



**NOTICE TO BIDDERS  
REQUEST FOR BIDS (RFB) FOR  
BATTERY ELECTRIC BUS CHARGER INSTALLATION (PHASE 3)  
FOR THE TOWN OF CHAPEL HILL, NORTH CAROLINA**

DATE: Wednesday, March 5, 2025  
BID: Q25-151  
TO: All Prospective Bidders  
FROM: Purchasing & Contracts Manager  
SUBJECT: Battery Electric Bus Charger Install Phase Three  
TYPE: Construction  
PROPOSALS ARE DUE: **Tuesday, March 25, 2025, by 2:00 pm ET**  
LOCATION: Proposals Due Via Electronic Submission

Pursuant to Section 143-131 of the General Statutes of North Carolina, sealed proposals for the **BATTERY ELECTRIC BUS (BEB) CHARGER INSTALLATION (PHASE 3)** (the "Project") to be furnished to the Town of Chapel Hill, N.C. will be received by electronic submission to Purchasing Manager Zakia Alam at [zalam@townofchapelhill.org](mailto:zalam@townofchapelhill.org) by **Tuesday, March 25, 2025, no later than 2:00 pm ET**.

**Project Summary:** The purpose of this project is to install additional equipment (to be supplied by the Town of Chapel Hill) to support the charging of Chapel Hill Transit's Battery Electric bus.

Prospective bidders may view the plans and specifications for the proposed project on the Town of Chapel Hill website ([www.townofchapelhill.org](http://www.townofchapelhill.org)). Click on "Businesses" menu, then "Bid Notices" option, then the name of this project).

A **mandatory** pre-bid conference will be held on **Wednesday, March 12, 2025, at 2:00 pm ET** in the 2<sup>nd</sup> Floor Conference room at the Howard and Lillian Lee Transit Center, 6900 Millhouse Rd, Chapel Hill, NC 27516. A visit to the site will be offered immediately following the pre-bid conference. All potential bidders are notified that attendance at the mandatory pre-bid conference is required for bid submittal, and failure to attend will disqualify the bid.

Any additional questions that arise after the pre-bid conference **must be emailed in writing to Bobbiette Glover, Procurement Analyst & DBELO**, Chapel Hill Transit, at [bglover@townofchapelhill.org](mailto:bglover@townofchapelhill.org) by March 13, 2025, by 5:00 pm ET. The subject line in the email shall read "**Bid Q25-151: BATTERY ELECTRIC BUS (BEB) CHARGER INSTALLATION (PHASE 3)**". Responses to all questions received will be published as an addendum on the Town's website at [www.townofchapelhill.org](http://www.townofchapelhill.org) by **Monday, March 17, 2025, by 5:00 pm ET**.

For questions on the bidding procedures, contact the Town's Purchasing Division at 919-969-5022.

**The Town of Chapel Hill reserves the right to reject any and all bids for any reason or no reason and to accept the bid most favorable to the Town of Chapel Hill. Bids must remain valid for 60 days after the public bid opening date.**



**INSTRUCTIONS TO BIDDERS  
REQUEST FOR BIDS (RFB) FOR  
BATTERY ELECTRIC BUS CHARGER INSTALLATION (PHASE 3)  
FOR CHAPEL HILL TRANSIT, NORTH CAROLINA**

DATE: Wednesday, March 5, 2025  
BID: Q25-151  
TO: All Prospective Bidders  
FROM: Purchasing & Contracts Manager  
SUBJECT: Battery Electric Bus Charger Install Phase Three  
TYPE: Construction  
PROPOSALS ARE DUE: **Tuesday, March 25, 2025, by 2:00 pm ET**  
LOCATION: Town Hall - 405 MLK JR. BLVD, Chapel Hill, NC 27514

**This bid package includes the following documents:**

- Notice to Bidders
- Instructions to Bidders
- Project Overview
- Bid Proposal Forms
- Certifications and Affidavits
- Contract between Owner & Contractor (sample contract)
- **Exhibit B** – Federal Terms and Clauses
- **Scope of Work:** See Attachment 1 from PDC
- **Technical Specifications** See Attachment 2 from PDC
- **General Conditions to Contract**

**Projected Project Schedule:** The Town's goal to use the following schedule if possible:

<b>Bid Request Issued</b>	Wednesday, March 5, 2025
<b>Mandatory</b> pre-bid conference (in-person meeting/tour)	<b>Wednesday, March 12, 2025, at 2:00 pm ET</b>
Questions Due from vendors	Thursday, March 13, 2025, by 5:00 pm ET
Addendum to RFP posted to Town website	Monday, March 17, 2025, by 5:00 pm ET
<b>Bid Proposals due (via email)</b>	<b>Tuesday, March 25, 2025, by 2:00 pm ET</b>
Proposal reviews complete and Contract award	Tuesday, April 4, 2025, by 5:00 pm ET
Notice to Proceed (by or before the date listed)	Monday, April 21, 2025, by 12:00 pm ET
Project Completion Date	180 Days after the project starts.

**Contacts:**

**Project Manager:**  
Peter Aube, Maintenance Manager  
Chapel Hill Transit  
Email: [paube@townofchapelhill.org](mailto:paube@townofchapelhill.org)

**For Questions about Bidding Procedures:**  
Zakia Alam  
Purchasing and Contracts Manager  
Email: [zalam@townofchapelhill.org](mailto:zalam@townofchapelhill.org)

## **PROJECT OVERVIEW**

*See Attachments 1 & 2 For Full Scope and Technical Specifications*

### **OVERVIEW:**

The Town of Chapel Hill invites bids for the installation of charging infrastructure to support its Battery Electric Bus (BEB) fleet. This project involves the installation, connection, and commissioning of BEB chargers supplied by the Town at the designated location. All work must adhere to applicable federal, state, and local regulations, including FTA requirements and the Town's procurement policies. The scope includes, but is not limited to:

### **KEY TASKS:**

1. **Site Preparation:**
  - Perform site excavation, grading, and foundation preparation as required.
  - Ensure compliance with environmental, safety, and zoning regulations.
  - Coordinate with utility providers to ensure minimal disruption during electrical tie-ins and testing.
2. **Electrical Installation:**
  - Install electrical conduits, cabling, and switchboards in accordance with project plans (**Attachments 1 & 2**) and applicable codes (e.g., NEC and North Carolina Building Code).
  - Integrate the chargers with the existing electrical infrastructure.
3. **Charger Installation and Commissioning:**
  - Assemble and install the Town-provided chargers as specified in project plans, ensuring proper alignment and stability.
  - Perform system testing and commissioning, including validation of electrical loads and communication protocols.
4. **Inspections and Compliance:**
  - Obtain all required permits.
  - Schedule and complete inspections with relevant authorities.
  - Provide documentation of compliance with Buy America, Davis-Bacon Act, and any other applicable federal requirements upon request.
5. **Project Closeout:**
  - Provide detailed documentation of all installed components, including conduit routing, cabling, and equipment connections. Include final inspection certificates.
  - Submit a comprehensive operation and maintenance manual for the installation work, including warranty documentation for work performed.

