LEGAL MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

To:	**DUSPA Finance Committee**
From:	**Bookhardt & O'Toole**
Date:	**February 24, 2010**
Re:	**Summary of Agreements**
Matter:	**DUSPA/General**

Below are summaries of the documents that have been drafted, edited or amended and the Board Action that must be taken with regard to such documents.

1. **SB-1 Agreement** among CDOT, DUSPA and RTD provides for RTD, as the grant recipient of state S.B. 97-001 funds ("SB-1 Funds"), to assign the SB-1 Funds to DUSPA and allows for DUSPA as the designated recipient of such funds for the DUS Project to assume the rights to those funds. The SB-1 Funds will be used to fund Approved Project Element costs including Optimization of Downtown Circular Access and final design and construction of the Commuter Rail Facility and of RTD's Regions Bus Facility as set forth in the DUS Scope of Work, Exhibit A to the Agreement (the "Project Scope"). The Transportation Commission must approve any proposed alterations to the Project Scope that affect the Approved Project Elements.
   Board Action: The Finance Committee must approve this Agreement, and with the Board's consent, DUSPA will execute as a party pursuant to the direction of the Finance Committee.

2. **PNRS Agreement** among CDOT, DUSPA and RTD provides for CDOT, as the recipient of federal PNRS funds, to assigns the PNRS Funds to DUSPA [and RTD], and for DUSPA [and RTD] as the designated recipient[s] of such funds to assume the rights, to those funds. The PNRS Funds will be used to fund Eligible Activities for PNRS funding including final design and construction of the DUS Light Rail Improvements, the Below Grade Commuter Bus Facility, and the 18th Street Access and bus access ramp. Eligible Activities will be funded with PNRS moneys not already expended for preliminary design, in the correct ration with other funds available for the project's completion.
   Board Action: The Finance Committee must approve this Agreement, and with the Board's consent, DUSPA will execute as a party pursuant to the direction of the Finance Committee.

3. **Alex Brown Consulting Amendment** between DUSPA and Alex Brown (the "Consultant") amends the Consulting Agreement dated April 30, 2009 (the "Original Agreement") to include certain federal requirements, the addition of certain tasks to be

performed by the Consultant and the extension of the term of the Original Agreement. This Amendment commences in January, 2010, and ends_____, 2010 with an additional six-month optional extension upon the written approval of DUSPA. The Consultant will be paid a total fee for professional services in the amount of $48,000 (calculated based on a rate of $8,000 per month for six months) for work completed on behalf of DUSPA during the time period from January 1, 2010 to June 30, 2010. Additionally, DUSPA agrees to pay the Consultant $28,000 for extra time expended during the federal loan development and application stage under the Original Agreement. DUSPA also agrees to pay the Consultant financial modeling expenses of $35,000 for financial modeling through March 31, 2010. Federal Requirements have been included in this Amendment as Exhibit A.

Board Action: The Finance Committee must approve this Agreement, and with the Board's consent, DUSPA will execute as a party pursuant to the direction of the Finance Committee.

4. **Stadium District Lease Agreement** among the Denver Metropolitan Major League Baseball Stadium District and the Colorado Rockies Baseball Club, LTD (collectively the "Landlord"), and DUSPA serves as a lease for industrial office space for an annual rental of $140,000 due in equally monthly installments of $11,667 on the first day of each calendar month during the term. This lease applies to a location at 2010 Delgany Street, Denver, Colorado and an industrial building comprising approximately 9,550 sq ft. The license expires April 30, 2014.

   Board Action: The Finance Committee must approve this Agreement, and with the Board's consent, DUSPA will execute as a party pursuant to the direction of the Finance Committee.

5. **DUSPA/RTD Funding Agreement** between DUSPA and RTD provides that the incurrence of Project Costs by DUSPA will be deemed the RTD Loan. In consideration of DUSPA incurring Project Costs and making the RTD Loan, RTD will issue to DUSPA an RTD Bond. In repayment of the RTD Loan, RTD will pay all interest and principal on the RTD Bond to the extent of available RTD Pledged Revenues. RTD pledges to DUSPA the RTD Pledged Revenues to the extent such revenues are available. This Agreement and the RTD Bond are special and limited obligations of RTD subordinate to all RTD Senior Debt, whether currently outstanding or incurred or issued in the future by RTD. The obligation of RTD to pay the RTD Bond is subordinate to the Senior RTD Debt. Although the DUSPA Creation Ordinance and corporate purposes include taking such action as necessary with respect to the DUS Project, the actions associated with each stated purpose are permissible, to be taken by DUSPA ***as necessary***, and certain of these stated purposes may be carried out by RTD or other entities that exist to fulfill such express purposes. If DUSPA defaults, RTD may, to the extent permitted under the

provisions of the Design Build Agreement, take control of the construction, acquisition, improvement or equipping of the DUS Project, including assignment and assumption of DUSPA's rights and obligations under the Design Build Agreement with respect to the construction, acquisition, improvement or equipping of the DUS Project.

Board Action: The Finance Committee must approve this Agreement, and with the Board's consent, DUSPA will execute as a party pursuant to the direction of the Finance Committee.

PNRS Draft 2010-02-18
PROJECT DEMO HPP-C010-107, (17785)
REGION 06 / (GWH)

CONTRACT

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

FACTUAL RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and DUSPA costs in Fund Number 400, Appropriation Code 010, Organization Number 9991, Program 2000, Functions 3404 & 3020 & 3301, 3200 (construction function), GL Acct. 4231200011, WBS Elements 17785.20.10 (Contract Encumbrance Amount: Environmental $XXX.00, Design $XXX.00, Construction $XXX.00; Total Encumbrance $XXX.00).

