



**CITY OF FORT COLLINS  
INVITATION TO BID**

**BID #5955**

**Traffic Signal Heads/Accessories and Retrofit Modules**

**BID OPENING: January 31, 2006 3:00 P.M.(our clock)**

Sealed bids will be received and publicly opened at the office of the Director of Purchasing and Risk Management, PO Box 580, 215 North Mason St., 2nd floor, Fort Collins, Colorado 80522, at the time and date noted on the bid proposal and/or contract documents. If delivered, they are to be sent to 215 North Mason Street, 2<sup>nd</sup> Floor, Fort Collins, Colorado 80524. If mailed, the address is P.O. Box 580, Fort Collins, 80522-0580.

**Bids must be received at the Purchasing Office prior to 3:00 p.m. (our clock), January 31, 2006.**

Questions concerning the scope of the bid should be directed to Project Manager, Dan Holland (970) 221-6816 [dholland@fcgov.com](mailto:dholland@fcgov.com).

Questions regarding bid submittal or process should be directed to John D. Stephen, CPPO, CPPB, Senior Buyer (970) 221-6777, [jstephen@fcgov.com](mailto:jstephen@fcgov.com).

**A copy of the Bid may be obtained as follows:**

1. Download the Bid from the Purchasing Webpage, Current Bids page, at: <https://secure2.fcgov.com/bsa/login.jsp>.
2. Come by Purchasing at 215 North Mason St., 2nd floor, Fort Collins, and request a copy of the Bid.

**Special Instructions**

All bids must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Bids may be withdrawn up to the date and hour set for closing. Once bids have been accepted by the City and closing has occurred, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the City of Fort Collins' bidders list for a period of twelve months from the date of the opening. The City may also pursue any remedies available at law or in equity. Bid prices must be held firm for a period of forty-five (45) days after bid openings.

Submission of a bid is deemed as acceptance of all terms, conditions and specifications contained in the City's specifications initially provided to the bidder. Any proposed modification must be accepted in writing by the City prior to award of the bid.

Only bids properly received by the Purchasing Office will be accepted. All bids should be clearly identified by the bid number and bid name contained in the bid proposal.

No proposal will be accepted from, or any purchase order awarded, to any person, firm or corporation in default on any obligation to the City.

Bids must be furnished exclusive of any federal excise tax, wherever applicable.

Bidders must be properly licensed and secure necessary permits wherever applicable.

Bidders not responding to this bid will be removed from our automated vendor listing for the subject commodities.

The City may elect where applicable, to award bids on an individual item/group basis or on a total bid basis, whichever is most beneficial to the City. The City reserves the right to accept or reject any and all bids, and to waive any irregularities or informalities.

Sales prohibited/conflict of interest: no officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

Freight terms: unless otherwise noted, all freight is F.O.B. Destination, Freight Prepaid. All freight charges must be included in prices submitted on proposal.

Discounts: any discounts allowed for prompt payment, etc., must be reflected in bid figures and not entered as separate pricing on the proposal form.

Purchasing restrictions: your authorized signature of this bid assures your firm's compliance with the City's purchasing restrictions. A copy of the resolutions is available for review in the Purchasing Office or the City Clerk's Office. Request Resolution 91-121 for cement restrictions.

Collusive or sham bids: any bid deemed to be collusive or a sham bid will be rejected and reported to authorities as such. Your authorized signature of this bid assures that such bid is genuine and is not a collusive or sham bid.

Bid results: for information regarding results for individual bids send a self-addressed, self-stamped envelope and a bid tally will be mailed to you. Bid results will be posted in our office 7 days after the bid opening.

James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management



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James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management

BID PROPOSAL  
**BID #5955**  
**BID OPENING: January 31, 2006, 3:00p.m., (our clock)**

WE HEREBY ENTER OUR BID FOR THE CITY OF FORT COLLINS' REQUIREMENTS FOR **TRAFFIC SIGNAL HEADS/ACCESSORIES AND RETROFIT MODULES** PER THE BID INVITATION AND ANY REFERENCED SPECIFICATIONS:

All items bid must meet all specifications. Vendors responding to this bid must comply with the federal requirements in Attachment #1. Vendors must complete and submit all certifications included in Attachment #1. All items must be bid FOB destination, freight prepaid.

This is a one year agreement but, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may use the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than 90 days prior to contract end.

For technical questions, please send to Dan Holland, Project Manager, 970-221-6816 or [dholland@fcgov.com](mailto:dholland@fcgov.com).

For purchasing questions, please send to John Stephen, CPPO, Senior Buyer at 970-221-6777 or [jstephen@fcgov.com](mailto:jstephen@fcgov.com).

