

## **North Wing Parcel Development Agreement (18<sup>th</sup> Street and Plaza Improvements)**

THIS NORTH WING PARCEL DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of March \_\_, 2010 (the "Effective Date"), by and among DENVER UNION STATION PROJECT AUTHORITY, a Colorado nonprofit corporation ("DUSPA"), and UNION STATION LAND COMPANY, LLC, a Colorado limited liability company ("USLC").

### **Recitals**

A. DUSPA and Union Station Neighborhood Company, LLC, a Colorado limited liability company ("USNC"), are parties to that certain Master Development Agreement dated August 6, 2009 (the "MDA"), concerning the financing, design and construction of the transportation and other public infrastructure for the renovation of the Denver Union Station building and the redevelopment of the lands surrounding the Denver Union Station building, all in the City and County of Denver, Colorado (the "Project Site"). The Project Site (with the exception of certain public rights-of-way) is owned by Regional Transportation District, a political subdivision of the State of Colorado ("RTD").

B. USLC is an "Affiliate" (as defined in the MDA) of USNC. USLC and RTD entered into that certain Agreement of Purchase and Sale (North Wing Parcel), dated January 29, 2010 (the "North Wing Purchase Agreement") for the purchase of a portion of the Project Site that is described on Exhibit A of this Agreement (the "North Wing Parcel"), for the purpose of constructing a commercial office/retail building on the North Wing Parcel (the "North Wing Building"). The MDA contemplates that USNC (or one of its Affiliates) will purchase the North Wing Parcel along with other portions of the Project Site.

C. Development of the Project Site will include the "Historic Station Zone Public Space Surface Improvements" as defined in the MDA. The Historic Station Zone Public Space Surface Improvements will include certain public plaza improvements to be constructed on the North Wing Parcel around and within 20 feet of the North Wing Building, as more fully depicted on Exhibit B of this Agreement (the "Plaza Improvements"). Development of the Project Site will also include the construction of certain street, curb and gutter, sidewalk and related improvements along the northeast side of the North Wing Parcel within the former public right-of-way for Eighteenth Street (the "18<sup>th</sup> Street Improvements"). Together, the Plaza Improvements and the 18<sup>th</sup> Street Improvements are referred to as the "Surrounding Improvements", and are more fully depicted on Exhibit C of this Agreement.

D. Completion of the Surrounding Improvements will be important to the ability of the North Wing Building to function as planned and to allow for appropriate access to and from the North Wing Building. Accordingly, the parties desire to provide for the cooperative design of the Surrounding Improvements and the construction of the Surrounding Improvements by DUSPA in coordination with the design and construction of the North Wing Building.

## Agreement

NOW, THEREFORE, in consideration for the terms and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Design and Permitting. Pursuant to Section 3.3 of the MDA, DUSPA has agreed to work in a coordinated fashion with USNC pursuant to the "Design Management Plan" (as defined in the MDA) to design the "Historic Station Zone Public Space Surface Improvements" (as defined in the MDA). Such design process is already intended to include the Plaza Improvements pursuant to the MDA. DUSPA agrees that it will also include the 18<sup>th</sup> Street Improvements within such design process. USLC will coordinate with USNC to submit to DUSPA a detailed preliminary summary of issues and design parameters for the Surrounding Improvements based on the plans for the North Wing Building (the "Project Parameters"). The Project Parameters will identify those issues that must be addressed to ensure a coordinated design of the North Wing Building, the Surrounding Improvements and the other Historic Station Zone Public Space Surface Improvements, including, without limitation, such issues as finished grades and drainage requirements, vehicular access points, pedestrian connections and utility connections; provided, however, that all development obligations of DUSPA under this Agreement shall be limited to the Surrounding Improvements. Based on the Project Parameters and such other information developed by the parties as may be necessary or appropriate to the design of the Surrounding Improvements, DUSPA will develop plans and specifications for the construction of the Surrounding Improvements pursuant to the terms of the MDA (the "Plans and Specs"). The Plans and Specs, including without limitation material selections for the Surrounding Improvements, will be subject to the reasonable approval of USLC (acting through USNC), which approval will not be unreasonably withheld, conditioned or delayed. Following USLC's approval of the Plans and Specs, DUSPA will not permit the Plans and Specs to be materially changed or amended without USLC's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. DUSPA and USLC will work and cooperate diligently and in good faith to finalize the Plans and Specs by not later than December 31, 2010, provided, however, that, so long as the parties are working and cooperating diligently and in good faith, failure to finalize the Plans and Specs by such date shall not be a default under this Agreement. In addition, DUSPA will secure funding and obtain all required construction, access and similar permits from the appropriate entities such that construction can be commenced on the Surrounding Improvements by not later than July 1, 2011 or such later date provided for in the Construction Schedule (as defined below) with USLC's prior written consent.

2. Construction Timing. Beginning on the Effective Date, DUSPA and USLC shall meet not less than once every three (3) months to set, establish, and modify, as applicable, in writing a construction schedule for the Surrounding Improvements (the "Construction Schedule"). DUSPA and USLC will work and cooperate diligently and in good faith to create and update the Construction Schedule; provided, however, that the Construction Schedule will not provide for commencement of construction of the Surrounding Improvements later than July 1, 2011 or substantial completion of such construction by later than January 1, 2012 without the prior written consent of USLC. DUSPA will commence construction of the Surrounding Improvements and diligently pursue such construction to completion in accordance with the Plans and Specs and the Construction Schedule ([as it may be updated as provided herein](#)), both

in compliance with all applicable laws and regulations. DUSPA will cause the Surrounding Improvements to be constructed in a good and workmanlike manner free and clear of all liens and encumbrances and at no direct cost to USLC. During the construction of the Surrounding Improvements, USLC may inspect the same, and DUSPA agrees to cause its general contractor to correct any material deficiencies in the work or materials, or any elements of the work which do not substantially comply with the Plans and Specs and that are called to DUSPA's attention in writing.