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

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

a. Federal funding from the "Projects of National and Regional Significance" program ("PNRS") including an FHWA approved use of 20% local in-kind match in lieu of the 20% local match normally required in cash to obtain the PNRS funding;

b. RTD funding;

c. Federal Grant Funds including funds received under the American Reinvestment and Recovery Act (ARRA).

d. Other funds that may be secured including Federal Railroad Rehabilitation and Improvement Financing ("***RRIF***"), Transportation Infrastructure Finance and Innovation Act ("***TIFIA***") funds, tax increment financing and revenue bonds or other sources.

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

5. Pursuant to § 43-1-223, C.R.S. and to applicable portions of the Federal Provisions, CDOT is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by DUSPA under a contract with CDOT.

6. CDOT was identified in SAFETEA-LU (Section 1301) to receive $50.00 million in the Projects of National and Regional Significance (PNRS) program to develop DUS. Federal funding made available to CDOT under this PNRS program may be reduced by federal obligation limitation and CDOT is not responsible to make up for any reductions caused by federal obligation changes. In this PNRS funding, there is a 20% non-Federal matching requirement of RTD and DUSPA as the sponsors. It is agreed that such ratio only applies to such costs as are eligible for federal participation. In this instance, RTD and DUSPA have chosen to seek and through this document obtain approval for the use of an in-kind match as an FHWA approved alternative to providing a 20% non- Federal cash match. The ratio, however, will still apply. By this Agreement, CDOT asserts its right to assign the PNRS funds to DUSPA and RTD and DUSPA and RTD will become joint project sponsors. It is further understood that all federally non-participating costs shall be paid entirely by DUSPA out of non federal funds obtained by DUSPA. Release to DUSPA of the federal PNRS funds is contingent upon meeting terms described in Recital paragraph 12 below.
7. Under a previous IGA between CDOT and RTD dated June 6, 2008 $4,000,000 of PNRS funds were expended with a $1,000,000 local match provided by RTD. This agreement does not impact those funds and will reflect the reduced amount of PNRS funds remaining available for the project.

On June 30, 2008, the Denver City Council adopted the DUSPA Ordinance which authorized the creation of DUSPA as a non-profit public corporation governed by a Board comprised of thirteen directors, eight of whom (six voting and two non-voting) are appointed by the Mayor of Denver, two of whom are appointed by RTD, one of whom is appointed by CDOT, one of whom is appointed by the Denver Regional Council of Governments and one of whom is appointed by the DUS Metropolitan District No. 1. DUSPA's purpose is to finance, acquire, own, equip, design, construct, renovate, operate and maintain the DUS project as such project is described in the Final Environmental Impact Statement for DUS dated August 2008 ("***FEIS***") and in the Record of Decision dated October 17, 2008 ("***ROD***"), together with undertaking other improvements beyond the FEIS and ROD which may include DUS renovation, storm sewer design and construction and public plaza improvements. . Although the DUSPA Ordinance and stated organizational purposes include financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the DUS Project, the actions associated with each stated purpose are permissible, to be taken by DUSPA ***as necessary***, and certain of these stated purposes will be carried out by RTD or other entities that exist to fulfill such express purposes.

8. DUSPA is currently designated as the entity to handle day-to-day operations with regard to the DUS development on behalf of the public entities including RTD, CCD and CDOT.

9. DUS property is under ownership of RTD. The purchase of a portion of the property to be used for this Project is to serve as the 20% "in kind" match for the PNRS funds provided in this Contract. See Exhibit F reflecting FHWA's approval for use of right of way purchased by RTD for the "in kind" local match for PNRS funds and RTD's purchase price. 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.

10. 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. CDOT has also entered into a separate IGA dated xx February, 2010 for the provision of state funds from the Department's strategic transit program for the project. These state funds are not being used as a source to match the PNRS funds that are the subject of this Contract.

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

12. The U.S. Department of Transportation ("***DOT***") will require a Major Project Financial Plan ("***Plan of Finance***"), or equivalent financial document acceptable to DOT, and a Project Management Plan for this Project, including documentation of any assumed revenues from RRIF and TIFIA loan programs. DUSPA and the City and County of Denver ("CCD")

have agreed that responsibility for preparing, submitting and securing approval of that Plan of Finance, or equivalent document, will be DUSPA's and CCD's. DUSPA and CCD have also agreed to provide the Plan of Finance, or equivalent financial document, to CDOT for review prior to submitting it to the DOT for final consideration. Approval of any such required Plan of Finance, or equivalent financial document, by DOT is deemed by the FHWA as sufficient for release of its funds for the DUS project and is a prerequisite for the release to DUSPA of any federal funding from CDOT under this Agreement. DUSPA and RTD have provided a completed Project Management Plan which the FTA, on behalf of DOT, has reviewed. DUSPA has developed an internal draft finance plan for the coverage of Project costs and revenues (the "***DUS Plan of Finance***"). The DUS Plan of Finance provides several revenue sources for payment of Project costs, including approximately $45 million in PNRS funds, $4 million of which were previously expended for the project's preliminary design, as described in Recital 7.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

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

Section 1. **Assignment to DUSPA and RTD of Federal PNRS Funds**

1. CDOT, as the recipient of federal PNRS funds, described above in Recital 6, hereby assigns all of its right, title and interest in such funds to DUSPA and RTD. DUSPA and RTD are hereafter the designated recipients of the federal PNRS funds for the DUS Project.

2. DUSPA and RTD hereby assume all of the right, title and interest in and to such federal PNRS funds described above in Recital 0~~8~~.

