



Financial Services
Purchasing Division
215 N. Mason St. 2nd Floor
PO Box 580
Fort Collins, CO 80522
970.221.6775
970.221.6707- fax
fcgov.com/purchasing

July 8, 2019

Power Motive Corporation
Attn: Trey Eichold
5000 Vasquez Blvd.
Denver, CO 80216

RE: Renewal, 8562 Equipment Rental 2017

Dear Mr. Eichold:


The City of Fort Collins wishes to extend the agreement term for the above captioned proposal per the existing terms and conditions and the following:

- 1) The term will be extended for one (1) additional year, August 1, 2019 through July 31, 2020.
- 2) Signed Equipment Rental Master Agreement as attached.

If this extension is not agreeable with your firm, we ask that you send us a written notice stating that you do not wish to renew the contract and state the reason for non-renewal.

Please contact Doug Clapp, CPPB, Senior Buyer at (970) 221-6776 if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

 A9D0A054C8CB45D...
Gerry S. Paul
 Director of Purchasing

DocuSigned by:

 83C9B78DB0014C4...

 Signature

8/5/2019

 Date

(Please indicate your desire to renew 8562 by signing this letter and returning it to Purchasing Division within the next fifteen days.)

GSP:kr



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**City of Fort Collins
Equipment Rental Master Agreement 2017**

This lease agreement (the "Agreement"), dated as indicated at the end of the Agreement, is between Power Motive Corporation (Lessor) and the City of Fort Collins, Colorado (Lessee), a body corporate and politic existing under the laws of the State of Colorado, PO Box 580, Fort Collins, Colorado, 80522, is as follows:

1.0. Agreement to Lease

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, equipment, when needed, as specified in the current City of Fort Collins annual Equipment Rental Bid. This Agreement shall remain in effect until cancelled. Either party may cancel by providing ten (10) days written notice.

2.0 Application of Agreement

This Agreement is required for any individual equipment rented under the Equipment Rental Bid where the total rental costs exceed \$5,000.

3.0 Entire Agreement

This writing, together with the Specifications contained in the current Equipment Rental Bid and the associated Purchase Order Terms and Conditions, constitutes the entire agreement between the parties, their officers, employees, agents and assigns and supersedes all prior agreements, understandings, warranties or promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto. The Lessor may require a signed receipt, verifying actual delivery of rental equipment.

4.0 Delivery

Delivery terms are FOB: Fort Collins, Fleet Services Equipment Shop at 835 Wood Street, or, if requested, Streets Shop at 625 9th Street. Delivery to other locations will be negotiated on an individual basis. At the end of the lease equipment will be returned to the delivery location for pickup unless other arrangements have been agreed to by the department representative.

5.0 Commencement and Term

The Agreement will be for one (1) year. In addition, at the option of the City, the Agreement may be extended for additional one (1) year periods not to exceed two (2) additional one-year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. Written notice of renewal shall be provided to the Service Provider and mailed no later than thirty (30) days prior to contract end.

6.0 Rental Payments

Lessee may not deduct any amount or reduce any payment for any reason except for failure of the equipment to operate as intended unless the Lessor has agreed to a reduction. Payments are due within 30 days of receipt of invoice by the City of Fort Collins Accounting Department. Monthly payment amounts shall be specified in the body of the City purchase order issued for each rental covered by this Agreement.

7.0 Location and Inspection of Equipment

The equipment will be used in various locations within the City of Fort Collins and the surrounding area. Lessor's representative may inspect rental equipment, on location, at any reasonable time and may remove equipment from service, if required, for repair or maintenance, provided that replacement equipment of similar or greater capability is made available to the City at no additional charge while the original equipment is being serviced or repaired. The Lessor shall provide the City at least two (2) business days prior notice before removing/replacing equipment for service.

8.0 Maintenance and Use of Equipment

The Lessee agrees, at the Lessee's expense, to maintain and return the equipment in the same condition as when delivered to it by the Lessor, ordinary wear and tear excepted. The Lessor may require the replacement of certain high-wear parts, such as crusher jaws, asphalt mill teeth, etc. Such parts shall be clearly identified in writing to the Lessee. Lessee will include the details of such parts replacement in the body of any applicable purchase order. Accessories and devices installed on the equipment by the Lessee become the property of the Lessor unless the accessories or devices are removed and any damage caused by such installation and removal is repaired at Lessee's expense prior to return of equipment to Lessor. Lessee agrees not to permit the equipment to be abused, overloaded, used beyond its capacity, or used in a negligent manner.

9.0 Additional Rental Charges

Lessee agrees that rental rates quoted in the Equipment Rental Bid are based on eight (8) hours per day, forty (40) hours per week (seven consecutive days equals one week), and one-hundred, seventy-six (176) hours per month. Lessee agrees to pay additional rental prorated at the applicable rate for each hour the rented equipment is used in excess of such time. Where the rental rate is based on mileage, Lessee agrees to pay the extra mileage charge specified in Lessor's response to the applicable Rental Bid.

10.0 Liability

To the extent permitted by law, Lessee assumes all risk and liability for and agrees to hold Lessor and its assigns harmless from all damages for injuries or death to persons or property arising out of use, possession, or transportation of the equipment except to the extent that the same results directly from the negligence of Lessor. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted as a waiver of any limits or protections afforded Lessee under the Colorado Governmental Immunity Act.