3. Construction Coordination. The construction of the North Wing Building by or on behalf of USLC is expected to proceed at or about the same time as construction of the Historic Station Zone Public Space Surface Improvements, including the Surrounding Improvements. DUSPA and USLC will coordinate the work of their respective general contractors with each other in order that the work being performed will be completed in a timely fashion and at no unreasonable increase in cost to the other.

4. Indemnities.

(a) To the proportional share of USLC's negligence and to the extent not covered by insurance, USLC will indemnify, defend and hold harmless DUSPA from all third-party personal injury and property damage claims, liabilities, costs, expenses, fees (including reasonable attorneys' fees and litigation costs), and disbursements that arise in whole or part from the negligent acts or omissions of USLC or any of its contractors in the course of constructing the North Wing Building or any related work (collectively, the "USLC Work"). Without limiting USLC's indemnity obligations, if one or more mechanics' lien is filed against any portion of the lands surrounding the North Wing Parcel as a result of the USLC Work, USLC agrees to cause such lien to be released within 45 days and in any event before any action to foreclose such lien is commenced. If USLC does not cause any such lien to be released within 45 days and in any event before any action to foreclose such lien is commenced, then DUSPA shall have the right to take such actions as it determines in its discretion are necessary to cause such lien to be released (whether posting a bond, settling with a lien claimant or otherwise), in which case USLC shall reimburse DUSPA for all costs and expenses incurred by DUSPA (including without limitation reasonable attorneys' fees) within 20 days after receiving an invoice therefrom from DUSPA. Any such amounts not paid when due will accrue interest until paid at the rate of 6% per annum.

(b) To the proportional share of DUSPA's negligence and to the extent not covered by insurance, DUSPA will indemnify, defend and hold harmless USLC from all third-party personal injury and property damage claims, liabilities, costs, expenses, fees (including reasonable attorneys' fees and litigation costs), and disbursements that arise in whole or part from the negligent acts or omissions of DUSPA or any of its contractors in the course of the construction of the Historic Station Zone Public Space Surface Improvements, 18<sup>th</sup> Street Improvements or any related work (collectively, the "DUSPA Work"). Without limiting DUSPA's indemnity obligations, if one or more mechanics' lien is filed against any portion of the North Wing Parcel as a result of the DUSPA Work, DUSPA agrees to cause such lien to be released within 45 days and in any event before any action to foreclose such lien is commenced. If DUSPA does not cause any such lien

to be released within 45 days and in any event before any action to foreclose such lien is commenced, then USLC shall have the right to take such actions as it determines in its discretion are necessary to cause such lien to be released (whether posting a bond, settling with a lien claimant or otherwise), in which case DUSPA shall reimburse USLC for all costs and expenses incurred by USLC (including without limitation reasonable attorneys' fees) within 20 days after receiving an invoice therefrom from USLC. Any such amounts not paid when due will accrue interest until paid at the rate of 6% per annum.

5. Permitted Delays. If completion of performance by DUSPA of its obligations under Section 2 is delayed by employment strikes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties not caused by the act or omission of DUSPA or its contractors, physical shortage or exorbitant price increases of materials, or any other events beyond DUSPA's control, then the time for performance by DUSPA will be extended by the time of the delay actually experienced.

6. Default and Remedies. If either party is in default of any of its obligations under this Agreement, the other party will have all remedies available at law and in equity for such default. Without limiting the foregoing, if DUSPA has not (a) commenced construction of the Surrounding Improvements in accordance with the Plans and Specs by the deadline in the Construction Schedule in good faith with an intent to complete such construction, or (b) completed construction of the Surrounding Improvements in accordance with the Plans and Specs by the deadline in the Construction Schedule, then USLC shall have the right, after providing the prior written notice to DUSPA described below, and without limiting any other remedies it may have, to undertake and/or complete construction of the Surrounding Improvements pursuant to the Plans and Specs, or if the Plans and Specs are not completed then pursuant to plans and specifications as USLC deems commercially reasonably necessary to provide for an all-weather plaza surface on the southeast and southwest sides of the North Wing Building and street and sidewalk improvements on the northeast side of the North Wing Building to allow for proper access to and operation and use of the North Wing Building in accordance with its design and to obtain a certificate of occupancy for the North Wing Building, all pursuant to the terms described herein (the "Self-Help Remedy"). USLC may exercise the Self-Help Remedy if the conditions in the preceding sentence are not satisfied by giving thirty (30) days' written notice of such exercise to DUSPA at any time prior to DUSPA satisfying such conditions.

7. Notices. All notices, consents, demands, requests and other communications required or permitted hereunder ("Notices") will be in writing, and will be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission or e-mail with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than two (2) business days thereafter. All Notices will be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by

reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery will be deemed to constitute delivery; and provided, further, however, that Notices given by facsimile or e-mail will be deemed given when received by facsimile or email, as the case may be. Each party will be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof in the manner herein provided for the delivery of Notices. All Notices will be sent to the addressee at its address set forth following its name below:

If to DUSPA:

Denver Union Station Project Authority  
One Tabor Center, Suite 1500  
1200 Seventeenth Street  
Denver, CO 80202  
Attn: President, c/o Cole Finegan  
Phone: (303) 899-7300  
Fax: (303) 899-7333  
E-mail: [cfinegan@hhlaw.com](mailto:cfinegan@hhlaw.com)

and to:

Denver Union Station Project Authority  
c/o Trammell Crow Company  
1225 Seventeenth Street, Suite 3050  
Denver, CO 80202  
Attn: William Mosher  
Phone: (303) 628-7439  
Fax: (303) 628-1744  
Email: [bmosher@trammellcrow.com](mailto:bmosher@trammellcrow.com)

If to USLC:

Union Station Land Company, LLC  
c/o Continuum Partners, LLC  
355 S. Teller Street, Suite 210  
Lakewood, Colorado 80226  
Attn: Daniel J. Murphy  
Phone: (303) 573-0050  
Fax: (303) 573-0011  
Email: [danm@continuumllc.com](mailto:danm@continuumllc.com)

with required copies to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
420 E. Main Street, Suite 210  
Aspen, CO 81611  
Attn: Bart Johnson

Phone: (970) 544-4638  
Fax: (970) 544-4632  
Email: [bart@ottenjohnson.com](mailto:bart@ottenjohnson.com)

8. Miscellaneous Provisions.

(a) Rules of Construction.