### **Timeline:**

The project must be completed within 180 calendar days from the issuance of the Notice to Proceed.

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## SUBMISSION REQUIREMENTS & EVALUATION CRITERIA

Bidders must prepare and submit their proposals in the following format to ensure consistency and ease of evaluation:

1. **Cover Letter:**
  - Provide a brief introduction, including company name, address, contact information, and a statement of interest in the project.
2. **Scope Confirmation and Timeline:**
  - Describe your approach to completing the project, including a detailed timeline with milestones.
  - Provide a summary of your experience with similar projects, highlighting key personnel qualifications.
3. **Cost Proposal:**
  - Include completed Bid Proposal Form with itemized pricing for labor, materials, equipment, and any additional costs.
4. **References:**
  - Provide at least three references from similar projects, including contact details and a brief description of the work performed.
5. **Compliance Documentation:**
  - Bid Proposal Forms & Acknowledgement of receipt of all addenda
  - Non-Collusion Affidavit
  - Certification Regarding Debarment and Suspension
  - Certification of Restrictions on Lobbying
  - DBE Participation Forms
  - Certification of Buy America Compliance
6. **Submissions:**
  - Submit signed proposal titled “**Bid Proposal Q25-151 – BEB Charger Installation (Phase 3)**”.
  - Submissions will be accepted by electronic mail up until the time stated for the Bid due date.
  - Late submissions will not be accepted.

### EVALUATION CRITERIA:

#### 1. Responsiveness:

- A bid will be considered responsive if all required documents are submitted, including:
- Bid Proposal Form.
- All included federal documentation.
- References from at least three similar projects, including contact information and project descriptions.

Non-responsive bids will not be evaluated further.

#### 2. Responsibility:

- The Town reserves the right to verify bidder qualifications, including reference checks, prior project performance, and regulatory compliance.
- Bidders must demonstrate the capability to perform the work in a timely and professional manner.

#### 3. Award:

- The contract will be awarded to the lowest responsive and responsible bidder.

**PLEASE READ ALL INSTRUCTIONS CAREFULLY**  
**BEFORE PREPARING AND SUBMITTING YOUR BID**

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.

**I. PRE-SUBMISSION PROCEDURES:**

**A. Questions/Requests for Interpretations.** Bidders in doubt as to the meaning of any part of the instructions, specifications, or other documents furnished with or referenced by these Instructions may submit questions in writing to Bobbiette Glover at [bglover@townofchapelhill.org](mailto:bglover@townofchapelhill.org) by the "Questions Due" date and time specified above. **No further requests for interpretation will be accepted after the deadline.**

**B. Pre-Bid Conference.** A mandatory pre-bid conference will be held on **Wednesday, March 12, 2025, at 2:00 p.m. in the 2nd Floor Conference Room at the Howard and Lillian Transit Facility, 6900 Millhouse Rd, Chapel Hill, NC 27516.** All potential bidders are hereby notified that attendance at the pre-bid conference is required for bid submittal. A visit to the site will be offered immediately following the pre-bid conference.

**C. Addenda.** All responses to timely submitted questions and requests for interpretations will be published in the form of an addendum of the Town's website at [www.townofchapelhill.org](http://www.townofchapelhill.org) by the end of the day on Monday, March 17, 2025, **by 5:00 pm ET.** Bidders shall ascertain that they have received all addenda issued and shall acknowledge their receipt on the Formal Bid Proposal Form furnished with the specifications.

**D. Expectations for Contract.** It is intended that the successful bidder shall furnish all tools, equipment, machinery, apparatus, labor, and materials necessary to complete all work required under the terms of such contract(s) as may be entered into.

**II. SUBMISSION OF BIDS:**

**A. Receipt of Bids.** Proposals for the furnishing of labor, materials, equipment, and services for the construction of the Project will be received by the Purchasing & Contracts Manager via electronic delivery to [zalam@townofchapelhill.org](mailto:zalam@townofchapelhill.org) **until Tuesday, March 25, 2025, by 2:00 pm ET.** In the email subject line, bids shall be titled **"Q25-151 Bid Proposal – Battery Electric Bus Charger Installation (Phase 3)"**.

**B. Bid Opening.** This will not be a public bid opening. Bids will be received via email.

**C. Licenses.** Bidders are hereby notified that Chapter 87 of the North Carolina General Statutes will be observed in receiving and awarding the Contract(s). Accordingly, Bidders must have proper license(s) under the State laws governing their respective trade(s).

**D. Bid Proposal Form.** Bids shall be submitted on the Bid Proposal Form furnished with the specifications and must be completed in ink or typewritten without erasure, interlineations, or changes. All prices shall be stated in numerals. In case of conflict, unit prices will take precedence over unit price extensions.

**E. Execution of Bids.**

1. **Corporations.** Bids by corporations shall be executed in the corporate name by the President or Vice-President (or other duly authorized corporate officer accompanied by evidence of authority to sign), and the corporate seal be affixed and attested by the Secretary or Assistant Secretary of the corporation. The officer's signature shall be notarized. The corporate address and state of incorporation shall be shown above the signature.

2. **Partnerships.** Bids by partnerships must be executed in the partnership name and signed by a partner, the partner's title must appear under the partner's notarized signature, and the official address of the partnership and the names of all partners must be typed or printed below the signature.
3. **Other Business Entities.** Bids other than by corporations or partnerships shall be executed by the owner of the firm submitting a bid, in the presence of a notary public whose signature and seal attest said signature.

**F. Disadvantaged Business Enterprises.** The Town of Chapel Hill has a **1.7% DBE participation goal** for federally funded projects, meaning bidders must either meet this goal through DBE subcontracting or demonstrate Good Faith Efforts (GFE) to do so.

See **Exhibit B, Federal Terms and Clauses**, for additional information. All required documents must be included with the bid at the time of submission. **Note:** Bidder must provide proof of timely payments to DBE subcontractors and submit monthly payment reports, if applicable to this project, including invoice numbers, amounts paid, and payment dates upon request by the Town of Chapel Hill.

**G. Familiarity with Project Conditions.** Bidders are required to and shall inform themselves fully of the conditions relating to the construction project and labor under which the work will be performed, and a contractor must employ, insofar as is possible, such methods and means in carrying out the work so as not to cause any interruption and/or interference with any other contractor(s).