11.0 Assignment

Lessor may not assign this Rental Agreement or any right, title, or interest of Lessor in any

equipment rented under this Agreement, or any sums due from Lessee for such rentals without the written consent of the Lessee. Lessee may not assign this Rental Agreement.

12.0 Ownership

This is a rental agreement. The equipment is and shall remain the property of the Lessor during the lease period.

13.0 Non-Appropriation of Funds

Lessee reasonably believes that it will have a need for equipment rented for the duration of lease terms negotiated under this Agreement and that funds will be available and appropriated to make all rental payments during those terms. Lessee will seek funding each year as part of its Budget process. If funds to continue the leasing of equipment for any ensuing term are not legally available for such purpose, Lessee may terminate rentals under this Agreement with no further liability.

14.0 Disclaimer of Warranties and Exclusion of Remedies

Lessee acknowledges that the Lessor is not the manufacturer of the equipment nor the manufacturer's or vendor's agent. Accordingly, with the exception of express warranties made by the Lessor to Lessee, all warranties and remedies, whether they be expressed or implied, specifically including, but not limited to, the warranties of merchantability and fitness for a particular purpose, and remedy of incidental and consequential damages, are excluded.

15.0 Insurance

Lessee is self-insured in accordance with the laws of the State of Colorado up to \$50,000 and provides comprehensive general all risk liability insurance for claims over that amount. Proof of such insurance coverage will be sent to Lessor upon request.

16.0 Choice of Law

This lease shall be considered to have been made in the State of Colorado and shall be interpreted in accordance with the laws of Colorado. Lessor agrees to jurisdiction in Colorado, Larimer County in case of any action, suit, or proceeding arising out of this lease. Lessor acknowledges transacting business in Colorado by entering into this lease, and that the jurisdiction choice of law and venue provisions of this lease are specifically terms of this lease.

17.0 Severability

In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Lessee in his or its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.

18.0 Cumulative Rights

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the City, or Contractor, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

19.0 Non-Waiver

The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

20.0 Benefits

This Agreement is made for the sole and exclusive benefit of the Lessee and Lessor, their successors and assigns, and is not made for the benefit of any third party.

21.0 Construction

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

22.0 Successors and Assigns

All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

23.0 Notices

Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

To Lessor:

To the person signing this Agreement on behalf of the Lessor, at the address given below.

To Lessee:

To the attention of Doug Clapp, Senior Buyer, at the address given below.

LESSOR:

Company Name: Power Motive Corporation

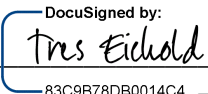
Street: 5000 Vasquez Blvd

City: Denver

Zip: 80216

Phone: 303-355-5900 1177

Email: teichold@powermotivecorp.com

By:  Tres Eichold

Print Name: Tres Eichold

Title: Fleet and Rental Ops Manager

LESSEE:

City of Fort Collins

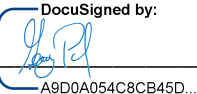
PO Box 580 / 215 N Mason Street, 2nd Floor

Fort Collins, CO

80522

970-221-6775

purchasing@fcgov.com

By:  Gerry Paul

Gerry Paul

Purchasing Director

**FEDERAL TRANSIT ADMINISTRATION
FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES**

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NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. 5307)

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract 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.

- (2) 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

(49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17)

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of

the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

FEDERAL CHANGES

(49 CFR Part 18)

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

CIVIL RIGHTS REQUIREMENTS

(29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.)

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, 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.
- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(FTA Circular 4220.1E)

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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

comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

ENERGY CONSERVATION REQUIREMENTS

(42 U.S.C. 6321 et seq. 49 CFR Part 18)

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The 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 Energy Policy and Conservation Act.

TERMINATION

(49 U.S.C. Part 18 FTA Circular 4220.1E)

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

- b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

- e. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- f. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

CARGO PREFERENCE REQUIREMENTS

(46 U.S.C. 1241 , 46 CFR Part 381)

Applicability to Contracts

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

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(49 CFR Part 26)

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set,

reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5 %. A contract goal of 5 % DBE participation has been established for this procurement.
- b. The contractor 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 CFR *Part 26* in the award and administration of this DOT-assisted contract. 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 City of Fort Collins deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate *good faith* efforts to do so, as provided for in 49 CFR 26.53. Award of this **contract is conditioned on submission of the following concurrent with and accompanying sealed bid:**
 1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.

Bidders must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the City of Fort Collins. In addition, the contractor may not hold retainage from its subcontractors and is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
- e. The contractor must promptly notify the City of Fort Collins whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same *amount* of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Fort Collins.

ADA ACCESS

Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

CITY OF FORT COLLINS BID PROTEST PROCEDURES

The City of Fort Collins has a protest procedure, covering any phase of solicitation or award, including but not limited to specification or award. The protest procedures are available from the Purchasing Department, City of Fort Collins, 215 N. Mason, Street, 2nd Floor, P. O. Box 580, Fort Collins, CO. 80522. You may also request a copy of the procedures by emailing: Purchasing@fcgov.com or calling 970-221-6775.