Quantities	Unit	Unit Cost	Extended Cost
128	Signal Head 3 Section 12,12,12 With Out Lens and Refector Full Visor (Yellow) (Aluminum)	_____	_____
26	Signal Head 2 Section 12,12, With Out Lens and Refector Full Visor (Yellow)(Aluminum)	_____	_____
34	Pedestrian Count Down Head 16 inch Countdown Head With/ LEDs (Clamshell Mount) (Right)	_____	_____
34	Pedestrian Count Down Head 16 inch Countdown Head With/ LEDs (Clamshell Mount) (Left)	_____	_____
72	Sky Brac 3 Section Standard 3 Section Sky Brac With/ 48" Bands (Mounting Hardware)	_____	_____
22	Sky Brac 5 Section Standard 5 Section Sky Brac With/ 48" Bands Side By Side (Mounting Hardware)	_____	_____
68	Backplate 3 Section For 3 Section Sky Brac 4 Inch Loveded	_____	_____
22	Backplate 5 Section For 5 Section Sky Brac Side by Side 4 Inch Loveded	_____	_____
34	Pedestrian Push Button Assembly With Sign (Right Arrow) Model Teeco 305	_____	_____
34	Pedestrian Push Button Assembly With Sign (Left Arrow) Model Teeco 305	_____	_____
42	Hardware For Side Of Pole Mounting For One Way Signal Head With Bandit Bracket J Type Foot (Vertical)(Set)	_____	_____

Sub Total for Traffic Heads/Accessories \$ \_\_\_\_\_

Retrofit Modules

<u>Quantities</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
<u>500</u>	11.9 X11.9 (12X12)" LED Full Man Module	_____	_____
<u>500</u>	11.9X11.9 (12X12)" LED Full Hand Module	_____	_____

Sub Total for Retrofit Modules \$ \_\_\_\_\_

**Grand Total \$** \_\_\_\_\_

**City reserves the right to award as a group, or Traffic Heads/Accessories and Retrofit Modules individually.**

FIRM NAME \_\_\_\_\_  
Are you a Corporation, Partnership, DBA, LLC, or PC

SIGNATURE \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

PHONE/FAX # \_\_\_\_\_

# Specifications

## Traffic Signal Heads, Accessories

The following specifications are intended to provide the minimum requirements for traffic signal equipment that will be acceptable by the City of Fort Collins.

1. General:  
All the components in the 8 inch aluminum signal head are interchangeable with all the 2 inch aluminum signal head components.
2. Material:  
High grade die cast aluminum alloy.
3. Housing  
Exterior grade die cast aluminum molded in one piece to provide strength and positive locking with other signals and mounting hardware. Each housing is molded with a 72 tooth serrated boss and reinforcing ribs on top and bottom. The top and bottom features have an opening to accept a standard 1.5 inch pipe mounting hardware. The housing will have a cast boss provided for the mounting of a 6 position terminal strip. The words red, amber, green, will be cast next to each boss to identify wire attachments.
4. Painting  
All exterior surfaces of the housing, door, visors, will be powder coated to the highest industry standard. Standard colors: Dark Green FS595A 14056, Federal Yellow FS595A 13538, Dull Black FS595A
5. Door and Mounting  
Exterior grade die cast aluminum molded with two integrated hinge lugs mounted to the housing with two stainless steel hinge pins. Positive latching will be achieved with stainless steel eyebolt and wing nut assemblies. A positive seal dust tight seal will be assured with a rubber gasket fitted into the gasket channel cast in the perimeter of the door.

## Retrofit Modules

- 12 Inch Pedestrian Traffic Signal LED Module
- LED Traffic Signal Module that will be inserted (retrofitted) into existing 12 Inch Eagle Pedestrian Signal Head.
- The Eagle Pedestrian Signal are 12 Inch stacked, with Don't Walk on top and the Walk on the bottom.
- Module must have high efficiency and long life LED's
- Meets all applicable ITS Specifications
- Failure of one single LED will result in loss of only that LED
- Must be dust and moisture resistant

## SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as "Service Provider".

### WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of \_\_\_\_\_ (\_\_\_\_\_) pages, and incorporated herein by this reference.

2. The Work Schedule. The services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule attached hereto as Exhibit "B", consisting of (\_\_\_\_\_) page[s], and incorporated herein by this reference.

3. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated within \_\_\_\_\_ (\_\_\_\_\_) days following execution of this Agreement. Services shall be completed no later than \_\_\_\_\_. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in a writing signed by the parties.