**H. Sales Tax.** All bid prices shall include sales taxes.

### **III. MINIMUM REQUIREMENTS FOR CONTRACT EXECUTION AND PERFORMANCE:**

**A. Form of Contract.** The contract to be awarded as a result of this RFB will be in substantially the same form and content as the sample "Contract between Owner and Contractor" included in this bid package. In the event that additional terms and conditions are proposed to be attached to said contract, there shall be none of the following unless Town's express prior written agreement is obtained: (i) any limitation on, or disclaimer of, implied or express warranties or the liability of Contractor; (ii) any limitation on damages, including a limitation on consequential damages; (iii) any requirement for arbitration or for mandatory mediation; (iv) any requirement that Town officials or employees keep information confidential or that records be kept confidential by the Town, unless the requirement for confidentiality meets the requirements of the North Carolina Public Records law.

**B. Federal Requirements.** Unless indicated otherwise below, all provisions in the Contract between Owner and Contractor related to federal requirements, including Davis-Bacon Act provisions, apply.

**C. Insurance Provisions.** The successful bidder shall procure and maintain during the life of the contract the Insurance Provisions as outlined in Article 33 of the General Conditions of the Contract for Construction. Required coverage limits will be 1) Commercial General Liability and Business Automobile - \$1,000,000 per occurrence and 2) Workers' Compensation - \$100,000 for both employer's liability and bodily injury by disease for each employee and \$500,000 for the disease policy limit. The Town shall be named as an additional insured for Commercial General Liability and Business Automobile policies. Based on nature of services to be provided by the contractor and assessment of risk posed to the Town, the Town may require evidence of supplementary insurance coverages.

**D. Commencement of Work.** The successful bidder will be required to commence work immediately upon receipt of the owner's Notice to Proceed.

**E. Time to Complete Work.** The project must be completed within 180 calendar days from the issuance of the Notice to Proceed.

**F. Billing and Payment.** The Contractor shall submit a bill to the Town for work performed or goods delivered under this contract. The Contractor shall bill, and the Town shall pay the rates set forth therein. Payment will be made by the Town within thirty (30) days of receipt of an accurate invoice, approved by the Contract Coordinator.

**BID PROPOSAL FORM**

**Bid: Q25-151**

Battery Electric Bus Charger Installation (Phase 3)

Town of Chapel Hill

Transportation Department

Chapel Hill, NC

Bidder: \_\_\_\_\_

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

To: Purchasing & Contracts Manager  
Town of Chapel Hill  
405 Martin Luther King Jr. Blvd.  
Chapel Hill, NC 27514

The undersigned, as Bidder, proposes and agrees if this proposal is accepted to contract with the Town of Chapel Hill for the furnishing of all materials, equipment, and labor necessary to complete the construction of the work described in these documents in full and complete accordance with plans, specifications, and contract documents, and to the full and entire satisfaction of the Town of Chapel Hill and Progressive Design Collaborative LTD. for the sum of:

Total Project Bid:	_____ dollars	(\$ _____)
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**The Town of Chapel Hill reserves the right to remove any work from the contract and its corresponding Base Bid.**

The undersigned further agrees that this proposal shall be valid for a period of sixty (60) days from the date of receipt of the bids and that if this proposal is accepted by the Town of Chapel Hill within this period, the Bidder will execute the contract.

The undersigned further agrees to begin the work promptly upon receipt of the Notice to Proceed and to pursue the work with an adequate workforce to complete the work within 180 days from Notice to Proceed to substantial completion.

The undersigned further acknowledges receipt of the following addenda, which will be considered as part of the Contract Documents:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

[SIGNATURES ON FOLLOWING PAGE.]

**BID PROPOSAL FORM**

**Bid: Q25-151**

Battery Electric Bus Charger Installation (Phase 3)

Town of Chapel Hill

Transportation Department

Chapel Hill, NC

**SUBMITTED BY THE FOLLOWING CORPORATION:**

Name of Corporation: \_\_\_\_\_

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

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

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

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

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

Contractor License No. \_\_\_\_\_

ATTEST:

CORPORATE SEAL

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

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of \_\_\_\_\_,  
\_\_\_\_\_ County, certify that \_\_\_\_\_, personally came before me this day and acknowledged  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and that by  
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by  
\_\_\_\_\_, its \_\_\_\_\_, sealed with its corporate seal and attested by him/her as its  
\_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



**BID PROPOSAL FORM**

**Bid: Q25-151**

Battery Electric Bus Charger Installation (Phase 3)

Town of Chapel Hill

Transportation Department

Chapel Hill, NC

**SUBMITTED BY THE FOLLOWING PARTNERSHIP:**

Name of Partnership: \_\_\_\_\_

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

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

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

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

List of all Partners: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor License No. \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of \_\_\_\_\_,  
\_\_\_\_\_ County, certify that \_\_\_\_\_ personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**BID PROPOSAL FORM**

**Bid: Q25-151**

Battery Electric Bus Charger Installation (Phase 3)

Town of Chapel Hill

Transportation Department

Chapel Hill, NC

**SUBMITTED BY THE FOLLOWING BUSINESS ENTITY OTHER THAN CORPORATION OR PARTNERSHIP:**

Name of Business Entity: \_\_\_\_\_

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

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

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

Business Entity Address: \_\_\_\_\_

Contractor License No. \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of \_\_\_\_\_,  
\_\_\_\_\_ County, certify that \_\_\_\_\_ personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**NON-COLLUSIVE AFFIDAVIT– To be Returned with Offer**

The undersigned as Bidder, hereby declares that the only person(s) interested in this quote as principals (s) are named herein and that no other person than herein mentioned has interest in this proposal or in the contract to be entered into; that this quote is made without connection with any other persons, company or parties making a bid or proposal and that it is in all respects fair and in good faith without collusion or fraud.

1. The Bidder further declares it can complete the work as specified in the request for bids at the rates included in its bid. The Bidder further declares itself informed of the applicable FTA contract clauses and has read all special provisions furnished before the solicitation of bids that is satisfied relative to the work to be performed.
2. The Bidder further declares that it received and examined the bid material and will abide by these requirements in performing the work.
3. The Bidder proposes and agrees, if this bid is accepted, to contract with the Town of Chapel Hill, to furnish all necessary materials, equipment, and labor necessary to deliver the repair specified in the request for bid to the full and entire satisfaction of the Town of Chapel Hill.
4. The undersigned Bidder hereby agrees that the Town of Chapel Hill reserves the right to reject any and all bids when such rejection is in the best interest of the Town of Chapel Hill. The bid will be awarded to the lowest responsive and responsible bidder. Bids shall be evaluated on a low price technically acceptance basis. Successful bidder(s) will be those that provide the lowest price and conform to the requirements specified herein.