Section 2. **Scope of Work**

1. The PNRS funds will be used by DUSPA to fund Eligible Activities for PNRS funding, including Final Design and Construction of the DUS Light Rail Improvements at Consolidated Main Line, Final Design and Construction of the Commuter Rail Facility, Final Design and Construction of the Below Grade Commuter Bus Facility, and Final Design and Construction of the 18th Street access and bus access ramp as shown on Exhibit A, the DUS Scope of Work. The requirement is that the Eligible Activities shall be funded with the PNRS moneys, not already expended for preliminary design, in the correct ratio with other funds available for the project's completion as shown in Exhibit C.

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

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

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

Section 3. **Roles and Responsibilities**

1. DUSPA is responsible for:

a. Ensuring completion of the Work.

b. Obtaining and complying with all applicable permits and building requirements in completing the Work.

c. Coordinating with CDOT and RTD regarding compliance with all federal requirements for the use of PNRS funding.

d. Preparing, submitting and securing approval of any required Project Plan of Finance as a prerequisite for receiving further federal PNRS funding, including, but not limited to, documentation of any assumed revenues from the RRIF or TIFIA loan programs as well as other funds dedicated to the completion of the Project.

e. Coordinating with all involved entities.

f. Preparing and submitting invoices to CDOT for work completed consistent with Section 7 of this Agreement. The invoices must detail charges for reimbursement from PNRS funding. The reimbursement will be at the correct ratio for the PNRS funds for this project and document that the invoices were paid in full to the vendors. .

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 Eligible Activities;

(ii) Percentage of funding expended on the Eligible Activities;

(iii) Any encountered or anticipated cost increases, the reason for any cost increases, a plan for completing the Eligible Activities in spite of cost increases;

(iv) Progress in completing the Eligible Activities, an explanation of any delays to meeting milestones for completing the Eligible Activities; and

(v) The plan for addressing any schedule delays or cost increases for the Eligible Activities.

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

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

2. CDOT is responsible for:

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

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

c. Coordinating with and providing guidance to DUSPA to allow DUSPA to comply with all federal requirements for the use of PNRS funding.

3. RTD is responsible for:

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

b. Providing the requisite documentation for the in kind match application to FHWA.

Section 4. **Order of Precedence**

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

a. Special Provisions contained in Section 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 5. **Term**

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

Section 6. **Project Funding Provisions**

RTD shall provide the documentation and supporting documents for the approval of an in kind match for the entire remaining portion of the PNRS funding for the Project as outlined in Exhibit C and Exhibit E prior to the final obligation of the PNRS funds and the issuance of a Notice to Proceed.

Section 7. **Project Payment Provisions**

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

2. CDOT will apply the PNRS funds to reimburse DUSPA's reasonable, allocable, allowable costs of performance of the Work completed solely on the Eligible Activities. This will occur subsequent

a. to signing this Agreement

b. subsequent to receiving federal authorization to obligate funds for this project. Federal approval includes USDOT approval of the project's plan of finance, FHWA approval of the request for use of an "in kind" match, FHWA review of this IGA and approval of a CDOT generated request for the obligation of funds in the FHWA's Financial Management Information System. No expenses incurred prior to designation as a federally participating project are eligible for reimbursement and the total amount of funds available for this project shall not exceed the maximum total amount set forth in Exhibit C.

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

a. Consistent with the Scope of Work as defined in Exhibit A;

b. In accordance with the provisions of Exhibit C and with the terms and conditions of this Agreement;

c. Necessary for the accomplishment of the Work;

d. Reasonable in the amount for the goods and services provided;

e. Actual net cost to DUSPA (i.e., the price paid minus any refunds, rebates or other items of value received by DUSPA that have the effect of reducing the cost actually incurred);

f. Incurred for Work performed after the effective date of this Agreement;

g. Are only for the portion of the costs eligible for the state match after deducting the local matching share; and

h. Satisfactorily documented. Satisfactory documentation shall include:

(i) Proof of payment: Cancelled checks or Cash or General Ledger showing payment;

(ii) Payroll: Timesheets that reflect time worked and salary or hourly pay;

(iii) Payroll Journal reflecting the time worked and salary or hourly pay; and

(iv) Expenditures: Expenditure ledger displaying the accounting coding of all incurred expenditures that are being billed, copies of invoices from vendors with proper approvals.

4. DUSPA shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and

integral part of its current accounting scheme) to assure that Project funds are expended and costs accounted for in a manner consistent with this Agreement and Project objectives.

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

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

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

6. To be considered for payment, billings for payment pursuant to this Agreement must be received within 60 days after the period for which payment is being requested and final

billings on the contract must be received by CDOT within ninety (90)~~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 DUSPA may be withheld at the discretion of CDOT until completion of final audit.

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

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

7. In the event the Project is not completed, RTD and DUSPA shall be jointly and severally liable for repayment of PNRS funds to CDOT.

Section 8. **Applicable Labor Rates**

It is understood that all labor and mechanics employed by DUSPA, [the Master Developer] or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the Project by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). It is also understood that construction undertaken with

federal financial assistance must comply with the provisions in Exhibit B attached hereto. The Parties recognize that the DUS Project will receive significant federal assistance that will require compliance with federal requirements. CDOT agrees to assist DUSPA in fulfilling its federal compliance requirements with respect to this Agreement.

Section 9. **Record Keeping Requirement**

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

Section 10. **Termination Provisions**

This Agreement may be terminated as follows:

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

2. Termination for Cause. If, through any cause, either party should fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if either party should violate any of the covenants, agreements or stipulations of this Agreement, the non-violating party shall thereupon have the right to terminate this Agreement for cause by giving written

notice to the violating party of its intent to terminate and at least sixty (60)~~ten (10)~~ days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by DUSPA under this Agreement shall, at the option of CDOT, become its property, and DUSPA shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. DUSPA shall be obligated to return any unused payments advanced under the provisions of this Agreement.

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

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

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

reflected in Exhibit C, the Scope of Work as defined in Exhibit A will be completed regardless of the shortfall, although such Scope of Work may be reduced or modified in correlation to such shortfall.