4. Contract Period. This Agreement shall commence upon the date of execution shown on the signature page of this Agreement and shall continue in full force and effect for one (1) year, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for an additional period of one (1) year at the rates provided with written notice to the Professional mailed no later than ninety (90) days prior to contract end.



4. Contract Period. This Agreement shall commence \_\_\_\_\_, 200\_\_\_\_\_, and shall continue in full force and effect until \_\_\_\_\_, 200\_\_\_\_\_, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed \_\_\_\_\_ (\_\_\_\_\_) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. The Denver Boulder Greeley CPIU published by the Colorado State Planning and Budget Office will be used as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end.

5. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

[Early Termination clause here as an option.

6. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City:

Service Provider:

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

7. Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) attached hereto as Exhibit "C", consisting of \_\_\_\_\_ (\_\_\_\_\_) page(s), and incorporated herein by this reference.

8. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

9. Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

10. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

11. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

12. Warranty.

(a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.

(b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.

(c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

13. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

14. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

15. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

16. Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit \_\_\_\_\_, consisting of \_\_\_\_\_ (\_\_\_\_\_) pages[s], attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, P. O. Box 580 Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

17. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

18. Law/Severability. The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

19. Special Provisions. [Optional] Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit \_\_\_\_, consisting of \_\_\_\_\_ (\_\_\_\_) page[s], attached hereto and incorporated herein by this reference.

CITY OF FORT COLLINS, COLORADO  
a municipal corporation

By: \_\_\_\_\_  
James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

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

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
CORPORATE PRESIDENT OR VICE PRESIDENT

Date: \_\_\_\_\_  
(Corporate Seal)

ATTEST:

\_\_\_\_\_  
CORPORATE SECRETARY

## EXHIBIT B

### INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

A. Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.

2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

B. Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

**FEDERAL REQUIREMENTS  
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## **BUY AMERICA REQUIREMENTS**

### **49 U.S.C. 5323(j)49 CFR Part 661**

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

## **CARGO PREFERENCE REQUIREMENTS**

### **46 U.S.C. 1241**

### **46 CFR Part 381**

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.

## **SEISMIC SAFETY REQUIREMENTS**

### **42 U.S.C. 7701 et seq. 49 CFR Part 41**

**Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **ENERGY CONSERVATION REQUIREMENTS**

### **42 U.S.C. 6321 et seq. 49 CFR Part 18**

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.



## **CLEAN WATER REQUIREMENTS**

### **33 U.S.C. 1251**

#### **Clean Water**

(1) 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. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **LOBBYING**

### **31 U.S.C. 135249 CFR Part 1949 CFR Part 20**

#### **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.]**

- Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Submit signed Attachment 4, Certification Regarding Lobbying, with Bid or Proposal.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

## **ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325 18 CFR 18.36 49 CFR.633.17** 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. Not applicable

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).

### **FEDERAL CHANGES**

#### **49 CFR Part 18**

**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 Agreement (Form FTA MA (2) dated October, 1995) 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.

### **CLEAN AIR**

#### **42 U.S.C. 7401 et seq**

#### **40 CFR 15.61**

#### **49 CFR Part 18**

### **Clean Air**

- (1) 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. 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **DAVIS-BACON ACT**

**40 USC 276a -276a-5 (1995)**

**29 CFR 5 (1995)**

**The language in this clause is mandated under the DOL regulations at 29 C.F.R.5.5.)**

**(1) Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employees payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1 321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the

contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (iv) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 2021 0. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (2) **Withholding** - The City of Fort Collins shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Fort Collins may, after written notice to the

contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Fort Collins for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse

side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1 001 of title 1 8 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 1 1 246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the

employees or their representatives.

**(10) Certification of eligibility**

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT 40 U.S.C. 827 -333 (1995)**

**29 C.F.R. 5 (1995)**

**29 C.F.R. 1926 (1995)**

**Pursuant to Section 102 (Overtime):**

- (1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** - The City of Fort Collins shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (5) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act



of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### **Section 107 (OSHA):**

#### **Contract Work Hours and Safety Standards Act**

(i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **COPELAND ANTI-KICKBACK ACT**

**40 U.S.C. 276c (1995)**

**29 C.F.R. 3 (1995)**

**29 C.F.R. 5 (1995)**

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at 5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES 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.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31 18 U.S.C. 1001**

**49 U.S.C. 5307**

**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.

## TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1 D

- a. **Termination for Convenience (General Provision)** The City of Fort Collins 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 the City of Fort Collins to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Fort Collins, the Contractor will account for the same, and dispose of it in the manner the City of Fort Collins 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 City of Fort Collins 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 City of Fort Collins 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 City of Fort Collins, 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 City of Fort Collins 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 the City of Fort Collins' satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from the City of Fort Collins setting forth the nature of said breach or default, the City of Fort Collins 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 the City of Fort Collins 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 the City of Fort Collins elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Fort Collins shall not limit the City of Fort Collins'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 City of Fort Collins may terminate this contract for default. The City of Fort Collins 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 City of Fort Collins may terminate this contract for default. The City of Fort Collins 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 City of Fort Collins, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and the City of Fort Collins 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 City of Fort Collins.

