



EL PASO  
TRANSPORTATION  
AUTHORITY

**Request for Qualifications (RFQ)  
Legal Counsel Services**

**Submission Due Date, Friday, June 5, 2026 at 5:00 p.m. MDT**

**SUMMARY OF REQUEST:**

The El Paso Area Transportation Services, LGC is requesting qualifications from attorneys and/or law firms located in El Paso County interesting in contracting for routine legal services, advice, interpretations, and risk management. ETA, doing business as El Paso Transportation Authority, contracts with private sector to provide public transportation services and the necessary operating and administrative staff to support ETA's mission.

The term of the Agreement will be for three (3) years, with conditions for extension for two (2) one (1) year extension. Presently, ETA Board of Directors meets monthly on the fourth Wednesday of each month, at 1:30 p.m., Mountain Daylight Time (MDT).

**SUBMITTAL INSTRUCTIONS**

Interested attorneys and/or law firms that can practice law in El Paso County are invited to submit a signed proposal in a PDF format electronically to John Andoh, Executive Director, at [jandoh@elpasotransportationauthority.org](mailto:jandoh@elpasotransportationauthority.org). The email subject line should be "Legal Services – ETA".. Submissions will be accepted at any time before **5:00 p.m. on Friday, June 5, 2026**.

This RFQ does not commit ETA to award a contract or to pay any costs incurred in the preparation of a proposal responsive to this request. The same email above may be used if there are questions. Questions will be posted at <https://elpasotransportationauthority.org/news/>

**EVALUATION AND SELECTION CRITERIA**

**Factor Weight Given**

1. Reputation and qualifications of the specific individuals to be assigned to act as Counsel to the ETA, including ability and history of successfully completing contracts of a similar type, meeting deadlines, and experience in similar work, with consideration given to references: **40%**
2. Responsiveness of the written proposal to the purpose and scope of service: **20%**.
3. Competitiveness of fee structure: **40%**.

Total Criteria Weight **100%**. Each proposal will be independently evaluated on factors (1) through (3).

**COMPENSATION**

The Respondent's proposed price should include price information on the hourly billing rates of each attorney or other legal staff who are expected to work for ETA.

**SCOPE OF SERVICES, TERMS AND CONDITIONS**

Please see the following draft Agreement for the scope of services, terms, and conditions, except as noted above.

# LEGAL SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the **El Paso Area Transportation Services, LGC** (“ETA”), doing business as “El Paso Transportation Authority”, and \_\_\_\_\_, licensed attorney in the State of Texas (“Attorney”).

## RECITALS.

**WHEREAS**, ETA desires to contract for routine legal services, advice, interpretations, and risk management, as hereafter mutually agreed between the parties; and

**WHEREAS**, ETA warrants that its execution of this Agreement is lawful and within its power; and

**WHEREAS**, ETA acknowledges that Attorney is limited in the performance of its duties by the Texas State Rules of Professional Conduct; and

**WHEREAS**, ETA contracts with the private contractor to provide public transportation services and the necessary operating and administrative staff to support ETA.

## **NOW THEREFORE, IT IS AGREED BETWEEN ETA AND ATTORNEY:**

1. **Authority.** ETA’s officials responsible for assigning the Attorney work are the Board Chair and Executive Director. Additionally, a majority of the Board Members may give direct assignments to the Attorney if such direction is given during a meeting of the Board of Directors.

2. **General Duties.** The Attorney shall be responsible for performing all legal work for ETA, except as set forth below, or in those instances in which ETA assigns legal work to other attorneys, at ETA’s own discretion.

3. **Specific Duties.** The following list of duties are illustrative of the services required from Attorney but is not necessarily inclusive of all duties. In addition, Attorney shall only provide these services when so requested by ETA.

a. ***Legal Documents.*** The Attorney shall review and offer its professional advice on all resolutions, contracts, interlocal agreements, legal correspondence or other legal documents. The Attorney shall draft such documents as requested by ETA. ETA shall forward all draft documents (including contracts, resolutions and interlocal agreements) to the Attorney to approve as to form, when required by law.

b. ***Advisory Duties.*** The Attorney shall advise the Board Chair, Executive Director, Board Members and/or ETA staff members with regard to legal matters relating to their respective duties. This includes providing advice on procedural issues relating to the conduct of meetings and conduct with the public.

c. ***Meetings.*** The Attorney shall attend and prepare for meetings as requested by ETA. Preparation includes the review and drafting of resolutions, review of any contracts, leases, inter-local agreements, and other legal documents pertaining to operation of ETA, and any legal research on issues or procedural matters before the Board.

d. ***Court Proceedings.*** Upon request, the Attorney shall represent ETA in civil lawsuits and other contested proceedings commenced by or against ETA. If applicable and upon request, Attorney shall assist ETA in pursuing any insurance benefits or seeking defense representation for claims covered by insurance. Attorney acknowledges that ETA’s operations contractor, who will handle or take the lead in responding to and defending against claims and lawsuits related to actual transit operations.