Submitted the \_\_\_\_\_ day of \_\_\_\_\_, 2025

BY:

Firm Name	
Signature of bidder	
Printed name & title	

**CERTIFICATION OF PRIME CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY  
MATTERS – To be Returned with Offer**

The Prime Contractor, \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (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;
3. 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 (2) of this certification; and
4. Have not within a three (3) year period preceding this bid/quote/proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

If the above-named Prime Contractor is unable to certify to any of the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Prime Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq. are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

**CERTIFICATION OF RESTRICTIONS ON LOBBYING – To be Returned with Offer**

I, \_\_\_\_\_, \_\_\_\_\_, hereby certify on behalf of  
(Name) (Title)

\_\_\_\_\_ that:  
(Firm)

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

This certification is a material representation of fact upon which reliance is 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.

Dated \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Firm)

**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS FOR THE PARTICIPATION OF  
DISADVANTAGED BUSINESS ENTERPRISES (DBE's)**

The Contractor hereby certifies that it will comply with the requirements of Section 19 of the FTA Act, Section 105(f) of the Surface Transportation Assistance Act of 1982, Section 100(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the DOT implementing regulations of 49 CFR Part 26.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

FIRM \_\_\_\_\_

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

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

## PLAIN LANGUAGE INSTRUCTIONS FOR MEETING DBE REQUIREMENTS

Chapel Hill Transit is fully committed to meeting our **DBE goal of 1.7%**. To help bidders understand and comply with these regulations, we have simplified our instructions and provided plain language guidance. Following these instructions will help ensure your proposal is responsive and not disqualified due to non-compliance with DBE requirements.

### 1. What is Required:

- All bidders must either meet the DBE goal set for this project or demonstrate a **Good Faith Effort (GFE)** to include DBEs.
- Failure to submit the required DBE forms and documentation will result in your bid being deemed non-responsive.

### 2. If You Meet the DBE Goal:

- Submit the DBE Letter of Intent / Schedule of Participation Forms listing all DBE firms participating in the project.
- Attach DBE proof of certification for each firm.

### 3. If You Do Not Meet the DBE Goal:

- Complete the GFE Checklist Form and provide supporting documentation for each action taken to find and include DBEs.
- Also submit a written explanation of why DBE participation is not possible (e.g., "All work performed in-house" or "No DBEs supply the required product"). *These reasons are ONLY acceptable if the bidder has demonstrated a Good Faith Effort and supplied appropriate documentation for actions taken to find and include DBEs.*

### 4. Examples of Good Faith Efforts (GFE):

- Contacted DBE firms listed in the [DOT DBE Directory](#).
- Advertised subcontracting opportunities in trade publications or online platforms.
- Sent emails or letters to DBE firms seeking quotes.
- Documented follow-up efforts with DBEs who did not respond.

### 5. Need Help?

- Contact the Chapel Hill Disadvantaged Business Enterprise Liaison Officer (DBELO) for assistance in answering questions about GFE requirements.

**Note:** These forms and instructions are designed to make DBE participation requirements clear and ensure compliance with federal regulations. If you have questions about completing these forms, please contact the listed Chapel Hill Transit Disadvantaged Business Enterprise Liaison Officer (DBELO).

## LETTER OF INTENT / SCHEDULE OF PARTICIPATION

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION\*

(THIS FORM MUST BE COMPLETED IN FULL & SUBMITTED TO THE SPONSOR WITH DBE DOCUMENTATION)

PROJECT/BID NO. \_\_\_\_\_

PROJECT TITLE \_\_\_\_\_

NAME OF GENERAL CONTRACTOR

NAME OF DBE CONTRACTOR\*

ADDRESS

CITY

STATE

ZIP CODE

PHONE

1. The undersigned DBE firm intends to perform work in connection with the above referenced project as:  
Check one:  
\_\_\_\_\_ an individual \_\_\_\_\_ a partnership \_\_\_\_\_ a corporation  
\_\_\_\_\_ a joint venture with \_\_\_\_\_  
\_\_\_\_\_ other \_\_\_\_\_  
attach extra sheets if necessary.

2. The undersigned affirms that s/he is a duly authorized official representing the proposed Disadvantaged Business Enterprise and affirms that its certification has not expired nor been revoked. (Attach a copy of certification letter.)\*\*

Check all that apply:

\_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ Other \_\_\_\_\_  
Certification Agency \_\_\_\_\_ Certification Number \_\_\_\_\_

3. If awarded the contract, the undersigned intends to enter into a subcontract to perform the work described on the following sheet for the prices indicated.

\* Use a separate form for each DBE firm to be utilized on the project.

\*\* Certification must be completed prior to contract award. See contract documents and "Instructions to Bidder."



### LETTER OF INTENT / SCHEDULE OF PARTICIPATION

NOTE TO BIDDER: **THE DBE GOAL FOR THIS PROJECT SHALL NOT BE LESS THAN 1.7 %**. IF THIS GOAL IS NOT MET, THE BIDDER MUST SUBMIT DOCUMENTATION OF A "GOOD FAITH EFFORT" TO THE SPONSOR, PRIOR TO CONTRACT AWARD, AS OUTLINED BY THE SPONSOR'S DBE PLAN.

CONTRACT ITEM NO	DESCRIPTION OF WORK PERFORMED BY DBE CONTRACTOR	ITEM QUANTITY	UNIT PRICE	ITEM AMOUNT

TOTAL AMOUNT CREDITED TO DBE CONTRACTOR (ADD ITEM AMOUNTS) TOTAL \$ \_\_\_\_\_

PROPOSED TOTAL CONTRACT PRICE \$ \_\_\_\_\_

THE TOTAL PRICE TO DBE CONTRACTOR FOR WORK PERFORMED UNDER THIS CONTRACT IS \_\_\_\_\_% OF THE PROPOSED TOTAL CONTRACT PRICE. (SEE NOTE TO BIDDER ABOVE)

---

The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project pursuant to all conditions noted in attached documents, swearing and affirming under the pains and penalties of perjury, that the foregoing information and appropriate attachments are true to the best of their knowledge.

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

AUTHORIZED SIGNATURE \_\_\_\_\_

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

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

AUTHORIZED SIGNATURE \_\_\_\_\_

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

## EVIDENCE OF GOOD FAITH EFFORTS

This form **must** be completed and submitted only if the bidder declares on the Letter of Intent that they cannot meet the established DBE goal. Supporting documentation is required for each action checked "Yes."