- g. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Fort Collins may terminate this contract for default. The City of Fort Collins shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor changed with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [1 0] days from the beginning of any delay, notifies the City of Fort Collins in writing of the causes of delay. If in the judgment of the City of Fort Collins, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Fort Collins shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**h. Termination for Convenience or Default (Architect and Engineering)** The City of Fort Collins may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Fort Collins shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall

- (1) immediately discontinue all services affected (unless -the notice directs otherwise), and
- (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an Equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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.

**i. Termination for Convenience of Default (Cost-Type Contracts)** The City of Fort Collins may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Fort Collins or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Fort Collins, or property supplied to the Contractor by the City of Fort Collins. If the termination is for default, the City of Fort Collins may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Fort Collins and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Fort Collins, the Contractor shall be paid its Contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the Work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Fort Collins determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Fort Collins, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) 49 CFR Part 29 Executive Order 12549**

**Instructions for Certification**

**1. By signing and submitting this bid or proposal, the prospective lower tier participant is**

**providing the signed certification set out below .**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City of Fort Collins may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the City of Fort Collins if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the City of Fort Collins for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City of Fort Collins.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous, A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City of Fort Collins may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **PRIVACY ACT**

#### **5 U.S.C. 552**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts. The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **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.**

**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 VI 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.

**BREACHES AND DISPUTE RESOLUTION. 49 CFR Part 18**  
**FTA Circular 4220.1 D**

Pick applicable clause:

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Fort Collins's [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the City of Fort Collins, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fort Collins and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Fort Collins is located. and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Fort Collins, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or



acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **PATENT AND RIGHTS IN DATA**

**37 CFR Part 401**

**49 CFR Parts 18 and 19**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FT/k is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights, as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government 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. (b) In accordance with 49 C.F.R. 18.34 and 49 C.F.R. 19.36, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental,

or research work required by the underlying contract to which this Attachment is added 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 that 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 the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree 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 Purchaser or 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. Neither the Purchaser nor 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.

(e) 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.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, 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 provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United

States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 23**

DBE Policy- It is the policy of the Department of Transportation, hereinafter referred to as DOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

DBE Obligation - The grantees and its vendors agree to ensure that DBEs as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all grantees and vendors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that the DBE have the maximum opportunity and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

### **Disadvantaged Business Enterprise Provision**

1. The Federal Fiscal Year goal has been set by the City of Fort Collins in an attempt to match projected procurements with available qualified disadvantaged businesses. the City of Fort Collins goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City of Fort Collins as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the City of Fort Collins may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- (a) Policy - It is the policy of the Department of Transportation and the City of Fort Collins that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract

financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the City of Fort Collins to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City of Fort Collins procurement activities are encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, the City of Fort Collins may declare the contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City of Fort Collins DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City of Fort Collins and will be submitted to the City of Fort Collins upon request.

(e) the City of Fort Collins will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- \* Identification of qualified DBE
- \* Available listing of Minority Assistance Agencies
- \* Holding bid conferences to emphasize requirements

## 2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. or

iii. Which is at least 51 percent owned by one or more women individuals, or in the

case of any publicly owned business, at least 51 % of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

#### Transit Vehicle Manufacturers (26.49)

The City of Fort Collins will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

### **INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

### **PROHIBITED INTEREST**

No employee, officer, or agent of the grantee shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

The employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, has a financial or other interest in the firm

selected for award. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.ID**

**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 4220.1 D, dated April 15, 1996, 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 the City of Fort Collins requests which would cause the City of Fort Collins to be in violation of the FTA terms and conditions.

**Attachment 1**

**BUY AMERICA REQUIREMENTS -49 U.S.C. 5323(j) - 49 CFR Part 661**

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Attachment 1**

**BUY AMERICA REQUIREMENTS -49 U.S.C. 5323(j) - 49 CFR Part 661**

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all Bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

***Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_



**Attachment 4**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

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

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

The Contractor, \_\_\_\_\_, certifies or affirms the Truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date



**CITY OF FORT COLLINS  
INVITATION TO BID**

**BID #5955**

**Traffic Signal Heads/Accessories and Retrofit Modules**

**BID OPENING: January 31, 2006 3:00 P.M.(our clock)**

Sealed bids will be received and publicly opened at the office of the Director of Purchasing and Risk Management, PO Box 580, 215 North Mason St., 2nd floor, Fort Collins, Colorado 80522, at the time and date noted on the bid proposal and/or contract documents. If delivered, they are to be sent to 215 North Mason Street, 2<sup>nd</sup> Floor, Fort Collins, Colorado 80524. If mailed, the address is P.O. Box 580, Fort Collins, 80522-0580.

