

SUMMARY OF PROPOSED TERMS
Modifications of Bridge Zone Improvements and Bridge Zone Area Rights
North Wing Building

Overview

1. Pursuant to that certain Declaration of Covenants and Easements for the Denver Union Station Historic Station Zone and Related Areas made as of June 25, 2010 (as may have been amended, modified or supplemented, the "Declaration") made by Regional Transportation District ("RTD"), RTD granted various easements including temporary and perpetual easements in, over and along the Bridge Zone Area on the North Wing Parcel for the purposes of the construction, use, maintenance, repair and replacement of the Bridge Zone Improvements. Capitalized terms used herein but not defined have the meanings given to those terms in the Declaration.
2. By Agreement of Purchase and Sale dated as of January 29, 2010 between RTD and North Wing Building Venture, LLC ("NWBV"), NWBV purchased the North Wing Parcel. NWBV is in the process of designing the North Wing Building and related improvements. RTD and DUSPA (and not NWBV) have been responsible for design of the Bridge Zone Improvements to date, including the stairs and elevator (the "Stairs and Elevators") that will connect the remainder of the Bridge Zone Improvements to the below grade parking structure to be designed, constructed, owned and managed by NWBV (the "Parking Garage"). As an expedient to causing the completion of the Stairs and Elevators, RTD and DUSPA have agreed to have NWBV perform the balance of the design and construction of the Stairs and Elevators. Once completed, the Stairs and Elevators will provide public access to RTD's public passenger facilities at DUS, as well as access to the Parking Garage.
3. The provisions set forth below describe the proposed general terms of DUSPA, RTD and NWBV's rights and obligations as to the design, construction, use, operation and maintenance of the Stairs and Elevators.
4. These proposed terms are intended for discussion purposes only. Assuming the proposed terms are acceptable to the parties, it is anticipated that such terms will be incorporated into a definitive agreement, which would then serve as the basis for the necessary legal documentation. Until such legal documentation is executed by RTD, DUSPA, and NWBV, neither party shall be bound by the proposed terms hereof.

Summary of the Proposed Transaction

New Agreement

The parties (DUSPA, NWBV and RTD) will enter into an agreement regarding the design, construction, ownership and operation of Stairs and Elevators (the "Agreement") containing the following general terms:

1. Preparation, Review and Approval of Designs, Plans and Specifications. NWBV will cause its design consultants to prepare and DUSPA, RTD AND THE City and County of Denver

("City") will have the right to review and approve the designs, plans and specifications for the Stairs and Elevators. With guidance from RTD, DUSPA and the City, the designs, plans and specifications will be based upon DUSPA's existing plans and specifications as prepared by AECOM and will comply with the Federal Americans with Disabilities Act requirements and all City code requirements.

2. Construction of the Stairs and Elevators. NWBV will engage Haselden Construction, Inc. to construct the Stairs and Elevators in substantial compliance with the designs, plans and specifications approved by RTD, DUSPA and the City. NWBV shall be responsible for obtaining all applicable building permits and utility approvals. A construction schedule for the Stairs and Elevators will be agreed upon by the parties, but in any event the Stairs and Elevators shall be completed and approved for public use on or before December 31, 2013.

3. Compliance with Buy America and Davis-Bacon Act. NWBV will comply with the applicable Federal "Buy America" and Davis-Bacon Act prevailing wage requirements in connection with its procurement of any goods or services for the construction of the Stairs and Elevators. Other federal terms will apply and will be specifically delineated in the final contract; DUSPA has provided NWBV with Exhibits I & K from the Kiewit construction contract as a template for federal compliance terms in a final agreement.

4. Inspection of Completed Work. Following the completion of the Stairs and Elevators, DUSPA, RTD and the City shall inspect the work and prepare a punchlist of items that must be completed or repaired prior to the final approval of the work by RTD, DUSPA and the City. All parties will retain the right for inspection of the work while in progress.