**Bidder Name:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_ **Project/Bid #:** \_\_\_\_\_  
**Contact Person:** \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
**Signature:** \_\_\_\_\_

The DBE Liaison Officer (DBELO) will evaluate all submitted evidence in accordance with the standards set forth in 49 CFR Part 26 and the DBE Program. All supporting documentation/evidence of good faith efforts must be clearly labeled and submitted with this form.

The following actions provide examples of efforts that may be considered but are not mandatory, exclusive, or exhaustive:

Good Faith Effort Action	Examples of Acceptable Documentation (Attach To This Form)	Check Yes/No
<b>Pre-Bid Meeting: Attended all pre-bid meetings where DBE participation was discussed.</b>	Meeting sign-in sheets, email confirmation of attendance.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
<b>Advertisement: Publicized subcontracting or supplier opportunities.</b>	Screenshots of online ads, copies of advertisements in trade journals.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
<b>Written Notices: Contacted DBEs directly to solicit their interest in the project.</b>	Copies of outreach emails, mailed letters, or phone call logs.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
<b>Follow-Up: Followed up with DBEs who expressed interest to confirm their availability and qualifications.</b>	Follow-up emails, notes from phone calls.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
<b>DBE Directory Search: Searched the state or federal DBE directories for potential partners or suppliers.</b>	Screenshot of search results or printout of DBE directory.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
<b>No DBE Opportunities: Explained why DBE participation is not possible.</b>	A written explanation detailing reasons (e.g., "All work performed in-house").	<input type="checkbox"/> Yes / <input type="checkbox"/> No

**Note:** If vendor declared on the Letter of Intent form that they cannot meet the established DBE goal, failure to complete and submit this "Evidence of Good Faith Efforts" form with required supporting documentation **will result in your bid being deemed non-responsive.**

## **BUY AMERICA CERTIFICATION STEEL OR MANUFACTURED PRODUCTS**

General Requirement (as stated in 49 CFR 661.5)

- a. Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- b. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- c. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- d. For a manufactured product to be considered produced in the United States:
  1. All of the manufacturing processes for the product must take place in the United States; and
  2. All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

### **A. Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**SAMPLE CONTRACT:**

**TOWN OF CHAPEL HILL, NORTH CAROLINA**  
**CONTRACT BETWEEN OWNER AND CONTRACTOR**  
**FOR {Insert Project Name}**

THIS CONTRACT BETWEEN OWNER AND CONTRACTOR (the “Agreement”), is made and entered into as of the date set forth below between the Town of Chapel Hill (the “Owner”), and {Insert Contractor’s Full Legal Name} (the “Contractor”), a duly licensed contractor authorized and qualified to do business in North Carolina.

**Section 1.** For and in consideration of the payments and mutual promises made by the Owner and Contractor, and under the penalty expressed in the bond bearing even date with these presents, and hereunto annexed, the Contractor agrees with the Owner, at the Contractor’s own proper cost and expense and with skill and diligence, to provide the labor and furnish all the materials for performance of the work (the “Work”) necessary to construct and complete ready for use, {Insert Project Name} (the “Project”) or such portion thereof as may be awarded to said Contractor, or to furnish such materials as may be awarded, as herein set forth, all in conformity with the Instructions to Bidders, Plans and Specifications, Detail of Bid Items, insurance requirements and the Contractor's proposal dated \_\_\_\_\_ attached hereto, and incorporated herein by reference, and such detailed directions, drawings, and similar information as may be given by the Owner from time to time during the construction, and in full compliance with this Agreement.

**Section 2.** The Contractor agrees to accept the sum of \$ \_\_\_\_\_ (the “Contract Sum”) in full compensation for furnishing materials and for all labor in performing all the Work contemplated in this Agreement.

**Section 3.** For the purpose of this Agreement, all directions from the Owner to the Contractor shall be made by \_\_\_\_\_ (the “Designer”), whose address is \_\_\_\_\_. No change orders shall be valid unless signed by the Designer, Town Manager, Department Director, Town Attorney and the Town Finance Officer, and, if required by Town ordinance or resolution, approved and executed by the Town Council.

**Section 4.** The Work will be staked out by the Contractor, as necessary, and reviewed by the Designer at the appropriate stages and times prior to placement of materials. The Contractor will be required to carefully preserve all stakes and grades until authorized to remove them. Construction staking is not a pay item.

The Contractor shall also furnish all proper and necessary assistance and access for reviewing and inspecting the Work.

**Section 5.** The Contractor agrees to substantially complete the Work within \_\_\_\_\_ (\_\_\_\_\_) calendar days following receipt of a written Notice to Proceed and to fully and finally complete the Work, including all punch list items, within

\_\_\_\_\_ (\_\_\_\_\_) calendar days after Substantial Completion. Furthermore, the Owner and Contractor acknowledge that because the damages and losses to the Owner in the event of the Contractor's failure to perform the Work within the time set forth herein will be difficult to ascertain and quantify, that there will be \$\_\_\_\_\_ per calendar day assessed against the Contractor as liquidated damages for losses sustained by the Owner for the Contractor's failure to substantially complete the Work within the time established herein, and that the amount of the liquidated damages as provided herein is a reasonable estimate of the Owner's losses. The Owner will hold retainage, in accordance with the General Conditions.

**Section 6.** The Contractor agrees not to employ any incompetent or disorderly person on the Work, and will employ competent, experienced foremen to be in charge of their respective work.

**Section 7.** The Designer, shall in all cases determine the quality and quantity of the Work, including the materials, furnished by the Contractor under this Agreement, and also shall determine all questions in relation to lines, levels, and dimensions of the work, and as to the interpretation of the plans and specifications and as to all time extension requests.

**Section 8.** The grand total of unit price extensions for the Work is \$\_\_\_\_\_. The sum may be modified by valid change orders as provided in the Contract Documents.

**Section 9.** The Contractor agrees that the Contractor's Superintendent, Project Manager, or Foreman in charge of the Work or any part thereof, shall have authority to receive information or instructions regarding the Project and to act on behalf of the Contractor with respect to such information or instructions.

**Section 10.** The Owner may require the Contractor to furnish additional materials, and to do additional work not provided in this Agreement or in the specifications, but which may be found necessary to the proper prosecution and completion of the Work as set forth in Article 19 of the General Conditions of the Agreement (the "General Conditions"). Said General Conditions are attached hereto and incorporated herein by reference. **No work other than that included in this Agreement shall be done and no additional material shall be furnished by the Contractor without a written Change Order or Construction Change Directive signed by the Designer, Town Manager, Town Department Director, Town Attorney and the Town Finance Officer, and, if required by ordinance or resolution, approved and executed by the Town Council.** In the absence of such written Change Order or Construction Change Directive, the Contractor shall not be entitled to the payment for any additional work.