Section 11. **Legal Authority**

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

Section 12. **Representatives and Notice**

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

If to CDOT:

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

If to DUSPA:

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

With copies to:

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

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

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

Section 13. **Assignments and Successors**

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

Section 14. **Third Party Beneficiaries**

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

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

Section 15. **Governmental Immunity**

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

Section 16. **Severability**

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

Section 17. **Waiver**

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

Section 18. **Entire Understanding**

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

Section 19. **Survival of Contract Terms**

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

Section 20. **Modification and Amendment**

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

Section 21. **Disputes**

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

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

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

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

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

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

Section 22. **Equal Opportunity Efforts**

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

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

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

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

Section 23. **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. 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. 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.

Denver Union Station Project Authority

By: _____
Elbra Wedgeworth, President

Approved as to Legal Form

_____
DUSPA Legal Counsel

State of Colorado, Department of Transportation

By: _____
Russell George, Executive Director

Approved as to Legal Form

_____
Colorado Attorney General

Regional Transportation District

By: _____
Phil Washington, General Manager

Approved as to Legal Form

_____
Marla L. Lien, General Counsel

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

SCOPE OF WORK

Scope of Eligible Activities for PNRS funding. Costs shown are estimates in millions of dollars and include local match. Allowable line item costs may be modified with prior written approval by the CDOT project manager.

Denver Union Station Project:

Light Rail at the Consolidated Main Line (CML)	$ 15.2 M
Passenger Rail Improvements	$ 2.5 M
Below Grade Regional Bus Facility	$ 20.7 M
Street Improvements Necessary for DUS Terminal Access and Operation	$ 3.0 M
Right of way acquisition (in-kind local match)	$ 10.3 M
Total	$ 51.7 M

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

EXHIBIT B

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

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I.	General	B-1
II.	Nondiscrimination	B-1
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IV.	Payment of Predetermined Minimum Wage	B-4
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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 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 that 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 of 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

The Recipient of Federal PNRS Funds has estimated the total cost the Work to be $51,618,060.00 which is to be funded as follows:

1	**BUDGETED FUNDS**			
a.	Federal Funds (FY05-FY09 Sec 1301 @ 80% share) The allocations are from FY06-fy09. FY05 were the funds previously spent.	$41,294,448.00		
	Total Federal Funds			$41,294,448,000.00
b.	Local Match (FY05-FY07 Sec 1301 @ 20% share) (prior authorized right-of-way purchase to serve as in-kind local match)	$10,323,612.00		
	Total Recipient of Federal and State Funds Matching Funds for Federal Funds			$10,323,612.00
c.	Recipient of Federal and State Funds Overmatch	Where did this come from? This isn't a normal breakout….?		$0.00
d.	Recipient of Federal and State Funds Matching for CDOT – Incurred Non-Participating Costs			$0.00
	(Including Non-Participating Indirects)	Where did this come from? This isn't a normal breakout….?		
	TOTAL BUDGETED FUNDS			$51,618,060.00
2	**ESTIMATED CDOT-INCURRED COSTS**			
a.	Federal Share (80% of Participating Costs)			$0.00
b.	Local Share			
	Recipient of Federal and State Funds Share of Participating Costs	$0.00		
	Non-Participating Costs (Including Non-Participating Indirects)	$0.00		
	Estimated to be Billed to Recipient of Federal and State Funds			$0.00

	TOTAL ESTIMATED CDOT-INCURRED COSTS			$0.00
3	**ESTIMATED PAYMENT TO** Recipient of Federal and State Funds			
	a. Federal Funds Budgeted (1a)			$41,294,448.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			$0.00
	TOTAL ESTIMATED PAYMENT TO Recipient of Federal and State Funds			$41,294,448.00
	FOR CDOT ENCUMBRANCE PURPOSES			
	Total Encumbrance Amount $41,294,448.00 divided by 80%)			$51,618,060.00
	Less ROW Acquisition 3111 and/or ROW Relocation 3109			$0.00
	Net to be encumbered as follows: All is in 20.10.			$51,618,060.00
	WBS Element <<<<<>>>>>	Misc	3404	$51,618,060.00 51,618,060.00
	100% of it goes here! WBS Element <<<17785.20.10<<>>>>>	Const	3301	$0.00

A. The matching ratio for the federal participating funds for this project is 80% federal-aid funds (CFDA #20 2050) to 20% Local Funds provided by Recipient of Federal PNRS Funds, it being understood that such ratio applies only to the $51,618,060.00 ($41,294,448.00 Federal funds and $10,323,612.00 Recipient of Federal PNRS Funds Matching Funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Recipient of Federal PNRS Funds at 100%. If the total participating cost of performance of the Work exceeds $51,618,060.00, and additional federal funds are made available for the project, the Recipient of Federal PNRS Funds shall pay the required pro-rata of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Recipient of Federal PNRS Funds shall pay all such excess costs. If the total participating cost of performance of the Work is less than $51,618,060.00, then the amounts of Recipient of Federal PNRS Funds and federal-aid funds will be decreased in accordance with the funding ratio described herein.

B. The maximum amount payable to the Recipient of Federal PNRS Funds under this contract shall be $51,618,060.00 (For CDOT accounting purposes, the federal funds of $41,294,448.00 and local matching funds of $10,323,612.00 will be encumbered for a total encumbrance of $51,618,060.00), unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. 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 contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

C. The parties hereto agree that this contract is contingent upon all Recipient of Federal PNRS Funds designated for the project herein being made available from federal and/or state and/or Recipient of Federal PNRS Funds sources, as applicable. Should these sources, either federal or Recipient of Federal PNRS Funds, fail to provide necessary funds as agreed upon herein, the contract 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

Exhibit E

Checklist for Pre-approval of In-Kind Match*

I.