(i) Except as specifically provided herein, any approval, consent, permission, submittal or authorization contemplated under this Agreement by USNC and/or the Authority will be given in advance and in writing, and any consent, approval, permission or authorization will apply only in the instance given.

(ii) The Recitals are made part of this Agreement.

(iii) A term defined in this Agreement that includes one or more items, when used, will mean all or one or more of those items.

(iv) A term defined in this Agreement that means or refers to an agreement, writing or statute will mean and refer to that agreement, writing or statute as amended, modified, substituted for or replaced from time to time, but only if and to the extent that such amendment, modification, substitution, or replacement is permitted under, and made in accordance with this Agreement.

(v) The word "day" or "days" refers to calendar days, unless specifically referred to as a business day.

(vi) The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided for convenience of reference, and will not be considered in construing their contents.

(vii) As used herein, all references made (a) in the neuter, masculine or feminine gender will be deemed to have been made in all such genders, (b) in the singular or plural number will be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any sections, subsections, paragraphs or subparagraphs will be deemed, unless otherwise expressly indicated, to have been made to such sections, subsections, paragraphs or subparagraphs of this Agreement.

(viii) The words "including" and "includes," and words of similar import, will be deemed to be followed by the phrase "without limitation."

(b) Severability. If any provision of this Agreement or the application thereof to any person or circumstance will be invalid or unenforceable to any extent, then the other provisions of this Agreement, the provision in question to any other extent, and the application thereof to any other person or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law.



(c) Governing Law. This Agreement will be governed by the laws of the State of Colorado, without regard to the principles of conflicts of law.

(d) Relationship of Parties. Nothing contained in this Agreement will be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between DUSPA and USLC.

(e) No Waiver. Failure by a party to complain of any action, non-action, or default of the other party will not constitute a waiver of any rights hereunder, nor will the waiver of any right occasioned by a default in any one or more instances constitute a waiver of any right occasioned by either a subsequent default of the same obligation or by any other default.

(f) Time of the Essence. Time is of the essence of each and every provision of this Agreement.

(g) Binding Nature. This Agreement will be binding upon and inure to the benefit of USLC and DUSPA and their respective successors and permitted assigns. USLC may assign this Agreement and its rights hereunder to any party to whom it may assign the North Wing Purchase Agreement pursuant to the terms thereof. In addition, this Agreement and USLC's rights hereunder will be deemed assigned to any owner of the North Wing Parcel, including without limitation any lender with a collateral ownership interest in the North Wing Parcel.

(h) Dates. If any date upon which performance is to be rendered by either party falls upon a weekend or legal holiday, such performance will be deemed to be timely if it is rendered or performed on the next following business day.

(i) Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same document. The signature of any party to any counterpart will be deemed a signature to, and may be appended to any other counterpart.

(j) Costs and Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action will be entitled to recovery of all costs and expenses of litigation, including reasonable attorneys' fees.

(k) No Individual Liability. Notwithstanding any provision of law to the contrary, no individual signing this Agreement or any document intended to carry out its intent will by such signing be individually liable for any representations, warranties or indemnities, if any, that may be set forth in this Agreement or in any document intended to carry out its intent, any such liabilities will be solely those of the parties to this Agreement.

EXECUTED TO BE EFFECTIVE as of the date first given above.

DENVER UNION STATION PROJECT  
AUTHORITY, a Colorado nonprofit corporation

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

UNION STATION LAND COMPANY, LLC, a  
Colorado limited liability company

By: USNC, Inc., a Colorado corporation, its  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Director



## **Exhibit A**

### North Wing Parcel Legal Description

## **Exhibit B**

### Plaza Improvements

## **Exhibit C**

### Surrounding Improvements

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Document comparison by Workshare Professional on Tuesday, March 02, 2010 5:14:13 PM

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Document 2 ID	PowerDocs://DENVER01/942097/3
Description	DENVER01-#942097-v3-Revised_North_Wing_Parcel_Development_Agreement_(Surrounding_Improvements)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Split/Merged cell	
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Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	21

**CONTRACT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the STATE OF COLORADO for the use and benefit of THE DEPARTMENT OF TRANSPORTATION, 4201 E. Arkansas Avenue, Denver, CO 80222 (hereinafter referred to as “**CDOT**”), the DENVER UNION STATION PROJECT AUTHORITY, a Colorado non-profit corporation, c/o Trammell Crow Company, 1225 17<sup>th</sup> Street, #3050, Denver, CO 80202 (hereinafter referred to as “**DUSPA**”) and the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202 (hereinafter referred to as “**RTD**”). CDOT, DUSPA and RTD are collectively referred to as the “Parties.”

**FACTUAL RECITALS**

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and DUSPA costs in Fund Number 400, Appropriation Code 010, Organization Number 9991, Program 2000, Functions 3404 & 3020 & 3301, GL Acct. 4231200011, WBS Elements XXXXX.10.40, XXXXX.10.30 and XXXX.20.10, (Contract Encumbrance Amount: Environmental \$XXX.00, Design \$XXX.00, Construction \$XXX.00; Total Encumbrance \$XXX.00).