In the event it becomes necessary to commence or defend hearings, litigation or appeals in connection with this representation, ETA shall reimburse Attorney for all litigation connected expenses, including filing fees, deposition expenses, expert fees, and such other out-of-pocket costs normally and reasonably incurred in such matters.

e. **Other Services.** The Attorney shall provide such other requested services as are necessary, appropriate and within Attorney's competence in order to provide ETA with adequate legal representation.

4. **Location, Time Frame of Services.**

a. **Location.** The Attorney shall provide services in El Paso County as directed by the Executive Director, the Board Chair or the majority of the Board of Directors by a vote at an official meeting. The Attorney shall be compensated for mileage at the then current Internal Revenue Services (IRS) mileage reimbursement rate, and reasonable travel expenses, for services outside of El Paso County. The Attorney may be based outside of El Paso County, however, shall be able to come to El Paso County when requested by the Executive Director.

b. **Time Frame.** The Attorney shall make every effort to perform the duties requested by ETA in the time frame requested by ETA or as expeditiously as possible. The Attorney agrees to keep ETA informed of the status of any assignment and provide a date as to when the work anticipated will be completed. Under no circumstances, should the delivery of work product exceed 15 business days unless agreed to by the Executive Director or circumstances require the Attorney to extend the delivery time of a specific work product or task.

5. **Excluded Services.** The Attorney's services do not include:

a. Providing any advice or representation to ETA on labor, labor negotiations, employment or personnel matters unless specifically requested by ETA.

b. Representing or advising ETA employees where the interest of ETA employee may conflict with that of ETA.

c. Providing legal services where ETA has insurance coverage that provides for legal services and ETA has tendered the defense to the insurance carrier. Provided, however, the Attorney shall monitor the lawsuit or claim on behalf of ETA, and may be retained by ETA's insurance provider to provide such legal services, or may pursue claims against ETA's insurance provider as needed to ensure ETA's rights under the contract of insurance are provided.

6. **Conflict of Interest.** The Attorney provides services to other governmental agencies in its independent law practice. The Attorney shall not perform such services for to other governmental agencies where a conflict of interest or ethical violation, as defined in the Texas State Bar Rules of Professional Conduct, may exist. The Attorney warrants, to the best of its knowledge, that its execution and delivery of this Agreement does not and will not conflict with any obligation of Attorney to a current or former to other governmental agencies.

7. **Compensation.**

a. **Hourly Rate.** ETA shall pay Attorney at the rate of \$\_\_\_\_\_ per hour. The Attorney shall invoice ETA no later than the last week of each month for work performed the previous month. ETA shall pay the Attorney's invoice promptly, and in no case later than 30 business days from the invoice date.

b. Attorney's actual direct expenses incurred for any routine work for ETA shall be reimbursed at actual cost. Examples of direct costs include copying costs, mailing and postage fees, hiring of subcontractors or other Attorneys as approved in advance by ETA, and other reasonable costs.

c. As appropriate, ETA shall issue the Attorney a federal 1099 form.

Attorney's federal tax identification number is \_\_\_\_\_.

Attorney's mailing address is \_\_\_\_\_.

Attorney's phone number is \_\_\_\_\_.

Attorney's e-mail address is \_\_\_\_\_.