5. Purchase and Sale of Stairs and Elevators.

a. As and when the Stairs and Elevators are completed, DUSPA, RTD and the City have accepted the work in writing and DUSPA has paid the purchase price (described below), RTD will accept in Stairs and Elevators for purposes of public access to and use of the Stairs and Elevators. The form of acceptance shall be determined as an addendum to the Agreement.

b. The purchase price for the Stairs and Elevators shall be \$848,000. This purchase price includes agreed upon warranties which at a minimum shall be one (1) year with a mandatory 11 month walk through inspection by RTD.

c. The Agreement will provide that RTD shall be responsible for the operation, maintenance, repair and replacement of the portion of the Stairs and Elevators above the grade of Wynkoop Plaza. NWBV shall be responsible for the improvements located below grade. NWBV will have right to perform RTD's obligations in event that RTD fails to perform. RTD will have the right to perform NWBV's obligations in the event NWBV fails to perform.

LEGAL MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

TO: DUSPA Board of Directors
FROM: Bookhardt & O'Toole
DATE: June 2, 2011
Re: TIF Support Policy

The DUSPA board currently has no policy regarding its provision of support for various projects that propose to generate TIF in the DDA in the Central Platte Valley. Historically, DUSPA has not issued any type of public support of projects, regardless of whether the project has clear benefits for the DUSPA project overall, or would otherwise be detrimental. In that DUSPA is now becoming more actively involved in the economic development aspects of the DUS project, it appears that the DUSPA board may wish to reconsider its practice regarding support, or withholding of support, of TIF development projects in the DDA area and that a simple, concise set of guiding principles should be developed as to when it will or will not support a new, potential TIF project. One expected benefit is that by providing (or withholding) support, the DUSPA board may be allowed an opportunity to suggest changes to a proposed project that will make the project more beneficial to the DUSPA project or the DDA, or that will make the proposed project more consistent with previously adopted plans.

General “Guiding Principles” (Policy Considerations Regarding Board Support for Various TIF Development Projects Around the DDA Area):

1. Non-Invasive Financing Structure.

Requests for support of TIF Development Projects that are related to or within the boundaries of the DDA should only be considered by the board if such projects provide either “stand alone” financings or are projects that will not require use of any TIF or other monies that have been allocated for use on the DUSPA project. The DUSPA board will consider supporting TIF and similar financing proposals for projects that are likely to: (1) lead to further development in the immediate vicinity; (2) provide significant improvement to the public infrastructure, or otherwise contribute to the attainment of planning and development goals of the DUSPA project; (3) and which bear sufficient risk and investment by the developer according to industry guidelines. The DUSPA board will consider management capacity, along with the overall development and financial capacity of the proposer along with the ongoing investment and risk.

2. Generation of Revenues and Highest Use.

Requests for support of TIF projects that are related to or within the boundaries of the DDA should only be considered by the DUSPA board if such projects can demonstrate, by pro forma or otherwise, the capacity to

generate adequate revenues to support such project and the DDA. The DUSPA board will not consider supporting projects that contribute to or result in low quality development projects (or projects that demonstrate a less than long-term commitment to project quality) or other undesirable uses or conditions; and the proposal must be consistent with any land use plan for the project area.

3. Consideration on an Ad Hoc Basis.

Specific criteria for review of projects presented for support by the DUSPA board will vary depending on the type of project request submitted. In all cases, the DUSPA board will support (or decline to support) projects based solely on its own discretion and on a case-by-case basis. The DUSPA board may consider: whether the such project includes evidence of community input and support of neighborhood groups or associations, if applicable; consistency with DDA plans for the area; project type and size; income mix; initial and ongoing investment by the developer; whether the management plan for the project ensures long-term commitment to the project quality; the track record of the development team; and consistent with any land use plan for the project area.

Fourth Amendment to DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement

This Fourth Amendment to the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement (Coordination Agreement) is entered into as of this ____ day of ____ 201~~12~~ for the purpose of transferring additional grant funds and construction funds from RTD to DUSPA and providing for their use in the DUS Project.

1. RTD applied for and was awarded a FASTER grant in the anticipated amount of \$4 million from the Colorado Department of Transportation (CDOT) for use in the renovation of the historic station building. Renovations to the historic station building have been budgeted and included in the DUS Project in the amount of \$17 million, which funds ~~for which~~ are not all presently available. ~~The Historic Stations~~ renovations are not eligible for federal grants or loans. RTD will transfer FASTER grant proceeds to the DUS Project and will provide for their use by drawing down and/or advancing funds to DUSPA for payment of costs and expenses~~bills~~ for historic station renovations. RTD will transfer only amounts received and RTD is not by this or any other agreement increasing the amount of FasTracks funds pledged to the DUS Project. The FASTER grant will require a local match of approximately \$1 million. RTD will not be responsible for the local match but DUSPA may use any funds otherwise payable from RTD to DUSPA including land sale proceeds or in kind RTD staff project management time or fees as match funds.