2. Any required approval, clearance and coordination have been accomplished from and with appropriate agencies with respect to funds that have been budgeted, appropriated and otherwise made available for the Denver Union Station (“**DUS**”) projects as described in the Scope of Work attached as Exhibit A hereto (the “**Project**”).

3. CDOT, DUSPA and RTD desire to enter into this Agreement to establish general provisions with respect to the contracting, oversight and funding for work on the Project using:

- a. State funding from the S.B. 97-001 10% for Transit Program (the “S.B. 97-001”) including a 20% local match required to obtain the State funding;
- b. RTD funding;
- c. Federal Grant Funds including funds received under the American Reinvestment and Recovery Act (ARRA).
- d. Other funds that may be secured including Federal Railroad Rehabilitation and Improvement Financing (“**RRIF**”), Transportation Infrastructure Finance and Innovation Act (“**TIFIA**”) funds; and tax increment financing and revenue bonds or other sources.

4. Pursuant to Title I, Subtitle A, Section 1108 of the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (“**SAFETEA-LU**”) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended (collectively referred to hereinafter as the “**Federal Provisions**”), certain federal funds have been and will in the future be allocated for transportation projects at DUS. These projects are eligible to receive funding under the State Transportation Improvement Program that has been approved by the Federal Highway Administration (“**FHWA**”), hereinafter referred to as the “**Program**.”

5. The City and County of Denver (“**CCD**”) is identified to receive \$16.88 million in state funds from CDOT in the S.B. 97-001 program in support of the DUS development by Transportation Commission Resolution Number TC-1455.

CCD, by letter dated January 11, 2007, has assigned the funding to RTD. RTD, by this Agreement, further assigns its rights to the S.B. 97-001 funds to DUSPA. By this Agreement, CDOT asserts its right to assign, and DUSPA asserts its right to assume the responsibilities as project sponsor, including providing required matching funds of \$4.22 million in local funding. DUSPA will receive these S.B. 97-001 funds pursuant to and in accordance with the terms set forth in this Agreement with CDOT. The matching ratio for this state funding is 80% state funds to 20% local funds (“**20% local match**”). The release of these state funds is contingent upon meeting the terms described in Recital paragraph 10 below.

6. On June 30, 2008, the Denver City Council adopted the DUSPA Ordinance which authorized the creation of DUSPA as a non-profit public corporation governed by a Board comprised of thirteen directors, eight of whom (six voting and two non-voting) are appointed by the Mayor of Denver, two of whom are appointed by RTD, one of whom is appointed by CDOT, one of whom is appointed by the Denver Regional Council of Governments and one of whom is appointed by the DUS Metropolitan District No. 1. DUSPA’s purpose is to finance, acquire, own, equip, design, construct, renovate, operate and maintain the DUS project as such project is described in the Final Environmental Impact Statement for DUS dated August 2008 (“**FEIS**”) and in the Record of Decision dated October 17, 2008 (“**ROD**”), together with undertaking other improvements beyond the FEIS and ROD which may include DUS renovation, storm sewer design and construction and public plaza improvements. DUSPA is currently designated as the entity to handle day-to-day operations with regard to the DUS development on behalf of the public entities including RTD, CCD and CDOT.



7. DUS property is under ownership of RTD. If further right-of-way or permanent real property interests are acquired for the DUS project as described in the Record of Decision issued by the Federal Transit Administration on October 17, 2008, all provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC 4601, et seq., will apply.

8. CDOT has also entered into a Master IGA dated April 12, 2004 with RTD for the FasTracks program, with DUS being the common termini for most of the rail corridors and principal transfer points to bus and interstate bus/rail travel.

9. The DUS FEIS has been prepared with the Federal Transit Administration (“*FTA*”) designated as the federal lead agency.

10. The U.S. Department of Transportation (“*DOT*”) will require a Major Project Financial Plan (“*Plan of Finance*”), or equivalent financial document acceptable to DOT, and a Project Management Plan for this Project including documentation of any assumed revenues from RRIF and TIFIA loan programs. DUSPA and CCD have agreed that responsibility for preparing, submitting and securing approval of that Plan of Finance or equivalent document will be DUSPA’s and CCD’s. DUSPA and CCD have also agreed to provide the Plan of Finance, or equivalent financial document, to CDOT for review prior to submitting it to the DOT for final consideration. Approval of any such required Plan of Finance, or equivalent financial document, by DOT and its acceptance by the FHWA as sufficient for to allow the obligation of its funds for the DUS project is a prerequisite for the release to DUSPA of any state funding from CDOT under this Agreement. DUSPA and RTD have provided a completed Project Management Plan which the FTA, on behalf of DOT, has reviewed.

**NOW, THEREFORE, IT IS HEREBY AGREED THAT:**

**The recitals set forth above are incorporated into this Agreement by reference.**

***Section 1. Assignment to DUSPA of State S.B. 97-001 Funds***

RTD, as the grant recipient of state S.B. 97-001 funds, described above in Recital 5, hereby assigns all of its right, title and interest in such funds to DUSPA. DUSPA is hereafter the designated recipient of the state S.B. 97-001 funds for the DUS Project. DUSPA hereby assumes all of the right, title and interest in and to such state S.B. 97-001 funds described above in Recital 6 and as such funds are assigned by RTD.

***Section 2. Scope of Work***

1. The S.B. 97-001 funds will be used by DUSPA to fund Approved Project Element costs, including Optimization of Downtown Circular Access, Final Design and construction of the Commuter Rail Facility, and Final Design and construction of RTD's Regional Bus Facility as shown on Exhibit A, the DUS Scope of Work. The requirement is that the Approved Project Elements shall be funded with the \$16.88 million in S.B. 97-001 moneys, combined with the correct 20% local match.