II. Part I

Project Numbers: STIP_____CDOT _____, FHWA _____,

CDOT Region _____Project Name/Location_____

Request Date_____, Local/Entity Requesting_____

Submitted to_____

In-Kind Match Contributor _____

Estimated Value of Match_____

Type of Match:

Real Property____ Design by 3rd party_____ Enhancement Project ____

Description of Match: (if other than ROW or Design by 3rd Party state basis of cost)

For 3rd party design the requesting entity signing below certifies that the selection process for the party providing the design complies with all applicable federal and state regulations.

_____ _____ _____

Entity Official Name & Title Entity Signature Date

III. Part II

The portion of the property required for this Federal Aid project followed the Uniform Act and has a FMV of _____. CDOT Region ____ ROW Manager verification / certification:

_____ _____ _____ ROW

Manager Name, Signature Date

Donated 3rd Party Design, cost of $_____ is reasonable. This design complies with all Federal requirements, as verified/certified by CDOT Region ____ Resident Engineer. RE signature required prior to NTP and phases other than design.

_____ _____ _____

Resident Engineer Name, Signature Date

Annual Audit Report received and reviewed by Region ____ Business Office. Date of Annual Audit Report _____ (Must be less than 24 months old)

_____ _____ _____

Business Manager Name, Signature Date

IV. Part III - ACTUAL

Total Project costs_____ Current STIP Federal $ amount_____

Maximum in kind match $_____, Maximum % _____

Amount of cash match_____

Approval Signatures: CDOT Business Manager _____

OFMB Federal Program Manager_____

FHWA Operations Engineer_____

FHWA Financial Manager_____

* (Must be completed prior to authorization of any phase by FHWA)

References: CFR 23 172 and 710.515, CFR 49 18.20 and 18.37

When completed: Original to Region Project File

Copies to: Business Office Project File
OFMB Project File
Accounting Project & Grants Manager
Accounting Project File
Local Entity
FHWA Fiscal File
FHWA Project File

Form last updated 2/20/04, (Previous editions usable)

AMENDED AND RESTATED
CONSULTING AGREEMENT

THIS AMENDED AND RESTATED CONSULTING AGREEMENT (this "Agreement") is made and entered into this _____ day of March, 2010, by and between the DENVER UNION STATION PROJECT AUTHORITY, a public, not-for-profit corporation, whose address is c/o William Mosher, Trammell Crow Company, 1225 17th Street, Suite 3050, Denver, Colorado 80202 ("DUSPA"), and ALEX BROWN CONSULTING, a sole proprietor, whose address is 4285 South Forest Court, Englewood, Colorado 80113 ("Consultant").

WITNESSETH:

WHEREAS, DUSPA requires the services of an experienced financial consultant to provide financial advice and analysis to DUSPA, including consulting on major projects, financial modeling for tax increment financing ("TIF") projects, financial impacts of TIF projects, bond issuance, intergovernmental grants, loans and financial agreements, and other related research and advice; and

WHEREAS, DUSPA believes the Consultant to be well able to undertake and perform such services for DUSPA, and desires to contract with the Consultant for the performing of such services as an independent contractor; and

WHEREAS, the Consultant was previously selected pursuant to a competitive process; and

WHEREAS, DUSPA and the Consultant entered into a Consulting Agreement dated April 30, 2009 (the "Original Agreement"); and

WHEREAS, the Consultant has performed in accordance with the terms of the Original Agreement and both DUSPA and the Consultant desire to extend the consulting relationship between the parties for an additional term; and

WHEREAS, Section 3 of the Original Agreement provides for the extension of the Original Agreement for two additional one year periods upon the written approval of DUSPA; and

WHEREAS, DUSPA and the Consultant desire to amend the Original Agreement to include: certain federal requirements, the addition of certain rights and tasks to be performed by the Consultant and the extension of the term of the Original Agreement; and

WHEREAS, the Consultant is ready, willing and able to undertake such services as an independent contractor; and

WHEREAS, the Consultant will sub-contract with other firms approved by DUSPA.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1. WORK TO BE PERFORMED: The Consultant, under the general direction of the Owner's Representative for DUSPA (the "Manager"), shall diligently perform the services and produce all the deliverables requested by the Manager and shall work in coordination with the Manager of Finance for the City and County of Denver and his designees. The work to be performed shall include all services presented by the Consultant in the proposal dated October 9, 2008, and the presentation to DUSPA dated November 3, 2008. Additional work shall be assigned by DUSPA, the Manager or other designated personnel as deemed necessary.

2. PROJECT MANAGEMENT:

A. *DUSPA* – The Consultant shall perform all work under the general direction of, and in coordination with, the Manager or other designated supervisory personnel. The Consultant agrees that during the term of this Agreement, it shall fully coordinate all services performed under this Agreement through the Manager or as otherwise directed by DUSPA. The Consultant shall submit deliverables, work product, correspondence, pay requests and all other documents related to this Agreement to the Manager. The Consultant shall also fully coordinate all services it performs with the City Finance Manager and any person or firm under contract with DUSPA doing work or providing services that affect the Consultant's work. The Consultant shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

B. *Consultant* – Alex G. Brown, of Alex Brown Consulting, shall be the principal-in-charge and single point of contact for the Consultant under this Agreement. It is understood and agreed that the Consultant will sub-contract with Fiscal Strategies Group and Public Resources Advisory Group as identified in the October 9, 2008 proposal for services submitted to DUSPA.

C. *Consultant's Information* – The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq*. In the event of a request to DUSPA for disclosure of such information, DUSPA shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, DUSPA will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant shall defend, indemnify and save and hold harmless DUSPA, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this provision including, but not limited to, prompt reimbursement to DUSPA of all reasonable attorney's fees, costs and damages that DUSPA may incur directly or may be ordered to pay by such court.