2. Pursuant to RTD's purchase of land at the Consolidated Main Line (CML) from 16 Chestnut LLC and related easement agreements, RTD anticipates receipt of funds of approximately~~about~~ ~~S~~seventy Two Thousand Dollars (\$72,000) for construction of a roadway at approximately 16th street and the CML. In consideration of DUSPA's construction of the roadway RTD will pay to DUSPA actual amounts received from 16 Chestnut LLC for construction of the road ~~to DUSPA~~. RTD anticipates receipt of these funds upon or after opening of the light rail station in approximately 2013.

3. RTD will continue to assist in preparation of all draws, payments and transfers of funds between RTD, DUSPA, CDOT and third parties as provided in the Second Amendment to the Coordination Agreement~~, as amended~~.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

**DENVER UNION STATION PROJECT
AUTHORITY**

By:_____

Elbra Wedgeworth

President

**REGIONAL TRANSPORTATION
DISTRICT**

By:_____

Phillip A. Washington

General Manager

Approved as to legal form for the Regional Transportation District

By:_____

EXHIBIT B

RTD's Estimated Costs for Budget Purposes

a. Hard cost for a SANS server storage Onetime	\$25,000
b. Setup DUSPA ledger consultant and staff	\$25,000
c. Accounting position July 1, 2010 to December 31, 2014	
(\$100,000 per year including benefits)	\$450,000
Total	\$500,000

FASTER TRANSIT GRANT FY 2011
DENVER UNION STATION
REGION 06

Contract Routing #
ID#

Comment [d1]:

PROJECT

INTERGOVERNMENTAL AGREEMENT CONTRACT

THIS AGREEMENT is made this _____ day of _____, 2011, by and between the STATE OF COLORADO for the use and benefit of THE DEPARTMENT OF TRANSPORTATION, Division of Transit and Rail, 4201 E. Arkansas Avenue, Denver, CO 80222 (hereinafter referred to as “**CDOT**”), the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202 (hereinafter referred to as “**RTD**”) and the DENVER UNION STATION PROJECT AUTHORITY, a Colorado non-profit corporation, c/o Trammell Crow Company, 1225 17th Street, #3050, Denver, CO 80202 (hereinafter referred to as “**DUSPA**”). CDOT, RTD and DUSPA 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 RTD costs in Fund Number 400, Appropriation Code 010, Organization Number 9991, Program 2000, Function **3301**, GL Acct. **4231200010**, WBS Element **18433.20.10**, (Contract Encumbrance Amount: **\$5,000,000.00**).

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 Historic Denver Union Station (“**DUS Historic Station**”) project as described in the Scope of Work attached as Exhibit A hereto (the “**Historic Station Project**”).

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3. CDOT, RTD and DUSPA 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 FASTER Transit Grant Program (the “FASTER Transit”) including a 20% local ~~matchshare~~ required to obtain the State funding;

b. RTD funding;

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 ~~Denver Union Station (“*DUS Project*”).~~ 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*.” The Historic Station itself, however, was not included in the federally funded project for DUS and at present is expected to be funded entirely with state and locally provided funds.

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5. RTD is identified to receive \$4 million in state funds for Fiscal Year 2011 from CDOT in the FASTER Transit program in support of renovating the ~~h~~Historic ~~Station~~DUS to accommodate Amtrak by Transportation Commission Resolution Number **TC-1936**. The ~~matchinglocal share ratio arrangement~~ for this state funding is 80% state funds to 20% local funds (“**20% local ~~matchshare~~**”). RTD will provide the required 20% local ~~matchshare~~. ~~The release of these state funds is contingent upon meeting the terms described in Recital paragraph 6 below.~~

6. ~~(Harry do we need this original language here in this paragraph or just what RTD has added? 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. This Historic Station Project is not part of the federally funded DUS Project and is limited to the Historic Station under RTD ownership. This work is being performed in conjunction with the DUS Pproject as an adjunct to the completion of the opening of the intermodal facilities and return of Amtrak to the Historic Station.~~

7. 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.