2. The DUS Scope of Work for eligible activities to be funded under this Agreement is attached as Exhibit A. Exhibit A reflects the DUS Project scope as agreed to by DUSPA and CDOT at the time of signing of this Agreement.

3. Any change orders that impact the DUS Project scope as set forth in Exhibit A and cause changes to them, shall follow the process set forth in Section 2.11.2 of the Project Management Plan. Any proposed alterations to the Scope of Work contained in Exhibit A, which affects the Approved Project Elements, will require approval by the Transportation Commission and an amendment to Exhibit A.

4. Right-of-way may be purchased by RTD as necessary to complete the Scope of Work identified in Exhibit A. If right-of-way or other permanent real property interest is to be acquired for the DUS Project described in the ROD, all provisions of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act listed further in this Agreement will apply to all real estate acquired to be used for the Project.

### **Section 3. Roles and Responsibilities**

1. DUSPA is responsible for:

- a. Ensuring completion of the Work.
- b. Obtaining and complying with all applicable permits and building requirements in completing the Work.
- c. Coordinating with CDOT and RTD regarding compliance with all state requirements for the use of S.B. 97-001 funding.
- d. Preparing, submitting and securing approval of any required Project Plan of Finance as a prerequisite for receiving state S.B. 97-001 funding, including, but not limited to, documentation of any assumed revenues from the RRIF or TIFIA loan programs as well as other funds dedicated to the completion of the Project.
- e. Coordinating with all involved entities.
- f. Preparing and submitting invoices to CDOT for work completed consistent with Section 7 of this Agreement. The invoices must detail charges for reimbursement from S.B. 97-001 funding and document the appropriate contribution of local matching funds required for use of the S.B. 97-001 funds.
- g. Preparing and submitting progress reports with each invoice to CDOT that include, at a minimum, the following:

- (i) Percentage completion of each element of the Approved Project Elements;
- (ii) Percentage of funding expended on the Approved Project Elements;
- (iii) Any encountered or anticipated cost increases, the reason for any cost increases, a plan for completing the Approved Project Elements in spite of cost increases;
- (iv) Progress in completing the Approved Project Elements, an explanation of any delays to meeting milestones for completing the Approved Project Elements; and
- (v) The plan for addressing any schedule delays or cost increases for the Approved Project Elements.

h. Ensuring that a certified Professional Engineer registered in Colorado review and approve all final design plans and construction documents for this Project.

i. Coordinating with CDOT for any change orders to the Scope of Work (Exhibit A) as provided in Section 2.2 and Section 2.3 above and assisting CDOT with presenting those changes requiring Commission approval to the Commission.

2. CDOT is responsible for:

a. Reviewing and processing invoices submitted by DUSPA in a manner consistent with Section 7 of this Agreement and consistent with all applicable federal and state rules.

b. Coordinating with and providing guidance to DUSPA, as needed, regarding DUSPA's responsibilities as set forth in Section 3 herein.

c. Coordinating with and providing guidance to DUSPA to allow DUSPA to comply with all state requirements for the use of S.B 97-001 funding.

3. RTD is responsible for:

a. Coordinating with and providing guidance to DUSPA, as needed, regarding DUSPA's responsibilities as set forth in Section 3 herein.

#### ***Section 4. Order of Precedence***

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a. Special Provisions contained in **Error! Reference source not found.** of this Agreement;
- b. This Agreement;
- c. Exhibit A (Scope of Work);
- d. Exhibit C (Funding Provisions);
- e. Exhibit D (Local Agency Billing format); and
- f. Other Exhibits in descending order of their attachment.

#### ***Section 5. Term***

This Agreement will be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this Agreement shall continue through the completion and final acceptance of the Project as defined in Exhibit A by DUSPA, CCD, CDOT, FTA and RTD.

## ***Section 6. Project Funding Provisions***

DUSPA shall provide its entire share of the 20% local match for the S.B. 97-001 funding for the Project as outlined in Exhibit C at the time DUSPA commences construction of each of the Approved Project Elements, as set forth in Exhibit A hereto.

## ***Section 7. Project Payment Provisions***

1. The State will reimburse DUSPA for the state share of the Project charges after the state's review and approval of such charges, subject to the terms and conditions of this Agreement. The reimbursement will be based upon certification by a member of CDOT staff designated as Project Manager and DUSPA's Owner's Representative or designee.

2. CDOT will apply the S.B. 97-001 funds to reimburse DUSPA's reasonable, allocable, allowable costs of performance of the Work completed solely on the Approved Project Elements. CDOT will only do so subsequent to signing this Agreement and subsequent to receiving federal authorization for the project. Federal approval includes approval of the project's Plan of Finance by USDOT. No expenses incurred prior to designation as a federally participating project are eligible for reimbursement. The total amount for which CDOT will reimburse DUSPA will not exceed the total amount described in Exhibit C.

3. The following principles shall govern the costs submitted for reimbursement to CDOT under this Agreement. DUSPA shall comply with all such principles. To be eligible for reimbursement, costs by DUSPA shall be:

- a. Consistent with the Scope of Work as defined in Exhibit A;
- b. In accordance with the provisions of Exhibit C and with the terms and conditions of this Agreement;

- c. Necessary for the accomplishment of the Work;
- d. Reasonable in the amount for the goods and services provided;
- e. Actual net cost to DUSPA (i.e., the price paid minus any refunds, rebates or other items of value received by DUSPA that have the effect of reducing the cost actually incurred);
- f. Incurred for Work performed after the effective date of this Agreement;
- g. Are only for the portion of the costs eligible for the state match after deducting the local matching share; and
- h. Satisfactorily documented. Satisfactory documentation shall include:
  - (i) Proof of payment: Cancelled checks or Cash or General Ledger showing payment;
  - (ii) Payroll: Timesheets that reflect time worked and salary or hourly pay;
  - (iii) Payroll Journal reflecting the time worked and salary or hourly pay; and
  - (iv) Expenditures: Expenditure ledger displaying the accounting coding of all incurred expenditures that are being billed, copies of invoices from vendors with proper approvals.