**Section 11.** The Owner reserves the right to place inspectors on the Work or at the place of shipment, or delivery of materials, or at factory or works of the Contractor, to observe the quality and character of the Work performed and materials used, and the Contractor agrees to afford such inspectors all proper access and facilities for carrying out their duties.

It is agreed and understood that the right of the Owner to review or inspect the Work or materials is retained in order to secure the completion of the Work in conformity with the plans, specifications, and the contract documents, and without unnecessary inconvenience to the public, but nothing contained in the plans, specifications, and the contract documents shall be taken or understood to

authorize control by the Owner of any of the Contractor's obligations, or of the means or methods for performance of the Work, or as to make the Contractor an agent of the Owner.

**Section 12.** The Contractor acknowledges and agrees that **no employee of the Owner or the Designer HAS ANY POWER TO VARY THIS CONTRACT without a written change order or construction change directive** as set forth in Article 19 of the General Conditions and that any variation from this Agreement shall be at the Contractor's own risk.

**Section 13.** The Contractor and Owner agree that this Agreement may not be assigned or transferred, including any assignment by operation of law, without the consent of the other. The assignment or transfer, including any assignment by operation of law, of any part of the Work by the Contractor shall not in any way relieve the Contractor of the Contractor's obligations, and the Owner will look to the Contractor, and not the subcontractor, for the faithful performance of the Work.

**Section 14.** The Contractor agrees to immediately remove and reconstruct at the Contractor's own expense all work or materials not in conformity with this Agreement, and any failure on the part of the Designer or Owner to reject nonconforming work or material before the final completion and acceptance of the entire Work or material, shall not be considered an acceptance of the Work or material, or any part of it, notwithstanding that such Work or material previously may have been paid for.

**Section 15.** On the final completion of the work, the Owner shall proceed with due diligence and in accordance with the General Conditions to pay or cause to be paid within thirty (30) days thereafter the Contract Sum as modified by valid change orders signed as provided herein, less progress payments previously made, in legal tender of the United States and the acceptance of payment of such final amount shall release the Owner from all claims by the Contractor for Work done, materials furnished, or any other claims under or relating to this Agreement.

**Section 16.** The Owner may at any time require full release of all claims for materials or labor furnished for the Work and may withhold payments of amounts reasonably adequate to pay such claims until the Contractor has produced evidence reasonably sufficient to establish that such claims have been resolved.

**Section 17.** The Contractor agrees to perform the Work in such a manner as to be of least inconvenience to the Owner and public. The Contractor agrees to comply with all ordinances and regulations affecting the Work in any manner, and with all sanitary rules and regulations, taking precaution to avoid creating unsanitary conditions.

**Section 18.** The Contractor further agrees that if there is a material breach of this Agreement by the Contractor as provided in Article 29 of the General Conditions, the Owner shall have the right to notify the Contractor of the Contractor's default. Upon notification of such a default, the Contractor shall discontinue said work or such part of parts thereof as the Owner may designate, and the Owner shall thereupon have the power and the right to proceed as provided in Article 27 or other applicable provision of the General Conditions.

**Section 19.** The Contractor shall maintain worker's compensation, general and automobile liability and property damage insurance as set forth in the General Conditions. The Contractor shall indemnify and save harmless the Owner from all costs, damages, expenses, suits, actions, proceedings of every name and description in law or equity, including reasonable attorneys' fees, brought against it or its officers, agents or employees, arising out of or related to the performance of the Work, arising out of or related to infringement of any patent, or due to or in consequence of any negligence or any action, error or omission of the Contractor, where the Contractor's actions are the proximate cause of the loss, damage or expense.

**Section 20.** The Contractor must be in full compliance with all applicable federal and state laws, including those on immigration.

**Section 21.** The Contractor contractually agrees to administer all functions pursuant to this Contract without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.

**Section 22.** The Contractor shall furnish the Owner certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, the Contractor's certified statement shall indicate the invoice number, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina sales and use taxes paid thereon. The Contractor's certified statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim by the Owner for sales or use taxes. The Contractor shall obtain and furnish to the Owner similar certified statements by the subcontractors. The certified statements to be furnished shall be in the form of the standard CONTRACTOR'S SALES TAX REPORT and shall be submitted with each request for payment. The Owner will not make payment to the Contractor until the CONTRACTOR'S SALES TAX REPORTS ARE SUBMITTED. Any and all refunds received by the Owner of said taxes shall remain with the Owner, and the Contractor shall not be entitled to such refund.

**Section 23.** The Contractor hereby agrees that the Contractor has read each and every clause of this Agreement and fully understands the meaning of the same, and that the Contractor will comply with all the terms herein. This Agreement is to be executed in two copies, one copy to be delivered to the Contractor and the other to be retained by the Owner.

**Section 24.** This Agreement is subject to the terms of all federal, state, and local requirements for the Work whether or not such requirements are set forth in the body of this contract.

**Section 25.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

**Section 26.** This agreement may be amended or modified only by a writing signed by the Owner and Contractor.

**Section 27.** This Contract is subject to the provisions of the North Carolina General Statutes regarding the dispute resolution process. Accordingly, the following procedure shall be used to resolve any disputed issues, where the amount in controversy exceeds \$10,000, arising out of this contract or the construction process thereunder. If a dispute occurs between the Owner and Contractor arising out of or relating to the Contract or an alleged breach thereof, the Owner and Contractor agree to attempt to resolve the dispute by engaging in good faith negotiations. If the dispute cannot be resolved by negotiation, the Owner and Contractor agree as a condition precedent to commencing a lawsuit to submit the dispute to non-binding mediation under the construction mediation rules of the American Arbitration Association. The parties agree to exercise good faith efforts to complete any such mediation within ninety (90) days after the demand for resolution has been delivered. The work shall proceed as required by the contract documents during the pendency of any mediation or litigation. In the event a dispute cannot be resolved through non-binding mediation, the courts and the authorities of the State of North Carolina shall have exclusive jurisdiction over all controversies between the parties which may arise under or in relation to this Contract. Venue is properly laid in Orange County, North Carolina for any state court action and in the Middle District of North Carolina for any federal court action.

**Section 28. E-Verify:** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, should the Contractor utilize a subcontractor(s), Contractor shall require the subcontractor(s) to comply with the requirements of Article 2, Chapter 64 of the General Statutes.