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

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~~8.9. This Intergovernmental Agreement is authorized by C.R.S. 29-1-203. DUSPA is a Colorado non-profit corporation organized and created by the City of Denver as a government owned business, serving as an public benefit corporation and an instrumentality of the City pursuant to City of Denver Ordinance No. 334.~~

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NOW, THEREFORE, IT IS HEREBY AGREED THAT:

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

Section 1. Scope of Work

1. The FASTER Transit funds will be used by RTD to fund Approved Project Element costs, including all the work described in Exhibit “A.” The requirement is that the

Approved Project Elements shall be funded with the \$4 million in FASTER Transit moneys, combined with the correct 20% local ~~match~~share supplied by RTD and payable by DUSPA pursuant to the DUSPA-RTD Initial Funding, Reimbursement and Project Coordination Agreement (Coordination Agreement) dated April 30, 2009, and all amendments thereto.

[Provide a copy]

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

3. Any change orders that impact the ~~DUS~~Historic Station 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.

Section 2. Roles and Responsibilities

1. RTD is responsible for:
 - a. With DUSPA, Ensuring completion of the Work.
 - b. With DUSPA, Obtaining and complying with all applicable permits and building requirements in completing the Work.
 - c. Coordinating with CDOT and DUSPA regarding compliance with all state requirements for the use of FASTER Transit funding.
 - d. Preparing, submitting and securing approval of any revisions to the required Project Plan of Finance which includes the federally funded DUS Project and

[the Historic Station Project](#) as a prerequisite for receiving state FASTER Transit 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 6](#)~~Section 7~~ of this Agreement. The invoices must detail charges for reimbursement from FASTER Transit funding and document the appropriate contribution of local matching funds required for use of the FASTER Transit 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 1.2](#)~~Section 2.3~~ and [Section 1.3](#)~~Section 2.4~~ 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 RTD in a manner consistent with [Section 6](#)~~Section 7~~ of this Agreement and consistent with all applicable federal and state rules.

b. Coordinating with and providing guidance to RTD, as needed, regarding RTD's responsibilities as set forth in [Section 2](#)~~Section 3~~ herein.

c. Coordinating with and providing guidance to RTD to allow RTD to comply with all state requirements for the use of FASTER Transit funding.

3. DUSPA is responsible for:

a. Coordinating with RTD, as needed.

a.b. [Performing all work and paying for all Project elements in the DUSPA Project budget which includes the federally funded DUS Project and the locally funded Historic Station Project pursuant to the Coordination Agreement.](#)

Section 3. 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 0Section 23 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 4. 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 RTD, CCD, CDOT, FTA and DUSPA.

Section 5. Project Funding Provisions

RTD and DUSPA, pursuant to the Coordination Agreement, shall provide ~~the~~ entire ~~share of the~~ 20% local ~~match~~ share for the FASTER Transit funding for the Project as outlined in Exhibit C at the time RTD and DUSPA commences construction of each of the Approved Project Elements, as set forth in Exhibit A hereto.

Section 6. Project Payment Provisions

1. The State will reimburse RTD for the state share of the Historic Station 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 RTD's Project Manager or designee.

2. CDOT will apply the FASTER Transit funds to reimburse RTD'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 RTD 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. RTD shall comply with all such principles. To be eligible for reimbursement, costs by RTD 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 RTD/DUSPA (i.e., the price paid minus any refunds, rebates or other items of value received by RTD/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. RTD 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 Historic Station Project funds are expended and costs accounted for in a manner consistent with this Agreement and Historic Station Project objectives.

a. All allowable costs charged to the Historic Station Project, including any approved services contributed by RTD 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 RTD including any item which is or will be chargeable against the Historic Station Project account shall be drawn up only in accordance with a properly signed voucher or electronic payment then on file in the office of RTD, 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. RTD will prepare and submit to CDOT, no more than monthly, invoices showing charges for costs incurred relative to the Historic Station Project. CDOT will reimburse RTD for eligible costs it has incurred on the Historic Station Project as defined in this Agreement. RTD'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.

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 RTD may be withheld at the discretion of CDOT until completion of final audit.

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

~~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 RTD, at CDOT's election. Harry refresh my memory on the common grant~~

rule. Does deleting this make us vulnerable to paying for inappropriate elements of the renovation of the historic station?