ETA's mailing address is 800 East Overland Avenue, Room 423, El Paso, TX 79901

ETA's phone number is (915) 273-3838

ETA's email address is [director@elpasotransportationauthority.org](mailto:director@elpasotransportationauthority.org)

8. **Term of Agreement.** This Agreement is for an initial term of \_\_\_\_\_, 2026 through \_\_\_\_\_, 2029.

a. At the option of ETA, this Agreement may be extended for two-year periods upon the same terms contained herein, except that the Attorney's hourly rate may be adjusted upon mutual agreement.

b. This Agreement may be terminated by either party by giving 90 business days' notice to the other party. Any earned compensation or expenses appropriate under this Agreement will be paid for services rendered during the notice period but will only be authorized thereafter upon express agreement of the Executive Director. The Attorney agrees to co-operate in the transferring of all ETA's files and records and provide a copy of all pending attorney files to ETA's designee promptly upon completion of services.

c. Upon termination of this Agreement, the Attorney shall not be entitled to severance pay or continued compensation other than for ongoing services the Attorney and Executive Director have agreed will extend beyond the effective termination date.

9. **Equipment and Other Resources.** The Attorney shall obtain its own cellular phone, computer, office equipment and access to electronic legal research services as needed to perform the legal services contemplated in this agreement.

10. **Insurance.** During the term of this Agreement and any extensions thereof, the Attorney shall secure and maintain a policy of comprehensive professional liability insurance provided by an insurance company licensed to do business in the state of Texas. Said policy shall have limits of not less than \$1,000,000.

The Attorney shall also secure and maintain general liability and automobile liability insurance, each with limits not less than \$1 million per occurrence and \$1 million aggregate, provided by an insurance company licensed to do business in the state of Texas.

11. **Indemnity.** ETA shall defend, indemnify and hold Attorney harmless from any and all claims arising out of the good faith performance of Attorney's duties for services provided within the scope of this Agreement, within the confines of applicable ethical rules and in compliance with existing law. Indemnity will not be provided for acts performed outside the scope of the Attorney's requested services, or for any acts of misconduct, negligence, or alleged violations of existing law.

The Attorney shall defend, indemnify, and hold ETA harmless from any and all claims arising out of the good faith performance of ETA's duties and services related to the scope of this Agreement and in compliance with existing law. Indemnity will not be provided for acts performed for any acts of misconduct, negligence, or alleged violations of existing law.

12. **Confidentiality.** Attorney agrees to keep all of the information provided by ETA in the context of this Agreement confidential for the term of this Agreement and thereafter, unless the Attorney-ETA privilege is specifically waived, in writing, by an individual authorized to waive this privilege. This applies to all information and communications, including electronic communications, unless available to the public through a public records request and otherwise not subject to a specific exemption.

13. **Maintenance of ETA Records and Files.** Any work-related products, such as letters, plans, spreadsheets, databases, or the like, that are developed during the term of this Agreement for ETA by the Attorney shall be deemed to be owned jointly by the Attorney and ETA. The Attorney will keep ETA adequately advised of all legal matters by providing copies of all letters or correspondence, plans or proposals written on ETA's behalf to the Executive Director. All copies of correspondence received by the Attorney relating to ETA business will be routinely forwarded to the Executive Director or its designee upon receipt. A copy of all documents prepared by the Attorney, but not previously provided, or when duplicates are needed, shall be delivered to ETA upon request.

14. **Qualifications.** Throughout the term of this Agreement, the Attorney shall be an attorney licensed by the state of Texas and a member in good standing of the Texas State Bar.

15. **Independent Contractor Status.** The Attorney is an independent contractor and is not an employee of ETA. The Attorney is responsible for paying its own federal income tax withholding and other taxes, fees or other charges imposed by law upon independent contractors from the compensation paid to it by ETA. The Attorney is

not entitled to any benefits such as sick leave, vacation, unemployment insurance, worker's compensation, retirement, overtime, compensatory time or any other benefit not specifically addressed and provided for in this Agreement.

**16. Non-Exclusive Agreement.** This is a non-exclusive Agreement. ETA reserves the right to appoint additional attorneys, to contract for a new attorney in the future, or to terminate this Agreement as provided herein. Nothing in this Agreement shall guarantee renewal of this Agreement, and in the event of a future renewal, the parties reserve the right to renegotiate all provisions. Likewise, Attorney reserves the right to perform legal duties for other governmental agencies, provided that there is no conflict of interest with ETA.