**Bids must be received at the Purchasing Office prior to 3:00 p.m. (our clock), January 31, 2006.**

Questions concerning the scope of the bid should be directed to Project Manager, Dan Holland (970) 221-6816 [dholland@fcgov.com](mailto:dholland@fcgov.com).

Questions regarding bid submittal or process should be directed to John D. Stephen, CPPO, CPPB, Senior Buyer (970) 221-6777, [jstephen@fcgov.com](mailto:jstephen@fcgov.com).

**A copy of the Bid may be obtained as follows:**

1. Download the Bid from the Purchasing Webpage, Current Bids page, at: <https://secure2.fcgov.com/bsa/login.jsp>.
2. Come by Purchasing at 215 North Mason St., 2nd floor, Fort Collins, and request a copy of the Bid.

**Special Instructions**

All bids must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Bids may be withdrawn up to the date and hour set for closing. Once bids have been accepted by the City and closing has occurred, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the City of Fort Collins' bidders list for a period of twelve months from the date of the opening. The City may also pursue any remedies available at law or in equity. Bid prices must be held firm for a period of forty-five (45) days after bid openings.

Submission of a bid is deemed as acceptance of all terms, conditions and specifications contained in the City's specifications initially provided to the bidder. Any proposed modification must be accepted in writing by the City prior to award of the bid.

Only bids properly received by the Purchasing Office will be accepted. All bids should be clearly identified by the bid number and bid name contained in the bid proposal.

No proposal will be accepted from, or any purchase order awarded, to any person, firm or corporation in default on any obligation to the City.

Bids must be furnished exclusive of any federal excise tax, wherever applicable.

Bidders must be properly licensed and secure necessary permits wherever applicable.

Bidders not responding to this bid will be removed from our automated vendor listing for the subject commodities.

The City may elect where applicable, to award bids on an individual item/group basis or on a total bid basis, whichever is most beneficial to the City. The City reserves the right to accept or reject any and all bids, and to waive any irregularities or informalities.

Sales prohibited/conflict of interest: no officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

Freight terms: unless otherwise noted, all freight is F.O.B. Destination, Freight Prepaid. All freight charges must be included in prices submitted on proposal.

Discounts: any discounts allowed for prompt payment, etc., must be reflected in bid figures and not entered as separate pricing on the proposal form.

Purchasing restrictions: your authorized signature of this bid assures your firm's compliance with the City's purchasing restrictions. A copy of the resolutions is available for review in the Purchasing Office or the City Clerk's Office. Request Resolution 91-121 for cement restrictions.

Collusive or sham bids: any bid deemed to be collusive or a sham bid will be rejected and reported to authorities as such. Your authorized signature of this bid assures that such bid is genuine and is not a collusive or sham bid.

Bid results: for information regarding results for individual bids send a self-addressed, self-stamped envelope and a bid tally will be mailed to you. Bid results will be posted in our office 7 days after the bid opening.

James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management



**CITY OF FORT COLLINS  
INVITATION TO BID**

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Bid results: for information regarding results for individual bids send a self-addressed, self-stamped envelope and a bid tally will be mailed to you. Bid results will be posted in our office 7 days after the bid opening.

James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management

BID PROPOSAL  
**BID #5955**  
**BID OPENING: January 31, 2006, 3:00p.m., (our clock)**

WE HEREBY ENTER OUR BID FOR THE CITY OF FORT COLLINS' REQUIREMENTS FOR **TRAFFIC SIGNAL HEADS/ACCESSORIES AND RETROFIT MODULES** PER THE BID INVITATION AND ANY REFERENCED SPECIFICATIONS:

All items bid must meet all specifications. Vendors responding to this bid must comply with the federal requirements in Attachment #1. Vendors must complete and submit all certifications included in Attachment #1. All items must be bid FOB destination, freight prepaid.

This is a one year agreement but, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may use the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than 90 days prior to contract end.

For technical questions, please send to Dan Holland, Project Manager, 970-221-6816 or [dholland@fcgov.com](mailto:dholland@fcgov.com).

For purchasing questions, please send to John Stephen, CPPO, Senior Buyer at 970-221-6777 or [jstephen@fcgov.com](mailto:jstephen@fcgov.com).