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Section 7. Applicable Labor Rates

It is understood that all labor and mechanics employed by RTD, the Owner 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 this Agreement deals solely with state FASTER Transit Grant XXXX funds. CDOT agrees to assist RTD in fulfilling its federal compliance requirements with respect to this Agreement. Harry, should we delete this paragraph?

Section 8. Record Keeping Requirement

RTD 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 RTD if requested. RTD 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 9. 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 RTD under this Agreement shall, at the option of CDOT, become its property, and RTD shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. RTD 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 RTD 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, RTD 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 10. Legal Authority

RTD and DUSPA 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 RTD and DUSPA to its terms. The persons executing this Agreement on behalf of RTD and DUSPA warrant that such persons have full authorization to execute this Agreement.

Section 11. Representatives and Notice

CDOT Region 6 (acting on behalf of CDOT) will provide liaison with RTD 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 RTD 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 RTD. 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:

Jim Paulmeno
CDOT FasTracks Liaison
1560 Lincoln Street, #700
Denver, CO 80202
(303) 299-2436

If to RTD

Jerry Nery
Project Manager
1701 Wynkoop
Suite 250
Denver, CO
80202

With copies to:
Mike Sullivan
Project Manager, DUSPA
1225 17th Street #3050
Denver, CO 80202
(303) 628-1719

Section 12. 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 RTD to another entity shall be subject to CDOT's prior written approval. Any such assignment shall not relieve RTD of responsibility for compliance with state and federal requirements with respect to the use of federal and state funds.

Section 13. 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 RTD that any such person or entity, other than CDOT or RTD receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

Section 14. 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 RTD or DUSPA, 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 15. 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 16. 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 17. 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 18. 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 RTD.

Section 19. 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 20. 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 RTD, the Project Manager- for DUSPA, and the CDOT Liaison to the Project.
 - b. CDOT's Region 6 Regional Transportation Director, RTD Assistant General Manager, Capital Programs 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 RTD and CDOT and shall not be binding until concurrence is obtained.~~

Comment [ms2]: Does this whole section need to be revised?

Section 21. Equal Opportunity Efforts

RTD 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 public projects ~~funded~~

~~by the DOT modal agencies,~~ including employees, businesses and the traveling public. RTD 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 Small~~ Business Enterprise Program, On-the-Job Training Program, Emerging Small Business Program, Americans with Disabilities Act and EEO Contract Compliance. RTD 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, RTD shall not discriminate on the basis of race, color, national origin or sex in the award and performance of this Historic Station Project.

~~Since RTD 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.~~

Comment [ms3]: This might have to stay DUSPA.

Section 232. Statewide Contract Management System

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §23 applies.

Grantee 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 Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies

and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee'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 Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee'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 Grant term. Grantee 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 Grantee 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 CDOT and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee 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 Grantee, by the Executive Director, upon a showing of good cause.

Section 243 Special Provisions

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

1. Controller's Approval. CRS §24-30-202(1). This Agreement 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 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, 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 Agreement. 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 Agreement. 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 Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement, including, without limitation, immediate termination of this Agreement 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 Agreement. 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]** ~~[DUSPA is a Colorado non-profit corporation organized and created by the City of Denver as a government owned business, serving as an public benefit corporation and an instrumentality of the City pursuant to City of Denver Ordinance No. 334.] [Need language about the applicability to public agencies]~~ Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the

employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, 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 Agreement 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 Agreement. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement 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 Agreement, (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 Agreement 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 Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year above written.

Regional Transportation District

By: _____
Phillip A. Washington, General Manager and CEO

Approved as to Legal Form

Marla L. Lien, General Counsel

Denver Union Station Project Authority

By: _____
Elbra Wedgeworth, President

Approved as to Legal Form

DUSPA Legal Counsel

State of Colorado, Department of Transportation

By: _____
Donald Hunt, Executive Director

Approved as to Legal Form

Comment [ms4]: This whole section should probably be changed too...

Colorado Attorney General

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This Agreement 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 this Agreement is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for goods and/or services provided.