4. DUSPA shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that Project funds are expended and costs accounted for in a manner consistent with this Agreement and Project objectives.



a. All allowable costs charged to the Project, including any approved services contributed by DUSPA or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.

b. Any check or order drawn up by DUSPA, including any item which is or will be chargeable against the Project account shall be drawn up only in accordance with a properly signed voucher or electronic payment then on file in the office of DUSPA, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

5. DUSPA will prepare and submit to CDOT, no more than monthly, invoices showing charges for costs incurred relative to the Project. CDOT will reimburse DUSPA for eligible costs it has incurred on the Project as defined in this Agreement. DUSPA's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with CDOT's standard policies, procedures and standardized billing format attached hereto and made a part hereof as Exhibit D.

6. To be considered for payment, billings for payment pursuant to this Agreement must be received within 60 days after the period for which payment is being requested and final billings on the contract must be received by CDOT within 60 days after the end of the contract term. You might want to extend this to 90 days, since we are requiring proof of payment being submitted. And sometimes it takes 60 days to get the check cleared and proof positive of it.

a. Payments pursuant to this Agreement shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of CDOT, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.

b. In the event this Agreement is terminated, final payment to DUSPA may be withheld at the discretion of CDOT until completion of final audit.

c. Incorrect payments to DUSPA due to omission, error, fraud or defalcation shall be recovered from DUSPA by deduction from subsequent payment under this Agreement between CDOT and DUSPA.

d. Any costs incurred by DUSPA that are not allowable under the Common Grant Rule shall be reimbursed by DUSPA, or offset against current obligations due by CDOT to DUSPA, at CDOT's election.

#### ***Section 8. Applicable Labor Rates***

It is understood that all labor and mechanics employed by DUSPA, the Master Developer or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the Project by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). It is also understood that construction undertaken with federal financial assistance must comply with the provisions in Exhibit B attached hereto. The Parties recognize that although this Agreement deals solely with state S.B. 97-001 funds, the DUS Project will receive significant federal assistance that will require compliance with federal requirements. CDOT agrees to assist DUSPA in fulfilling its federal compliance requirements with respect to this Agreement.

## ***Section 9. Record Keeping Requirement***

DUSPA shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available for inspection at all reasonable times during the contract period and for 3 years from the date of final payment by CDOT. Copies of such records shall be furnished by DUSPA if requested. DUSPA shall, during all phases of the Work, permit duly authorized agents and employees of CDOT to inspect the Project and to inspect, review and audit the Project records.

## ***Section 10. Termination Provisions***

This Agreement may be terminated as follows:

1. Termination for Convenience. The Parties may terminate this Agreement at any time the Parties determine that the purposes of the distribution of moneys under this Agreement would no longer be served by completion of the Project. The Parties shall effect such termination by the terminating party giving written notice of termination to the non-terminating party, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination.

2. Termination for Cause. If, through any cause, either party should fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if either party should violate any of the covenants, agreements or stipulations of this Agreement, the non-violating party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the violating party of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by DUSPA under this Agreement shall, at the option of CDOT, become its property, and DUSPA shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. DUSPA shall be obligated to return any unused payments advanced under the provisions of this Agreement.

Notwithstanding the above, the violating party shall not be relieved of liability to the non-violating party for any damages sustained by the non-violating party by virtue of any breach of this Agreement by the violating party, and the non-violating party may withhold payment or services to the violating party for the purposes of mitigating its damages until such time as the exact amount of damages due to the non-violating party from the violating party is determined.

If after such termination it is determined, for any reason, that the violating party was not in default or that the violating party's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the Parties shall be the same as if the Agreement had been terminated for convenience, as described herein.

3. Loss of Funding. The Parties hereto expressly recognize that DUSPA is to be paid, reimbursed or otherwise compensated with state funds which are available to CDOT for the purposes of contracting for the Project provided for herein, and therefore, DUSPA expressly understands and agrees that all its rights, demands and claims to compensation arising under this Agreement are contingent upon availability of such funds to CDOT.

The Parties hereto agree that in the event that state funds made available for this Project are less than the amounts reflected in Exhibit C, the Scope of Work as defined in Exhibit A will be completed regardless of the shortfall, although such Scope of Work may be reduced or modified in correlation to such shortfall.

### ***Section 11. Legal Authority***

DUSPA and RTD warrant that they possess the legal authority to enter into this Agreement and that they have taken all actions required by their procedures, by-laws and/or applicable law to exercise that authority, and to lawfully authorize their undersigned signatories to execute this Agreement and to bind DUSPA and RTD to its terms. The persons executing this Agreement on behalf of DUSPA and RTD warrant that such persons have full authorization to execute this Agreement.

### ***Section 12. Representatives and Notice***

CDOT Region 6 (acting on behalf of CDOT) will provide liaison with DUSPA through the CDOT Project Manager. Said Project Manager will also be responsible for coordinating CDOT's activities under this Agreement and will also issue a "Notice to Proceed" to DUSPA for commencement of the Work. All communications relating to the day-to-day activities for the Work shall be exchanged between the CDOT Project Manager and DUSPA. All communication, notices and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to CDOT:

Gary Gonzales  
CDOT FasTracks Liaison  
1560 Lincoln Street, #700  
Denver, CO 80202  
(303) 299-6905

If to DUSPA:

Mike Sullivan  
Project Manager  
1225 17<sup>th</sup> Street, #3050  
Denver, CO 80202  
(303) 628-1719

If to RTD:  
Jerry Nery  
RTD Engineering Project Manager for Denver  
Union Station  
1560 Broadway – 7<sup>th</sup> Floor  
Denver, CO 80202

With copies to:

Hogan & Hartson  
Attention: Cole Finegan  
1225 17<sup>th</sup> Street, #1500  
Denver, CO 80202  
(303) 899-7300

Bookhardt & O'Toole  
Attention: Dawn Bookhardt  
999 18<sup>th</sup> Street, #2500  
Denver, CO 80202  
(303) 294-0204

### ***Section 13. Assignments and Successors***

Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Any assignment of this Agreement by DUSPA to another entity shall be subject to CDOT's prior written approval. Any such assignment shall not relieve DUSPA of responsibility for compliance with state and federal requirements with respect to the use of federal and state funds.