Quantities	Unit	Unit Cost	Extended Cost
128	Signal Head 3 Section 12,12,12 With Out Lens and Refector Full Visor (Yellow) (Aluminum)	_____	_____
26	Signal Head 2 Section 12,12, With Out Lens and Refector Full Visor (Yellow)(Aluminum)	_____	_____
34	Pedestrian Count Down Head 16 inch Countdown Head With/ LEDs (Clamshell Mount) (Right)	_____	_____
34	Pedestrian Count Down Head 16 inch Countdown Head With/ LEDs (Clamshell Mount) (Left)	_____	_____
72	Sky Brac 3 Section Standard 3 Section Sky Brac With/ 48" Bands (Mounting Hardware)	_____	_____
22	Sky Brac 5 Section Standard 5 Section Sky Brac With/ 48" Bands Side By Side (Mounting Hardware)	_____	_____
68	Backplate 3 Section For 3 Section Sky Brac 4 Inch Loveded	_____	_____
22	Backplate 5 Section For 5 Section Sky Brac Side by Side 4 Inch Loveded	_____	_____
34	Pedestrian Push Button Assembly With Sign (Right Arrow) Model Teeco 305	_____	_____
34	Pedestrian Push Button Assembly With Sign (Left Arrow) Model Teeco 305	_____	_____
42	Hardware For Side Of Pole Mounting For One Way Signal Head With Bandit Bracket J Type Foot (Vertical)(Set)	_____	_____

Sub Total for Traffic Heads/Accessories \$ \_\_\_\_\_

Retrofit Modules

<u>Quantities</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
<u>500</u>	11.9 X11.9 (12X12)" LED Full Man Module	_____	_____
<u>500</u>	11.9X11.9 (12X12)" LED Full Hand Module	_____	_____

Sub Total for Retrofit Modules \$ \_\_\_\_\_

**Grand Total \$** \_\_\_\_\_

**City reserves the right to award as a group, or Traffic Heads/Accessories and Retrofit Modules individually.**

FIRM NAME \_\_\_\_\_  
Are you a Corporation, Partnership, DBA, LLC, or PC

SIGNATURE \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

PHONE/FAX # \_\_\_\_\_

# Specifications

## Traffic Signal Heads, Accessories

The following specifications are intended to provide the minimum requirements for traffic signal equipment that will be acceptable by the City of Fort Collins.

1. General:

All the components in the 8 inch aluminum signal head are interchangeable with all the 2 inch aluminum signal head components.

2. Material:

High grade die cast aluminum alloy.

3. Housing

Exterior grade die cast aluminum molded in one piece to provide strength and positive locking with other signals and mounting hardware. Each housing is molded with a 72 tooth serrated boss and reinforcing ribs on top and bottom. The top and bottom features have an opening to accept a standard 1.5 inch pipe mounting hardware. The housing will have a cast boss provided for the mounting of a 6 position terminal strip. The words red, amber, green, will be cast next to each boss to identify wire attachments.

4. Painting

All exterior surfaces of the housing, door, visors, will be powder coated to the highest industry standard. Standard colors: Dark Green FS595A 14056, Federal Yellow FS595A 13538, Dull Black FS595A

5. Door and Mounting

Exterior grade die cast aluminum molded with two integrated hinge lugs mounted to the housing with two stainless steel hinge pins. Positive latching will be achieved with stainless steel eyebolt and wing nut assemblies. A positive seal dust tight seal will be assured with a rubber gasket fitted into the gasket channel cast in the perimeter of the door.

## Retrofit Modules

- 12 Inch Pedestrian Traffic Signal LED Module
- LED Traffic Signal Module that will be inserted (retrofitted) into existing 12 Inch Eagle Pedestrian Signal Head.
- The Eagle Pedestrian Signal are 12 Inch stacked, with Don't Walk on top and the Walk on the bottom.
- Module must have high efficiency and long life LED's
- Meets all applicable ITS Specifications
- Failure of one single LED will result in loss of only that LED
- Must be dust and moisture resistant



SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of \_\_\_\_\_ (\_\_\_\_\_) pages, and incorporated herein by this reference.

2. The Work Schedule. The services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule attached hereto as Exhibit "B", consisting of (\_\_\_\_\_) page[s], and incorporated herein by this reference.

3. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated within \_\_\_\_\_ (\_\_\_\_\_) days following execution of this Agreement. Services shall be completed no later than \_\_\_\_\_. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in a writing signed by the parties.

4. Contract Period. This Agreement shall commence upon the date of execution shown on the signature page of this Agreement and shall continue in full force and effect for one (1) year, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for an additional period of one (1) year at the rates provided with written notice to the Professional mailed no later than ninety (90) days prior to contract end.