**State Controller
David McDermott**

By: _____

EXHIBIT A – STATEMENT OF WORK

The Transit Unit used a template for its Senate Bill 1 grants and has updated it based on its experience to use for the FASTER Grant funds. This template is meant to be a guide for developing your scope so it includes all necessary information needed by the State. We encourage you to use language from your original application, but it's important to provide a clear picture in each section below.

Recipient Organization Information

Region Transportation District

Project Contact Information

Jerry Nery
Regional Transportation District
Denver Union Station – Project Manager
1701 Wynkoop Street, Ste. 250
Denver CO, 80202
303-299-6985 (direct)
303-573-4942 (fax)
Jerry.nery@rtd-fastracks.com

Project Overview

Denver Union Station (DUS) and its surrounding areas, is being transformed into a multimodal transportation hub, integrating bus transit, light rail, commuter rail and intercity rail (AMTRAK) as part of the RTD Fastracks program. The historic Denver Union Station will be the focal point of this hub.

The historic Denver Union Station will be renovated for current and future AMTRAK and transit passengers. Maintenance and rehabilitation of the exterior to preserve the historic façade and the structural integrity will be addressed. Upgrades to the interior train hall will be provided to facilitate the daily use by the AMTRAK and transit passengers.

Project Milestones:

- Notice to Proceed (IGA) July 01, 2011
- Request for Proposal (Design) November 2011
- Design Completion and Ready for Advertisement November 2012
- Notice to Proceed (Construction) March 2013
- Construction Completion March 2014

Project Budget and Funding

FASTER Grant

	Amount
Exterior Rehab	\$2 million
Interior train hall upgrades	\$1 million
Code upgrades/infrastructure upgrades within the building	\$1 million
Total	\$4 million*

*The 20% ~~matching local~~ funds of \$1 million are provided through DUSPA and will be payable from land sales.

Ongoing Operational Funding

Operating and maintenance of the facility will continue to be by RTD and the tenants of the building.

Project Timeframe

Construction will begin tentatively in March of 2013, and complete in March of 2014.

Specific Project Elements

In an attempt to meet the Vision of the DUS Multimodal Transportation Hub, DUS will need to undergo renovation. The renovation will address current code deficiencies that pertain to life safety and ADA accessibility, as well as infrastructure upgrade for the AMTRAK and transit passenger and the AMTRAK employees and building occupants.

The Historic designation of DUS, will require both design and construction firms, with specialty expertise in historic preservation.

State Interest

As Stewards of the FASTER funds, CDOT will ensure that the contracting, project development, and construction, meet the intent of the FASTER legislation.

RTD and DUSPA commits to ~~matching~~ providing the required local contribution of 20% along with the 80% -the FASTER Transit Funds share, at an 80% (FASTER Transit Grant fund) with 20% contribution to the Project.

All FASTER Transit Grant Funds are to be used only for elements included in the original grant application.

Project Measurement and Certification

To measure the effectiveness of this project, RTD will produce an assessment of existing conditions report. This report will focus on the attributes of the DUS that need to be addressed with this project. These attributes include but are not limited to: Building Code Deficiencies, aspects of life safety, and ADA access. Upon completion of the Project RTD Fastracks will reassess DUS, and record the progress, and any remaining issues that will be addressed or funded by other sources besides FASTER funds.

Comment [PM5]: This is awkward, I am trying to allude to that this is a historically sensitive project and not just your run of the mill warehouse conversion toooffice space.

Comment [PM6]: Not sure if this is appropriate, but this is my attempt to fill this section out. My license is in Engineering , not Law.

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 FHWA-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 a 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 of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. 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 worked 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.

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.

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

Renovating historic DUS consistent with Exhibit A, Scope of Work:

FASTER Transit FY 2011	\$4,000,000.00
Local <u>Matching Funds Share</u>	\$1,000,000.00

1. The matching local share ratio for the state participating funds for this project is 80% State Funds for FASTER Transit funds as outlined above. It is understood that such ratio applies only to the \$4,000,000.00 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 \$5,000,000.00, the Recipient shall pay all such costs. If the total participating cost of performance of the Work is less than \$5,000,000.00, 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 \$4,000,000.00 (for CDOT accounting purposes, the State Funds of \$4,000,000.00 and local matching funds of \$1,000,000.00 will be encumbered for a total encumbrance of \$5,000,000.00). 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 \$
			Current This Period	Total to Date	
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:				\$ _____	
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		