D. *Intellectual Property Rights* – DUSPA and the Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions and any other work or recorded information created by the Consultant and paid for by DUSPA pursuant to this Agreement, in preliminary or final forms and on any media (collectively "Materials"), shall belong to DUSPA. The Consultant shall disclose all such items to DUSPA. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq*., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in DUSPA at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Consultant hereby sells, assigns and transfers all right, title and interest in and to the Materials to DUSPA, including the right to secure copyright,

patent, trademark and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark or other intellectual property rights in perpetuity.

E. *Ownership of Work Product* – All plans, drawings, reports, submittals and other documents submitted to DUSPA or its authorized agents by the Consultant shall become and are the property of DUSPA, and DUSPA may, without restriction, make use of such documents and underlying concepts as it sees fit. The Consultant shall not be liable for any damage which may result from any use of such documents for purposes other than those described in this Agreement.

F. *Prohibition Against Employment of Illegal Aliens to Perform Work Under This Agreement* –

(i) This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended (the "Certification Statute"). Compliance by the Consultant and its subcontractors with the Certification Statute, and the execution of the 'Certification', Exhibit C, attached hereto and incorporated by reference are both expressly made a contractual condition of this Agreement.

(ii) The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Consultant shall not enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien or that fails to certify to the Consultant that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(iii) The Consultant represents, warrants and agrees that:

(a) It has verified or attempted to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration and U.S. Department of Homeland Security (the "Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into this Agreement, it shall apply to participate in the BPP every three

months until either it is accepted into the BPP or it has completed its obligations under this Agreement, whichever occurs first.

(b) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under this Agreement.

(c) If it obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs with or contracts with an illegal alien, it will notify such subcontractor and DUSPA within three days, and terminate such subcontractor if within three days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(d) It shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

(e) If the Consultant fails to comply with any provision of this paragraph 2.F, DUSPA may terminate this Agreement for breach and the Consultant shall be liable for actual and consequential damages to DUSPA.

3. **TERM**: Effective upon execution, the term of this Agreement shall be from January 1, 2010 to [_____, 2010], unless terminated earlier pursuant to this Agreement. The term of this Agreement may be extended by DUSPA for [two additional one year periods] upon the written approval of DUSPA.

4. **COMPENSATION AND PAYMENT**:

A. *Fees* –

(i) The Consultant shall be paid a total fee for professional services in the amount of $48,000 (calculated based on a rate of $8,000 per month for six months) for

work completed on behalf of DUSPA during the time period from January 1, 2010 to June 30, 2010.

(ii) The fee will be paid in equal monthly installments, subject to DUSPA's availability of funds. The Consultant acknowledges that funds may not be available to DUSPA to meet the equal monthly payment requirement. DUSPA agrees to use its best efforts to secure funding and will immediately pay amounts past due upon receipt of funds available for this purpose.

(iii) The amount of time spent by the Consultant working for DUSPA pursuant to the Original Agreement was in excess of the Consultant's original estimate. The Consultant expended considerable time working for DUSPA during the federal loan development and application stage. The fee for the Consultant's additional time is $28,000. Subject to the limitations outlined in this Section 4, DUSPA agrees to pay the Consultant $28,000 as a lump sum for the excess time spent working for DUSPA as set forth in this Section 4.A(iii).

(iv) In addition to the compensation set forth above, DUSPA shall pay the Consultant reasonable, actual expenses incurred in connection with the development of a financial model to date and through and including April 30, 2010. The Consultant has incurred and expects to further incur financial modeling expenses in the amount of $35,000. Subject to the limitations outlined in this Section 4, DUSPA hereby agrees to pay the Consultant the additional financial modeling fees set forth in this Section 4.A(iv). Preparation of any additional models will occur only upon written instructions from the Manager to the Consultant. It is understood that this work will be performed by Public Resources Advisory Group. If requested by the Manager, a written proposal for this scope of work, to include fees and expenses, shall be submitted by the Consultant to the Manager.

B. *Invoicing* – The Consultant shall, unless otherwise agreed upon, submit invoices to the Manager on a monthly basis.

C. *Expenses* – The Consultant shall be entitled to reimbursement of reasonable expenses incurred for travel, lodging, meals and related costs for out of state travel approved by DUSPA.

D. *Appropriation* – The parties agree that DUSPA's payment obligation, whether direct or contingent, shall extend only to funds appropriated by the DUSPA Board of Directors from the funds of DUSPA, and designated for the purpose of this Agreement. The parties agree that (i) DUSPA does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of DUSPA.

5. STATUS OF THE CONSULTANT: The parties agree that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform services for limited periods of time. It is not intended, nor shall it be construed, that the Consultant or its employees are employees or officers of DUSPA.

6. TERMINATION: DUSPA has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to the Consultant, signed by the Manager. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

In addition, DUSPA may immediately, by written notice to the Consultant, terminate this Agreement in the event the Consultant or any of its subcontractors, officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business.

The Consultant has the right to terminate this Agreement for cause by giving not less than thirty (30) days written notice to the Manager.

If this Agreement is terminated by the Consultant, or if this Agreement is terminated by DUSPA for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (i) the sum of the amounts contained in invoices which have been submitted to and

approved by DUSPA; (ii) the reasonable value to DUSPA of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment; and (iii) the cost of any work that is needed to accomplish an orderly termination of the Agreement and is approved in writing by the Manager. If this Agreement is terminated without cause and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination.

If this Agreement is terminated, DUSPA shall take possession of all materials, equipment, tools and facilities owned by DUSPA that Consultant is using by whatever method DUSPA deems expedient. The Consultant shall deliver to DUSPA all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by DUSPA; and these documents and materials shall be the property of DUSPA. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE." DUSPA shall use any and all such incomplete documents or incomplete data at its own risk.