4. Contract Period. This Agreement shall commence \_\_\_\_\_, 200\_\_\_\_\_, and shall continue in full force and effect until \_\_\_\_\_, 200\_\_\_\_\_, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed \_\_\_\_\_ (\_\_\_\_\_) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. The Denver Boulder Greeley CPIU published by the Colorado State Planning and Budget Office will be used as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end.

5. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

[Early Termination clause here as an option.

6. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

City:

Service Provider:

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

7. Contract Sum. The City shall pay the Service provider for the performance of this Contract, subject to additions and deletions provided herein, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) attached hereto as Exhibit "C", consisting of \_\_\_\_\_ (\_\_\_\_\_) page(s), and incorporated herein by this reference.

8. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

9. Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

10. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

11. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

12. Warranty.

(a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.

(b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.

(c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

13. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

14. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

15. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

16. Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit \_\_\_\_\_, consisting of \_\_\_\_\_ (\_\_\_\_\_) pages[s], attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, P. O. Box 580 Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

17. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

18. Law/Severability. The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

19. Special Provisions. [Optional] Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit \_\_\_\_, consisting of \_\_\_\_\_ (\_\_\_\_) page[s], attached hereto and incorporated herein by this reference.

CITY OF FORT COLLINS, COLORADO  
a municipal corporation

By: \_\_\_\_\_  
James B. O'Neill II, CPPO, FNIGP  
Director of Purchasing and Risk Management

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

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

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
CORPORATE PRESIDENT OR VICE PRESIDENT

Date: \_\_\_\_\_  
(Corporate Seal)

ATTEST:

\_\_\_\_\_  
CORPORATE SECRETARY

## EXHIBIT B

### INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

A. Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.

2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

B. Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

**FEDERAL REQUIREMENTS  
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## **BUY AMERICA REQUIREMENTS**

### **49 U.S.C. 5323(j)49 CFR Part 661**

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

## **CARGO PREFERENCE REQUIREMENTS**

### **46 U.S.C. 1241**

### **46 CFR Part 381**

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.

## **SEISMIC SAFETY REQUIREMENTS**

### **42 U.S.C. 7701 et seq. 49 CFR Part 41**

**Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **ENERGY CONSERVATION REQUIREMENTS**

### **42 U.S.C. 6321 et seq. 49 CFR Part 18**

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.

## **CLEAN WATER REQUIREMENTS**

### **33 U.S.C. 1251**

#### **Clean Water**

(1) 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. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **LOBBYING**

### **31 U.S.C. 135249 CFR Part 1949 CFR Part 20**

#### **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.]**

- Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Submit signed Attachment 4, Certification Regarding Lobbying, with Bid or Proposal.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

## **ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325 18 CFR 18.36 49 CFR.633.17** 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. Not applicable

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).

### **FEDERAL CHANGES**

#### **49 CFR Part 18**

**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 Agreement (Form FTA MA (2) dated October, 1995) 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.

### **CLEAN AIR**

#### **42 U.S.C. 7401 et seq**

#### **40 CFR 15.61**

#### **49 CFR Part 18**

### **Clean Air**

- (1) 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. 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **DAVIS-BACON ACT**

**40 USC 276a -276a-5 (1995)**

**29 CFR 5 (1995)**

**The language in this clause is mandated under the DOL regulations at 29 C.F.R.5.5.)**

**(1) Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employees payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1 321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the

contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (iv) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 2021 0. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (2) **Withholding** - The City of Fort Collins shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Fort Collins may, after written notice to the

contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Fort Collins for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse

side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1 001 of title 1 8 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 1 1 246, as amended, and 29 CFR part 30.

- (5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the



employees or their representatives.

**(10) Certification of eligibility**

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT 40 U.S.C. 827 -333 (1995)**

**29 C.F.R. 5 (1995)**

**29 C.F.R. 1926 (1995)**

**Pursuant to Section 102 (Overtime):**

- (1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** - The City of Fort Collins shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (5) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act

of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### **Section 107 (OSHA):**

#### **Contract Work Hours and Safety Standards Act**

(i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **COPELAND ANTI-KICKBACK ACT**

**40 U.S.C. 276c (1995)**

**29 C.F.R. 3 (1995)**

**29 C.F.R. 5 (1995)**

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at 5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES 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.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31 18 U.S.C. 1001**

**49 U.S.C. 5307**

**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.

## TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1 D

- a. **Termination for Convenience (General Provision)** The City of Fort Collins 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 the City of Fort Collins to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Fort Collins, the Contractor will account for the same, and dispose of it in the manner the City of Fort Collins 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 City of Fort Collins 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 City of Fort Collins 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 City of Fort Collins, 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 City of Fort Collins 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 the City of Fort Collins' satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from the City of Fort Collins setting forth the nature of said breach or default, the City of Fort Collins 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 the City of Fort Collins 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 the City of Fort Collins elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Fort Collins shall not limit the City of Fort Collins'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 City of Fort Collins may terminate this contract for default. The City of Fort Collins 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 City of Fort Collins may terminate this contract for default. The City of Fort Collins 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 City of Fort Collins, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and the City of Fort Collins 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 City of Fort Collins.