**Section 29. Contractor's Affidavit:** The final payment of retained amount due the Contractor on account of the Contract shall not become due until the Contractor has furnished to the Owner directly or through the Designer an affidavit signed, sworn and notarized to the effect that all payments for materials, labor, services or subcontracted Work in connection with this Contract have been satisfied, and that no claims or liens exist against the Contractor in connection with this Contract.

**Section 30. Non-Appropriation of Funding:** Contractor acknowledges that the Town is a governmental entity, and the Contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of Town's obligations under this Contract, then this Contract shall automatically expire without penalty to the Town, thirty (30) days after written notice to Contractor advising of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

**Section 31. Federal Assistance.** This Contract is funded, in whole or in part, by federal assistance. Accordingly, the federal provisions contained in **Exhibit B** apply as applicable.

*[SIGNATURES ON FOLLOWING PAGE.]*



This Contract is between the Town of Chapel Hill and {Insert Contractor's Full Legal Name} for {Insert Project Name}.

IN WITNESS WHEREOF, the parties hereto cause this Contract to be executed in their respective names.

**{CONTRACTOR'S FULL LEGAL NAME}**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME & TITLE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRINTED NAME & TITLE

**TOWN OF CHAPEL HILL**

\_\_\_\_\_  
DEPARTMENT HEAD/EXECUTIVE DIRECTOR OR DEPUTY/TOWN MANAGER

\_\_\_\_\_  
PRINTED NAME & DEPARTMENT

ATTEST BY TOWN CLERK:

\_\_\_\_\_  
TOWN CLERK/DEPUTY TOWN CLERK

TOWN SEAL

**Town Clerk** attests date this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

Approved as to Form and Authorization

\_\_\_\_\_  
ATTORNEY FOR TOWN

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
FINANCE OFFICER

\_\_\_\_\_  
DATE

SAMPLE

**PROJECT PLANS**

**SEE ATTACHMENT 1**

**TECHNICAL SPECIFICATIONS**

**SEE ATTACHMENT 2**

# EXHIBIT B - FEDERAL TERMS

## PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

### B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs		\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All
Federal Tax Liability	All	All	All	All	All
Trafficking	All	All	All	All	All

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**

**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**  
(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All

## FEDERAL TRANSIT ADMINISTRATION CLAUSES

### ARTICLE FTA-1. DEFINITIONS

- 1.1 **C.F.R.** : The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their contractors and subcontractors.
- 1.2 **DOT** : The acronym referring to the United States Department of Transportation. Also represented as USDOT.
- 1.3 **EPA** : The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.
- 1.4 **FTA** : The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.
- 1.5 **U.S.C.** : The acronym referring to the United States Code.

### ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 2.1 ***Access to Records.*** The CONTRACTOR agrees to provide sufficient access to FTA and its contractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.

In accordance with 49 U.S.C. section 5325(g), CONTRACTOR agrees to provide the Council, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions.

The CONTRACTOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") contractor, access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311.

- 2.2 ***Access to the Sites of Performance.*** The CONTRACTOR agrees to permit FTA and its contractors access to the sites of performance under this Contract as may reasonably may be required.
- 2.3 ***Reproduction of Documents.*** The CONTRACTOR will retain and will require its subcontractors at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 2.4 ***Retention Period.*** The CONTRACTOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. The CONTRACTOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The expiration or termination of this Contract does not alter the record retention or access requirements of this Section.

### ARTICLE FTA-3. BUY AMERICA

The provision of this article apply if the value of this Contract (including the value of any amendments) exceeds \$150,000.

- 3.1 Buy America Provision.** The CONTRACTOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §section 661.7.

*Build America, Buy America Act.* Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

### ARTICLE FTA-4. CARGO PREFERENCE

- 4.1 Reserved.**

- 4.2 Fly America Requirements.** The CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

### ARTICLE FTA-5. RESERVED

### ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 6.1** The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the CONTRACTOR certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any Federal department or agency. This certification is a material representation of fact upon which the COUNCIL relies in entering this Contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to the COUNCIL, the Federal Government may pursue available remedies, including suspension or debarment or both. The CONTRACTOR shall provide to the COUNCIL immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The CONTRACTOR will include a provision requiring such compliance in its lower tier covered transactions.



## ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES

- 7.1 *Clean Water Act.*** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251-1387. The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency ("EPA") Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.2 *Clean Air Act Compliance.*** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The CONTRACTOR agrees to report each violation to COUNCIL and understands and agrees that COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.3 *Energy Conservation.*** CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.
- 7.4 *Reserved.***

## ARTICLE FTA-8. LOBBYING RESTRICTIONS

For any project of \$100,000 or more, the CONTRACTOR is required to make the following certifications. The CONTRACTOR must also require its contractors or subcontractors to make the following certification in any contracts or subcontracts valued at or above \$100,000.

- 8.1 *Certification of Restrictions on Lobbying; Disclosure.*** The CONTRACTOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR 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.

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

The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which COUNCIL has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 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.

By its signature on this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this

certification and disclosure, if any.

## ARTICLE FTA-9. RESERVED

## ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 10.1 *National Intelligent Transportation Systems Architecture and Standards.*** To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

## ARTICLE FTA-11. Program Fraud and False or Fraudulent Statements or Related Acts

- 11.1 *Program Fraud and False or Fraudulent Statements or Related Acts.*** The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

## ARTICLE FTA-12. CIVIL RIGHTS

Under this Contract, the CONTRACTOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

### **12.1 *Nondiscrimination.***

- 12.1.1 *Nondiscrimination in Employment.*** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- 12.1.2 *Nondiscrimination in Contracting.*** The CONTRACTOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: (1) The CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the CONTRACTOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

**12.2 Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:

- 12.2.1 Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 200e *et seq.*, and federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- 12.2.2 Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- 12.2.3 Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and Federal transit law at 49 U.S.C. section 5332, the CONTRACTOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the CONTRACTOR agrees to comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, and any implementing requirements FTA may issue. The CONTRACTOR will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and any applicable implementing regulations.

**12.3 Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

## **ARTICLE FTA-13. GENERAL PROVISIONS**

**13.1 Federal Changes.** The CONTRACTOR shall comply with the required FTA clauses set forth in this Contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

**13.2 No Obligation by the Federal Government.** The COUNCIL and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 COUNCIL, the CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The CONTRACTOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

- 13.3 *Incorporation of FTA Terms.*** Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 422.01 "Third Party Contracting Guidance", to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

#### **ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) – WITH GOAL**

- 14.1 *Nondiscrimination.*** Pursuant to 49 CFR part 26, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.