**17. Miscellaneous.**

- a. ETA is a tax-exempt political corporation of the State of Texas that will not be liable for any taxes from which it is exempt.
- b. Nothing referenced herein modifies or waives any sovereign immunity, lien or indemnity prohibition, defense, or limitation of liability enjoyed by ETA, its elected officials, or employees at common law or under other Texas law.
- c. The parties are not liable for delays in performance due to causes beyond their reasonable control. The parties are not liable under any circumstance for lost business/profits, indirect, consequential, liquidated, or punitive damages of any kind, under any theory of recovery even if the party is advised of the potential for any such damages, and a party shall be liable for direct damages only to the extent allowed by parties law and attributable to that party's gross negligence, willful, or intentional conduct.
- d. ETA is subject to the Open Meetings Act and Public Information Act, Texas Government Code Chapters 551 and 552, respectively, which may require the disclosure of information despite any confidentiality or other provisions to the contrary in the Tenna between the parties.
- e. The laws and remedies of the State of Texas apply the Terms between the parties, Texas choice of law or conflicts of law provisions notwithstanding. Venue is in El Paso County, Texas.
- f. The experience, knowledge, capability and reputation of Attorney, its principal and employees, were a substantial inducement for ETA to enter this Agreement. Therefore, Attorney shall not assign its obligations herein or contract with any other entity to perform in whole or in part the services required hereby without the express written approval of ETA.
- g. Attorney shall keep the books and records necessary to perform the services required by this Agreement and allow ETA to evaluate the same. ETA shall have full and free access to such books and records at all times during normal business hours of ETA, including the right to inspect, copy, audit, and make records and transcripts of such records. Such records shall be maintained for a period of three (3) years following completion of services hereunder, and ETA shall have access to such records in the event any audit is required.
- h. All drawings, specifications, reports, records, documents and other materials prepared by Attorney, its employees, and agents in the performance of this Agreement shall be the property of ETA and shall be delivered to ETA upon request of ETA or upon termination of this Agreement and Attorney shall have no claim for further employment or additional compensation as a result of the exercise by ETA of its full rights of ownership of such documents and materials.
- i. Attorney covenants that, by and for itself, its executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement.
- j. This Agreement may be amended at any time by an instrument in writing signed by both parties.
- k. Should a portion of this Agreement be declared invalid or unenforceable by a judgement or decree of a competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of the bargain or renders this Agreement meaningless.
- l. The persons executing this Agreement on behalf of the parties hereto warrant that such party is duly authorized to execute and deliver this Agreement on behalf of said party.
- m. **Federal Funds.** The Attorney acknowledges that ETA shall use Federal funds to pay for the services in this Agreement. Therefore Attorney, shall comply with the appropriate Federal Clauses and Certifications in Exhibit B, certify any use of Disadvantaged Business Enterprise (DBE) vendors in this Agreement and register with Systems for Awards Management or SAM at [www.sam.gov](http://www.sam.gov). Any

reference in Exhibit B to Agency, Sub-Recipient or Recipient shall mean ETA and any reference to Contractor or Respondent shall mean Attorney.

17. **Entire Agreement.** This Agreement incorporates the entire Agreement between the parties with regard to the legal work to be performed on behalf of ETA, and the rates to be charged therefore.

DATED this \_\_\_\_ day of \_\_\_\_\_ 2026.

**ATTORNEY**

**EL PASO TRANSPORTATION AUTHORITY**

\_\_\_\_\_

\_\_\_\_\_

Name

John Andoh

Firm

Executive Director

**EXHIBIT A**

**PROPOSAL AND QUOTATION**

**EXHIBIT B**

**FEDERAL CLAUSES AND CERTIFICATIONS**

## ACCESS TO RECORDS AND REPORTS

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

## CHANGES TO FEDERAL REQUIREMENTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, "49 C.F. R. Part 21 and any implementing requirement FTA may issue.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964," 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Equal Employment Opportunity.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 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.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Federal Law and Public Policy Requirements.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## DEBARMENT AND SUSPENSION

Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (1) Complies with federal debarment and suspension requirements; and
- (2) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

## DISADVANTAGED BUSINESS ENTERPRISE (DBE)

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## DOMESTIC PREFERENCES FOR PROCUREMENTS

a. The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

b. For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

c. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR 184.

## ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

#### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PATENT RIGHTS AND RIGHTS IN DATA**

### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to

use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not 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.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

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

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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- 1) Procure or obtain covered telecommunications equipment or services;
- 2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- 3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(c) For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115-232 and 200.471.

## **PROMPT PAYMENT**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SOLID WASTES (RECOVERED MATERIALS)**

(a) A Recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

## SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency'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 Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### 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 Agency 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 be paid only 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 Agency 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 Agency, 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.

