legal Liability (not less than the replacement value of the portion of the premises occupied), Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations for a minimum of eight (8) years following final completion of the Project or the applicable statute of limitations or statute of repose, whichever is greater. The policy cannot be endorsed to exclude the perils of explosion, collapse and underground exposures without the specific written approval of RTD.

If Commercial General Liability Insurance or other form with general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the D/BC or the City may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the D/BC. General Aggregate limit applies per construction Project.

Amount of Coverage:	\$1,000,000 per occurrence
	\$2,000,000 aggregate

Such insurance shall include the following specified CGL endorsements:

**“Contractual Liability - Railroads” (ISO CG 24 17)**

*This endorsement is required if any construction work performed under this contract is within fifty (50) feet of RTD’s light rail or commuter rail alignment.* This endorsement shall provide that all policy or endorsement limitation(s) relating specifically to operations on or near railroad property are eliminated, including a “Contractual Liability - Railroads” endorsement to amend the definition of “insured contract” to delete the “railroad exclusion;” provided, however, that such endorsement is not required if Railroad Protective Liability Insurance is provided as set forth in this exhibit.

**“Limited Pollution Liability Extension” (ISO CG 24 15 10 01)**

**Automobile Liability Insurance**

The **Contractor and Subcontractors** shall provide Automobile Liability Insurance insuring against claims for bodily injury and property damage arising out of the ownership, maintenance or use of all owned/leased as well as hired and non-owned vehicles used in the performance of the Work.

Amount of Coverage:           \$1,000,000 combined single limit

**Workers’ Compensation and Employer’s Liability Insurance**

Not Required by RTD

**Umbrella/Excess Liability**

The **Contractor and Subcontractors** shall provide Umbrella/Excess Liability insurance limits as follows:

Amount of Coverage:           \$10,000,000 per occurrence  
  \$10,000,000 aggregate

This excess insurance shall be at least as broad as the D/BC’s primary Commercial General Liability, Commercial Auto Liability and Employer’s Liability insurance. The above insurance levels may be met through any combination of primary insurance and excess liability/umbrella insurance so long as the total amount meets the stated requirements.

**Railroad Protective Liability Insurance (RRPL)**

Not Required by RTD

### **Contractors Pollution Liability**

This insurance requirement applies when a vendor will be performing environmental clean-up work (decontamination/remediation), will be working with hazardous substance or waste, or may have similar such exposures while performing work under the proposed contract. Contractor and Subcontractors shall provide Contractors Pollution Liability Insurance including contractual liability and providing third-party coverage for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed.

Amount of Coverage:           \$5,000,000 per occurrence  
  \$5,000,000 aggregate

### **Professional Liability<sup>1</sup>**

This insurance requirement applies when a supplier has a professional designation or license and/or is providing professional services. The minimum limit for architects and engineers is \$5,000,000 per occurrence and in the aggregate and may be increased depending upon the nature of the services to be provided to RTD.

The **Contractor and Subcontractors** shall provide Professional Liability Insurance covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This insurance is to be maintained for the duration of the Contract and for a minimum of two (2) years following completion of this Contract.

Amount of Coverage:           \$5,000,000 per occurrence  
  \$5,000,000 aggregate

### **Cyber Risk Insurance**

Not Required by RTD

### **Endorsements, Waivers and Related Requirements**

Prior to entry upon, above or adjacent to RTD property, **Contractor** agrees to furnish RTD with a certificate of insurance for each of **Contractor's and its Subcontractors'** policies. All insurance policies required hereunder shall contain or be endorsed to contain the following provisions:

---

<sup>1</sup> Generally applicable only to design build contracts.

1. All insurance companies shall provide RTD with 30 days' advance notice of cancellation of policies by Registered or Certified mail. The Contractor shall be responsible to immediately notify RTD in writing of any changes or cancellations of its insurance, or the Contractor may be found in breach of the Contract and the Contract could be terminated. Any notice of cancellation shall be provided to the designated RTD Department or Division as provided herein. Such notice requirement does not waive the insurance requirements contained herein.
2. For the insurance specified herein, RTD and its members, directors, officers, employees and agents shall be named as an additional insured (except Workers' Compensation).
3. For claims covered by the insurance specified herein, said insurance coverage shall be primary and non-contributory insurance with respect to the additional insured parties, and their members, directors, officers, employees and agents.
4. The insurance specified herein shall contain a waiver of subrogation in favor of RTD as set forth below:

“All policies of insurance carried by the D/BC or its subcontractors pursuant to this contract shall expressly waive any right on the part of their insurer(s) against RTD and its members, directors, officers, employees and agents, which right, is hereby expressly waived to the full extent permitted by law.”

5. The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. The amount of insurance must be “at least” equal to the limits of liability shown herein.

#### **Acceptable Insurance Company**

The insurance company providing any of the insurance coverage required herein shall have at a minimum an AM Best Key Rating of A, with a Financial Strength of VII or higher, (i.e., A VII, A VIII, A IX, A X, etc.) or equivalent from similar rating agency and shall be subject to approval by RTD. Each insurance company's rating as shown in the latest AM Best Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance.



### **Premiums, Deductibles and Self-Insured Retentions**

The City shall ensure the D/BC provides payment of premiums for all of the insurance coverages required hereunder and that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the D/BC or Third Party Participants are responsible hereunder, the D/BC shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$25,000 in the Contractor's or D/BC's insurance must be declared and approved in writing by RTD.

### **Certificate of Insurance**

The City shall ensure the D/BC deliver to the designated RTD Department or Division a certificate of insurance with respect to each required policy to be provided by the D/BC and any Third Party Participants. The required certificates must be signed by the authorized broker or agent representative of the insurance company shown on the certificate and authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. All endorsements, waivers, and related requirements described above shall be attached to the certificates of insurance when submitted to RTD. A certified, true and exact copy of each insurance policy (including renewal policies) required under this contract shall be provided to RTD if so requested.

### **Renewal Policies**

The City shall ensure the D/BC promptly deliver to RTD a certificate of insurance with respect to each renewal policy as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to RTD not less than 30 calendar days prior to the expiration date of any policy.

### **No Recourse**

There shall be no recourse against RTD for the payment of premiums or other amounts with respect to the insurance required from the City, D/BC or Third Party Participant.

### **Failure to Provide or Maintain Insurance Coverages**

The **City's or the D/BC's** failure to provide or maintain any of the insurance coverage required herein shall constitute a breach of the IGA. In addition to the remedies that **RTD** may have under the insurance specified herein, **RTD** may take whatever action is necessary to maintain the current policies in effect (including the payment of any premiums that may be due and owing by the **D/BC and Third Party Participants**) or procure substitute insurance. The City is responsible for any costs incurred by **RTD** in maintaining the current insurance coverage in effect, or providing substitute insurance, and such costs may be deducted from any sums due and owing the **City or D/BC**.



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

DOTI-202053934-00  
THE 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:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_


By:

\_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have executed this IGA on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2020.

**REGIONAL TRANSPORTATION DISTRICT**

**CITY of DENVER**

By:   
Paul J. Ballard  
Interim General Manager and CEO


By: \_\_\_\_\_  
Michael B. Hancock  
Mayor

DATE: Feb. 28, 2020

DATE: \_\_\_\_\_

Approved as to legal form for the Regional  
Transportation District:

Approved as to legal form for City:

By:   
Dana E. Steele  
Sr. Associate General Counsel

By: \_\_\_\_\_  
Kristin M. Bronson  
Assistant City Attorney

DATE: 2/27/2020

DATE: \_\_\_\_\_