**14.2 *Prompt Payment.***

14.2.1 Reserved.

14.2.2 The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work, regardless of whether the CONTRACTOR has received any retainage payment from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this Section 14.2 may result in the COUNCIL finding the CONTRACTOR in noncompliance with the DBE provisions of this Contract.

- 14.3 *DBE Good Faith Efforts*** During the term of this contract, the CONTRACTOR will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the CONTRACTOR meets its DBE commitment as set forth in its proposal. These efforts shall include, without limitation, the following:

14.3.1 If CONTRACTOR requests substitution of a DBE subcontractor or supplier listed in its **Document Disadvantaged Business Enterprise Information and Certifications** form, the CONTRACTOR shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of the COUNCIL.

14.3.2 CONTRACTOR shall not terminate for convenience any DBE subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of the COUNCIL

14.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract

for any reason, CONTRACTOR shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.

- 14.3.4 The dollar amount of amendments or any other contract modifications will be entered into the DBE Contract Monitoring System (CMS).
- 14.3.5 The CONTRACTOR will identify a "DBE and Workforce Liaison" who will serve as a single point of contact for all CONTRACTOR DBE and Workforce issues.
- 14.3.6 Failure to comply with the provisions of this section FTA-14.3 may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this contract and the imposition of Administrative Sanctions described in section FTA-14.6.

#### **14.4 Reporting.**

- 14.4.1 The CONTRACTOR will submit monthly progress reports to the COUNCIL reflecting its DBE participation through the CMS.
- 14.4.2 Upon award of a contract a representative from the COUNCIL will assign the DBE and Workforce Liaison a CMS user account and provide a CMS User Manual detailing the following guidelines.
- 14.4.3 All committed DBE subcontractors to be used on the contract must be entered into the CMS system.
- 14.4.4 All DBE billing, submitted during the reporting period, must be finalized and entered into CMS prior to submission of CONTRACTOR'S payment application.
- 14.4.5 Any changes to the DBE subcontractor list or their amounts must be entered into CMS. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.
- 14.4.6 All payments made to DBE firms must be finalized and entered into CMS within 10 days of receipt of payment from the COUNCIL.
- 14.4.7 Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.6, pursuant to the COUNCIL's DBE policy and USDOT regulations. For the purposes of this section FTA-14.4, timely submittal means receipt in the contract compliance function of the COUNCIL's Office of Diversity and Equal Opportunity by the close of business on the fifteenth (15<sup>th</sup>) of the following month.

#### **14.5 Review of Good Faith Efforts**

- 14.5.1 The COUNCIL's Office of Equal Opportunity will review the CONTRACTOR's DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of CONTRACTOR as stated in its proposal.
- 14.5.2 If it is determined that the CONTRACTOR's DBE utilization under the contract is not consistent with its commitment, the CONTRACTOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The CONTRACTOR shall be given ten (10) working days to submit this documentation. Failure to respond shall place the CONTRACTOR in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.
- 14.5.3 The CONTRACTOR's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. COUNCIL staff shall make a determination as to the adequacy of the CONTRACTOR's good faith efforts documentation and so inform the CONTRACTOR. If it is determined that the CONTRACTOR's good faith efforts documentation is acceptable, the CONTRACTOR will be deemed to be in compliance with the DBE program.

- 14.5.4 If it is determined that the CONTRACTOR's good faith efforts documentation is not

acceptable, the CONTRACTOR will be notified and be deemed to be in non-compliance with the DBE program.

- 14.5.5 Non-compliance by the CONTRACTOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.

#### **14.6 Administrative Sanctions.**

- 14.6.1 If the COUNCIL deems the CONTRACTOR to be in non-compliance with the DBE requirements of this Contract, the COUNCIL will inform the CONTRACTOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.
- 14.6.2 The CONTRACTOR has five (5) working days from the date of the notice to file a written appeal to the COUNCIL's Regional Administrator. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the COUNCIL's governing board.
- 14.6.3 Sanctions may include, without limitation: suspension of any payment or part due to the CONTRACTOR for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by the COUNCIL as retained on the contract; denial to the CONTRACTOR (including its principal and key personnel) of the right to participate in future contracts of the COUNCIL for a period of up to three years; and/or termination of the contract for cause.

#### **ARTICLE FTA-15. RESERVED**

#### **ARTICLE FTA-16. RESERVED**

#### **ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS**

The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. The CONTRACTOR shall grant the COUNCIL intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- 17.1 The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- 17.1.1 Any subject data developed under the Contract, whether or not a copyright has been

obtained; and

- 17.1.2 Any rights of copyright purchased by the CONTRACTOR using Federal assistance in whole or in part by the FTA.
- 17.2 Unless FTA determines otherwise, the CONTRACTOR performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- 17.3 Unless prohibited by state law, upon request by the Federal Government, the CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The CONTRACTOR shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 17.4 Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 17.5 Data developed by the CONTRACTOR and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the CONTRACTOR identifies those data in writing at the time of delivery of the Contract work.
- 17.6 The CONTRACTOR agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **ARTICLE FTA-18. SAFE OPERATION OF MOTOR VEHICLES**

### **18.1 *Seat Belt Use.***

The CONTRACTOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to this Contract.

### **18.2 *Distracted Driving, Including Text Messaging While Driving.***

The CONTRACTOR agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

- (1) The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.
- (2) The CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- (3) The CONTRACTOR agrees to include the preceding “Distracted Driving, Including Text Messaging While Driving” provisions in each third party agreement related to this Contract.

## **ARTICLE FTA -19 RESERVED.**

### **ARTICLE FTA-20. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

- 20.1** When applicable contracts in excess of \$175,000, and all nonprocurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where CONTRACTORS violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful proposer.
- 20.2** ***Notification to FTA; Flow Down Requirement.*** If a current or prospective legal matter that may affect the Federal Government emerges, the CONTRACTOR must promptly notify the Council and FTA’s Region 5 Office’s FTA Chief Counsel and Regional Counsel. The CONTRACTOR must include these requirements as a flow down clause in any subcontract related to this Contract.
- 20.2.1 The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

### **ARTICLE FTA – 21. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

- 21.1** ***Applicability to Contracts; Flow down Requirements.*** This requirement is applicable to all contracts. The Federal Tax Liability and Recent Felony Convictions prohibition extends to all third party contractors and their subcontracts at every tier.
- 21.2** ***Transactions Prohibited.*** The CONTRACTOR agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third-Party Participant:
- (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - (2) was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- 21.3** ***Failure to Certify.*** If the prospective Third-Party Participant cannot so certify, the CONTRACTOR agrees to refer the matter to the COUNCIL and not to enter into any Third-Party Agreement with the Third-Party Participant without the COUNCIL’s written approval.

**END OF DOCUMENT**