- g. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Fort Collins may terminate this contract for default. The City of Fort Collins shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor changed with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [1 0] days from the beginning of any delay, notifies the City of Fort Collins in writing of the causes of delay. If in the judgment of the City of Fort Collins, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Fort Collins shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**h. Termination for Convenience or Default (Architect and Engineering)** The City of Fort Collins may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Fort Collins shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall

- (1) immediately discontinue all services affected (unless -the notice directs otherwise), and
- (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an Equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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.

**i. Termination for Convenience of Default (Cost-Type Contracts)** The City of Fort Collins may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Fort Collins or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Fort Collins, or property supplied to the Contractor by the City of Fort Collins. If the termination is for default, the City of Fort Collins may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Fort Collins and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Fort Collins, the Contractor shall be paid its Contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the Work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Fort Collins determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Fort Collins, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) 49 CFR Part 29 Executive Order 12549**

**Instructions for Certification**

**1. By signing and submitting this bid or proposal, the prospective lower tier participant is**

**providing the signed certification set out below .**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City of Fort Collins may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the City of Fort Collins if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the City of Fort Collins for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City of Fort Collins.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous, A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City of Fort Collins may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **PRIVACY ACT**

#### **5 U.S.C. 552**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts. The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **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.**

**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 VI 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.

**BREACHES AND DISPUTE RESOLUTION. 49 CFR Part 18**  
**FTA Circular 4220.1 D**

Pick applicable clause:

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Fort Collins's [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the City of Fort Collins, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fort Collins and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Fort Collins is located. and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Fort Collins, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or

acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **PATENT AND RIGHTS IN DATA**

**37 CFR Part 401**

**49 CFR Parts 18 and 19**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FT/k is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights, as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government 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. (b) In accordance with 49 C.F.R. 18.34 and 49 C.F.R. 19.36, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental,

or research work required by the underlying contract to which this Attachment is added 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 that 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 the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree 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 Purchaser or 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. Neither the Purchaser nor 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.

(e) 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.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, 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 provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United

States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 23**

DBE Policy- It is the policy of the Department of Transportation, hereinafter referred to as DOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

DBE Obligation - The grantees and its vendors agree to ensure that DBEs as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all grantees and vendors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that the DBE have the maximum opportunity and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

### **Disadvantaged Business Enterprise Provision**

1. The Federal Fiscal Year goal has been set by the City of Fort Collins in an attempt to match projected procurements with available qualified disadvantaged businesses. the City of Fort Collins goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City of Fort Collins as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the City of Fort Collins may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- (a) Policy - It is the policy of the Department of Transportation and the City of Fort Collins that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract

financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the City of Fort Collins to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City of Fort Collins procurement activities are encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, the City of Fort Collins may declare the contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City of Fort Collins DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City of Fort Collins and will be submitted to the City of Fort Collins upon request.

(e) the City of Fort Collins will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- \* Identification of qualified DBE
- \* Available listing of Minority Assistance Agencies
- \* Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. or

iii. Which is at least 51 percent owned by one or more women individuals, or in the

case of any publicly owned business, at least 51 % of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

#### Transit Vehicle Manufacturers (26.49)

The City of Fort Collins will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

### **INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

### **PROHIBITED INTEREST**

No employee, officer, or agent of the grantee shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

The employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, has a financial or other interest in the firm

selected for award. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

#### **FTA Circular 4220.ID**

**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 4220.1 D, dated April 15, 1996, 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 the City of Fort Collins requests which would cause the City of Fort Collins to be in violation of the FTA terms and conditions.

**Attachment 1**

**BUY AMERICA REQUIREMENTS -49 U.S.C. 5323(j) - 49 CFR Part 661**

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_



**Attachment 1**

**BUY AMERICA REQUIREMENTS -49 U.S.C. 5323(j) - 49 CFR Part 661**

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all Bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

***Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Attachment 4**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

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

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

The Contractor, \_\_\_\_\_, certifies or affirms the Truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date