### ***Section 14. Third Party Beneficiaries***

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to CDOT, RTD and DUSPA. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

It is the express intention of CDOT and DUSPA that any such person or entity, other than CDOT or DUSPA receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

#### ***Section 15. Governmental Immunity***

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of CDOT DUSPA or RTD, their officials and employees are controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

#### ***Section 16. Severability***

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

#### ***Section 17. Waiver***

The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision or requirement.



### ***Section 18. Entire Understanding***

This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a writing, executed and approved pursuant to the State Fiscal Rules.

### ***Section 19. Survival of Contract Terms***

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by CDOT as provided herein in the event of such failure to perform or comply by DUSPA.

### ***Section 20. Modification and Amendment***

This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by all parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

### ***Section 21. Disputes***

Dispute Resolution. The Parties shall resolve disputes regarding all items in this Agreement at the lowest staff level possible. The escalation process shall be:

a. The Project Manager for DUSPA, the Project Manager for RTD, and the CDOT Liaison to the Project.

b. CDOT's Region 6 Regional Transportation Director, RTD Assistant General Manager for Engineering and DUSPA's Owner's Representative.

c. The CDOT Executive Director, the RTD General Manager and the DUSPA President.

d. The Transportation Commission, the RTD Board and the DUSPA Board.

Resolution of any dispute that may result in loss of future funds or request for return of funds by any federal agency including FTA or FHWA shall require concurrence by the appropriate federal agency(ies) in addition to DUSPA and CDOT and shall not be binding until concurrence is obtained.

## ***Section 22. Equal Opportunity Efforts***

DUSPA acknowledges that it is in the best interest of the people of Colorado to promote and encourage the full inclusion of underutilized groups and communities in projects funded by the DOT modal agencies, including employees, businesses and the traveling public. DUSPA agrees to incorporate into the Project programs, systems and monitoring processes to ensure equal opportunity in all aspects of the Project. Such programs/monitoring processes include the Disadvantaged Business Enterprise Program, On-the-Job Training Program, Emerging Small Business Program, Americans with Disabilities Act and EEO Contract Compliance. DUSPA further agrees to utilize the resources of CDOT's Center for Equal Opportunity, including its local agency manual at:

<http://www.dot.state.co.us/DesignSupport/Local%20Agency%20Manual/2006%20Local%20Agency%20Manual/2006%20Local%20Agency%20Manual.htm>

In addition, DUSPA shall not discriminate on the basis of race, color, national origin or sex in the award and performance of this Project.

Since DUSPA is receiving DOT funds through CDOT for use with the Project, all funds will be subject to DOT Civil Rights requirements pursuant to 49 CFR, 23 CFR, 28 CFR, and the Civil Rights Act of 1964 Titles VI and VII and their implementing regulation.

### ***Section 23. Statewide Contract Management System***

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§Statewide Contract Management System** applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

## Section 24. Special Provisions

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. *[Not Applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

## SIGNATURE PAGE

### REGIONAL TRANSPORTATION DISTRICT

By \_\_\_\_\_

**Phillip A. Washington**  
General Manager, RTD

2000175  
CDOT Vendor #

**APPROVED AS TO LEGAL FORM  
FOR THE RTD**

By: \_\_\_\_\_  
**Marla L. Lien,**  
General Counsel

**STATE OF COLORADO:  
BILL RITTER, JR. GOVERNOR**

By \_\_\_\_\_  
*for the Executive Director*  
Department of Transportation

**LEGAL REVIEW:  
for JOHN W. SUTHERS  
ATTORNEY GENERAL**

By: \_\_\_\_\_  
**Harry Morrow**  
State of Colorado  
Attorney General's Office

### DENVER UNION STATION PROJECT AUTHORITY

By: \_\_\_\_\_  
**Elbra Wedgeworth, President**

**Approved as to Legal Form**

\_\_\_\_\_  
**DUSPA Legal Counsel**

### **I. ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:  
DAVID J. MC DERMOTT, CPA**

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

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

## EXHIBIT A

### SCOPE OF WORK

Scope of Eligible Activities for S.B. 97-001 10% for Transit Funding. Costs shown are estimates and include local match. Allowable line item costs may be modified with prior written approval by the CDOT project manager.

<i>Goal</i>	<i>Element</i>	<i>Cost</i>
Optimize downtown circulator access to the underground regional bus facility at the intersection of 18 <sup>th</sup> and Wynkoop	Acquire right-of-way for 18 <sup>th</sup> St access and design and construct the bus access ramp.	\$4.1 M
Commuter rail facility	Final design and construction of commuter rail facility.	\$9.0M
Relocate Market Street Station bus facility to DUS.	Final Design and construction of below-grade RTD bus facility.	\$8.1 M
		\$21.1 M total

Completion of contract obligations will occur when all facilities listed in this Project Scope of Work, consistent with the NEPA decision document are constructed. Costs in excess of the funding provided by this Agreement are to be paid by other revenue sources.