Upon termination of this Agreement by DUSPA, the Consultant shall not have any claim against DUSPA by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

7. EXAMINATION OF RECORDS: The Consultant agrees that any duly authorized representative of the DUSPA, including auditors on behalf of DUSPA, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Consultant related to this Agreement.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by a party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other party. A party's action or inaction when any breach exists shall not impair or prejudice the remedy available to that party with respect to such breach as set forth herein. No assent, expressed or implied, to any breach of any provisions of this Agreement shall be deemed to be a waiver of any other breach.

9. INSURANCE:

A. *General Conditions* – The Consultant agrees to secure, at or before the time of execution of this Agreement, the insurance covering all operations, goods or services provided pursuant to this Agreement as set forth herein. The Consultant shall keep the required insurance coverage in force at all times during the term of this Agreement, or any extension, during any warranty period and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. The Consultant shall notify DUSPA immediately should any of the policies required herein be canceled or should any coverage be reduced before the expiration date thereof by sending written notice to the address specified herein, and a lack of the required insurance shall be deemed to be a default of the Consultant's obligations under this Agreement. If any policy is in excess of a deductible or self-insured retention, DUSPA shall be notified by the Consultant. The Consultant shall be responsible for the payment of any deductible or self-insured retention. DUSPA reserves the right to require the Consultant to provide a bond, at no cost to DUSPA, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. *Proof of Insurance* – The Consultant shall provide a copy of this Agreement to its insurance agent or broker. The Consultant further agrees to have its agent or broker provide proof of the Consultant's required insurance on www.ins-cert.com and link the information to DUSPA. DUSPA reserves the right to require the Consultant to provide a certificate of insurance, a policy or other proof of insurance as required by DUSPA.

C. *Additional Insureds* – For general liability insurance, the Consultant's insurer shall name DUSPA as an additional insured.

D. *Waiver of Subrogation* – For the commercial general liability insurance only, the Consultant's insurer shall waive subrogation rights against DUSPA.

E. *Sub-consultants* – The Consultant shall include all sub-consultants, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all sub-consultants maintain the coverages required by this Agreement. The Consultant agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by DUSPA.

F. *General Liability* – The Consultant shall maintain limits of $1,000,000 for each occurrence claim, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations for each occurrence, and $2,000,000 policy aggregate. All general liability insurance policies must provide the following:

(i) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Consultant shall notify DUSPA within ten (10) days and reinstate the aggregates required;

(ii) Unlimited defense costs in excess of policy limits;

(iii) Contractual liability covering the indemnification provisions of this Agreement;

(iv) A severability of interests provision;

(v) Waiver of exclusion for lawsuits by one insured against another;

(vi) A provision that coverage is primary; and

(vii) A provision that coverage is non-contributory with other coverage or self-insurance provided by DUSPA.

For all general liability insurance, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement, or the first date when any goods or services were provided to DUSPA, whichever is earlier.

G. *Automobile Liability* – The Consultant shall maintain combined single limits of $1,000,000 applicable to all vehicles operating on DUSPA property and elsewhere.

H. *Professional Liability* – The Consultant shall maintain a minimum of $1,000,000 of Errors and Omissions or other Professional Liability Insurance per claim and in the aggregate.

10. INDEMNIFICATION: The Consultant shall defend, release, indemnify and hold harmless DUSPA, its directors, officers, agents and employees as well as those professionals engaged by the Consultant who are employed by the City and County of Denver from and against: (1) any and all damages, including loss of use, to property, including DUSPA property, or (2) injuries to or death of any person or persons (including officers, agents and employees of DUSPA), and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses (including reasonable attorneys fees, expert witness fees and all associated defense fees), or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, directly caused by the acts or omissions of the Consultant or those performing under it in connection with its performance under this Agreement or its use or occupancy of real or personal property hereunder, including acts or omissions of the officers, employees, agents, contractors, representatives, invitees or licensees of the Consultant. The Consultant's obligation to indemnify or hold harmless DUSPA, its directors, officers, agents and employees under this paragraph shall not apply to liability or damages proximately caused by and apportioned to the negligence of DUSPA's officers, agents and employees.

This indemnity clause shall also cover DUSPA's defense costs, in the event that DUSPA, in its sole discretion, elects to provide its own defense. DUSPA retains the right to disapprove counsel, if any, selected by the Consultant to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for DUSPA's protection in the performance of this Agreement.

The Consultant shall require all contracts with subcontractors performing work under this Agreement to contain an indemnification provision identical to this Paragraph 10.

11. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties agree that DUSPA is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq*.

12. TAXES, CHARGES AND PENALTIES: The Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against DUSPA property, including but not limited to land, facilities, improvements or equipment.

13. ASSIGNMENT AND SUBCONTRACTING:

A. *Assignment* – The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Manager, which consent may be withheld at the sole and absolute discretion of the Manager. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock is transferred. Any attempt by the Consultant to assign or transfer its rights or obligations without the prior written consent of the Manager shall, at the option of the Manager, terminate this Agreement and all rights of the Consultant. Any assignment, and any consent thereto, shall not become effective until the assignee executes a document satisfactory to the Manager wherein assignee (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement.

B. *Subcontracting* – The Consultant agrees that it will not subcontract any of its obligations under this Agreement, except as specifically identified in Section 2.B of this Agreement, without first obtaining the written consent of the Manager, which consent may be withheld in the absolute discretion of the Manager. The Consultant shall submit to the Manager a request to subcontract, which sets forth the role of the proposed subcontractor in the specified Scope of Work. If DUSPA consents to the subcontract, such action shall not be construed to create any contractual relationship between DUSPA and the Consultant's subcontractor. The Consultant shall remain fully responsible to DUSPA according to this Agreement.