## EXHIBIT B

FHWA-1273 Electronic version – March 10, 1994  
FHWA Form 1273

### REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General	B-1
II. Nondiscrimination	B-1
III. Nonsegregated Facilities	B-3
IV. Payment of Predetermined Minimum Wage	B-4
V. Statements and Payrolls	B-6
VI. Record of Materials, Supplies, and Labor	B-7
VII. Subletting or Assigning the Contract	B-7
VIII. Safety: Accident Prevention	B-7
IX. False Statements Concerning Highway Projects	B-8
X. Implementation of Clean Air Act and Federal Water Pollution Control Act	B-8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	B-8
XII. Certification Regarding Use of Contract Funds for Lobbying	B-10

#### ATTACHMENTS

- A. Employment Preference for Appalachian Contracts  
(included in Appalachian contracts only)

#### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

#### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who



will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will

use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

#### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

##### **1. General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHW-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

##### **2. Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

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

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

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

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

##### **3. Payment of Fringe Benefits:**

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

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program,

provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

##### **a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

##### **b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

#### **5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

## **6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

## **8. Violation:**

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

## **9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

## **V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### **1. Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### **2. Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

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

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

## **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and

protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

#### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

#### **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

##### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary

participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered

transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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#### **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal



is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension,  
Ineligibility and Voluntary Exclusion--Lower Tier  
Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\*\*\*\*\*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

### EXHIBIT C FUNDING PROVISIONS

The Recipient of Federal and State Funds has estimated the total cost of the Work to be \$21,100,000.00 which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>				
a. State Funds (FY06 S.B. 97-001 @ 80% of FAB463)				\$4,220,000.00
b. State Funds (FY07 S.B. 97-001 @ 80% of FAB463)				<u>\$12,660,000.00</u>
Total State Funds				\$16,880,000.00
c. Local Match (FY06 S.B. 97-001 @ 20% of FAB463)				\$1,055,000.00
d. Local Match (FY07 S.B. 97-001 @ 20% of FAB463)				<u>\$3,165,000.00</u>
Total Recipient of Federal and State Funds Matching Funds				\$4,220,000.00
e. Recipient of Federal and State Funds Matching for CDOT – Incurred Non-Participating Costs				\$0.00
(Including Non-Participating Indirects)				
<b>TOTAL BUDGETED FUNDS</b>				<b>\$21,100,000.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>				
a. State Share (80% of Participating Costs)				\$0.00
b. Local Share				
Recipient of Federal and State Funds Share of Participating Costs			\$0.00	
Non-Participating Costs (Including Non-Participating Indirects)			\$0.00	
Estimated to be Billed to Recipient of Federal and State Funds				\$0.00
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>				<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO RECIPIENT OF FEDERAL AND STATE FUNDS</b>				
a. State Funds Budgeted (1b)				\$16,880,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				<b>\$16,880,000.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>				
Total Encumbrance Amount \$16,880,000.00divided by 80%)				\$21,100,000.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$21,100,000.00
Misc	2312 1P	3404		\$21,100,000.00
Const	2312 1P	3301		\$0.00

1. The matching ratio for the state participating funds for this project is 80% State Funds for S.B. 97-001 funds as outlined above. It is understood that such ratio applies only to the \$21,100,000.00 that is eligible for state participation, it is further understood that all non-participating costs are borne by the Recipient of these State Funds at 100%. If the total participating cost of performance of the Work exceeds \$21,100,000.00, the Recipient shall pay all such costs. If the total participating cost of performance of the Work is less than \$21,100,000.00, then the amounts of state funds will be decreased in accordance with the funding ratio described herein.

2. The maximum amount payable to the Recipient under this Agreement shall be \$16,880,000.00 (for CDOT accounting purposes, the State Funds of \$16,880,000.00 and local matching funds of \$4,220,000.00 will be encumbered for a total encumbrance of \$21,100,000.00). It is understood and agreed by the Parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accordance with the procedure in the previous sentence) agreeable to the Parties prior to bid and award.

3. The Parties hereto agree that this Agreement is contingent upon all funds designated for the Project herein being made available from State Funds sources, as applicable. Should these sources, or State Funds, fail to provide necessary funds as agreed upon herein, this Agreement may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

## EXHIBIT D

### LOCAL AGENCY BILLING FORMAT

#### SECTION I. CONTRACT DATA

Local Agency: \_\_\_\_\_ Project No. \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer (FEIN) ID Number: \_\_\_\_\_ Project Location \_\_\_\_\_  
Invoice Number and Date: \_\_\_\_\_  
% Completed: \_\_\_\_\_ Subaccount No. \_\_\_\_\_

BASIC AND/OR SUPPLEMENTAL CONTRACT TOTAL: \$ \_\_\_\_\_

Federal Share \$ \_\_\_\_\_  
Local Agency Share \$ \_\_\_\_\_  
State Share \$ \_\_\_\_\_

Prior Period Billing Amount: \$ \_\_\_\_\_

Current Billing Period : From: \_\_\_\_\_ To: \_\_\_\_\_

#### SECTION II. INCURRED COSTS

DIRECT LABOR: (List individually)

Employee Name	Classification	Regular Hours	Direct Hourly Rate \$	Overtime Hours*	Cost \$
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SUBTOTAL – DIRECT LABOR

BENEFITS \_\_\_\_\_% OF DIRECT LABOR

OTHER DIRECT COSTS (In-House)

List individually-at actual cost;

Mileage (miles x \$), CADD (hrs. x \$),

Equip rental (hrs. x \$), etc.

OUTSIDE SERVICES (Consultants & Vendors)

(List individually) (To be in this same format-  
attach copies of invoices)

TOTAL COSTS CURRENT PERIOD:

TOTAL COSTS TO DATE:

Current This Period	Total to Date
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____

#### SECTION III. BILLING

TOTAL BILLING CURRENT PERIOD

(\_\_\_\_\_ % OF TOTAL COSTS):

Prior Billing:

\$ \_\_\_\_\_  
\$ \_\_\_\_\_

I certify that the billed amounts are actual and in agreement with the contract terms.

Signature

Title

Date