14. **NO THIRD PARTY BENEFICIARY**: The parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the parties. Nothing contained in this Agreement shall give any claim or right of action to any third person. The parties intend that any person other than DUSPA or the Consultant receiving services or benefits pursuant to this Agreement shall be deemed to be an incidental beneficiary only.

15. **NO AUTHORITY TO BIND DUSPA TO CONTRACTS**: The Consultant has no authority to bind DUSPA on any contractual matters. Final approval of all contractual matters that obligate DUSPA must be by DUSPA.

16. **AGREEMENT AS COMPLETE INTEGRATION AND AMENDMENTS**: This Agreement is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other modification shall have any force or effect, unless embodied in this Agreement in writing. Except as otherwise provided herein, no subsequent novation, renewal, addition, deletion or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the parties. No oral representation by any officer or employee of DUSPA at variance with the terms and conditions of this Agreement shall have any force or effect nor bind DUSPA. This Agreement and any amendments to it shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

17. **SEVERABILITY**: The parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by DUSPA, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of the parties can be fulfilled.

18. **CONFLICT OF INTEREST**: No director, official or employee of DUSPA shall have any personal or beneficial interest in the services described in this Agreement. The Consultant agrees not to hire or contract for services any director, employee or officer of DUSPA. The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed

current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of DUSPA. The Manager, in his or her sole discretion, shall determine the existence of a conflict of interest. If a conflict is found to exist, the Manager shall give the Consultant written notice describing the conflict. The Consultant shall have thirty (30) days from the date of the notice to eliminate or cure the conflict of interest in a manner acceptable to the Manager. If the conflict is not cured, the Manager may terminate this Agreement.

19. **NOTICES**: Notices required by this Agreement shall be deemed delivered if sent by the parties in the United States mail, postage prepaid, to the parties at the following addresses:

If to DUSPA:	Elbra Wedgeworth, President Denver Union Station Project Authority c/o Hogan & Hartson 1200 17th Street, Suite 1500 Denver, Colorado 80202
With copies to:	Cole Finegan and Dawn Bookhardt c/o Hogan & Hartson 1200 17th Street, Suite 1500 Denver, Colorado 80202
If to Consultant:	ALEX BROWN CONSULTING 4285 South Forest Court Englewood, Colorado 80013

The addresses may be changed by the parties by written notice.

20. **GOVERNING LAW; VENUE**: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

21. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of services under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual

orientation, marital status or physical or mental disability. The Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

22. **LEGAL AUTHORITY**: The Consultant represents and warrants that it possesses the legal authority to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Consultant represents and warrants that such person has been fully authorized by the Consultant to execute this Agreement on behalf of the Consultant and to validly and legally bind the Consultant to all the terms of this Agreement. DUSPA shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Consultant or the person signing this Agreement to enter into this Agreement.

23. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: Each of the parties acknowledge that they have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement was prepared by a particular party.

24. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement shall control.

25. **SURVIVAL OF CERTAIN PROVISIONS**: The parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify DUSPA shall survive for a period equal to all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters or actions begun within that period.

26. **FEDERAL REQUIREMENTS**: By entering into this Agreement, the Consultant hereby certifies to the truthfulness and accuracy of each statement of any certification and disclosure as set forth in Exhibit A hereto and the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq*., apply to the certification and disclosure as set forth in

Exhibit A hereto. The Consultant also agrees that those provisions set forth in Exhibit A hereto are hereby incorporated by reference as though fully set forth herein.

27. COMPLIANCE WITH ALL LAWS: All of the services performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States, the State of Colorado and with the charter, Code, ordinances, rules and regulations of the City and County of Denver.

28. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by DUSPA. The Manager shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of DUSPA, including without limitation directors and the Manager.

29. DUSPA EXECUTION OF THIS AGREEMENT: This Agreement shall not be binding on DUSPA until it has been fully executed by all signatories of DUSPA.

30. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

DENVER UNION STATION PROJECT AUTHORITY

By:_____

Name:_____

Title:_____

"DUSPA"

ALEX BROWN CONSULTING

By:_____

Name:_____

Title:_____

"Consultant"

EXHIBIT A

CERTIFICATIONS AND FEDERAL REQUIREMENTS

Lobbying

The Consultant certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

Access to Records and Reports

The following access to records requirements apply to this Agreement:

1. The Consultant agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this

contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Owner is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Consultant agrees to provide the Owner, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Owner enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Consultant agrees to provide the Owner, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Owner which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Consultant shall make available records related to the contract to the Owner, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Consultant shall at all times comply with all applicable federal regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the

term of this contract as they are communicated to Consultant by any of the Partner Agencies or Owner.

No Government Obligation to Third Parties

(1) The Owner and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Government-Wide Debarment and Suspension (Nonprocurement)

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant verifies that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Consultant shall comply with 49 CFR 29, Subpart C and agrees to include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, the Consultant certifies as follows:

> The certification in this clause is a material representation of fact relied upon by the Owner. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Consultant agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement or any contract that may arise therein The Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Disadvantaged Business Enterprise (DBE)

1**.** This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. DUSPA's overall aspirational Project goal for DBE participation is [12%]. A separate contract goal has not been established for this Agreement.

2. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DUSPA deems appropriate. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

[3. ***{If a separate contract goal has been established for a contract, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

a. The names and addresses of DBE firms that will participate in this contract;

b. A description of the work each DBE will perform;

c. The dollar amount of the participation of each DBE firm participating;

d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

e. Written confirmation from the DBE that it is participating in the contract as provided in the prime Consultant's commitment; and

f. If the contract goal is not met, evidence of good faith efforts to do so.]

Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.