### Opportunity to Cure (General Provision)

The Agency, 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### 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 Agency may terminate this contract for default. The Agency 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 Agency.

### 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 Agency may terminate this contract for default. The Agency 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 Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency 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 Agency.

### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure 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 provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default.

In this event, the Agency 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 Agency 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 Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged 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 Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. 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 Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's 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 Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

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 Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency 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 Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency 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 Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **OTHER RECOMMENDED CONTRACT REQUIREMENTS**

### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

### **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

### **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

### **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

(a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;

- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

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Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**Instructions for Certification:** Signing below indicates the prospective lower tier participant is providing the signed certification.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspension,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,
2. Is for audit services, or,
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project, or
  - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

**Certification**

Contractor: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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

## Applicable General State Clauses

Debarment Under this subchapter, the director may, in order to protect the interests of the state: (1) conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment; (2) cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment; (3) assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract; (4) debar a contractor for a specified period of time; and (5) take any other action authorized by law. Authority: 34 TAC §20.585 Debarment Public Information Act Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Authority: Chapter 552, Gov't Code and §2252.907 Gov't Code Child Support Obligation Certification Under Section 231.006(d) of the Texas Family Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified GRANT and acknowledges that this Agreement may be terminated and payment or grant funds may be withheld if this certification is inaccurate. Authority: §231.006 Family Code Debts and Delinquencies Affirmations Sub-recipient agrees that any payments due it under the Agreement shall be applied toward any debt or delinquency that is owed to the State of Texas. Authority: §2252.903 Gov't Code Disaster Recovery Plan In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide to AGENCY the descriptions of its business continuity and disaster recovery plans. Authority: §444.190 Gov't Code Disclosure of Prior State Employment In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, RESPONDENT certifies that it does not employ an individual who has been employed by AGENCY or another agency at any time during the two years preceding the submission of the Response or, in the alternative, RESPONDENT has disclosed in its Response the following: (i) the nature of the previous employment with AGENCY or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. Authority: §2254.033 Gov't Code Entities that Boycott Israel Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either (i) it meets an exception criteria under Section 2271.002, or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. Sub-recipient shall in a writing to the AGENCY state any fact(s) that make it exempt from the boycott certification. Authority: §2271.001 Gov't Code Excluded Parties Sub-recipient certifies that it is not listed on the prohibited vendors list authorized by Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control. Authority: Federal Executive Order 13224 False Statements Sub-recipient represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void this agreement. Authority: §2155.077(a)(2) Gov't Code Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate. Authority: §2155.004 Gov't Code Financial Participation Prohibited Affirmation Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate. Authority: §2155.004 Gov't Code Foreign Terrorist Organizations Sub-recipient represents and warrants that is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code. Authority: §2252.152 Gov't Code Prior Disaster Relief Contract Violation Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate. Authority: §2155.006 and §2261.053 Gov't Code Signature Authority The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient. Authority: §2252.0012 Gov't Code State Auditor's Right to Audit The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Authority: §2262.154 Gov't Code Suspension and Debarment Sub-recipient certifies that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Authority: §2155.077 Gov't Code Agency Policy It is the responsibility of the end-user to verify their procurement policies or other local requirements that could affect their solicitation are included in their solicitation. Assignment Sub-recipient shall not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval from the AGENCY. Any attempted assignment in violation of this provision is void and without effect. Authority: §2262.056 (b) Gov't Code Contracting Information Responsibilities In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to: (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the AGENCY for the duration of the Agreement, (2) promptly provide to the AGENCY any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of the AGENCY, and (3) on termination or expiration of the contract, either provide at no cost to the AGENCY all contracting information related to the Agreement that is in the custody or possession of the Sub-recipient or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the AGENCY. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and the Sub-recipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter. Authority: §552.372 Gov't Code Human Trafficking Prohibition Under Section 2155.0061 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Agreement/GRANT and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. Authority: §2155.0061 Human Trafficking Prohibition Energy Company Boycotts If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required. Authority: Section 2274.002 of the Texas Government Code Firearm Entities and Trade Association Discrimination If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required. Authority: Section 2274.002 of the Texas Government Code No Conflicts of Interest Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Authority: §2252.908, 2254.032, 2261.252(b) Dispute Resolution The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to

attempt to resolve any dispute under this Agreement. Authority: §2260.004 Gov't Code

### **Clauses Applicable to Professional Services, Architecture, Engineering, and A&E**

Buy Texas Affirmation In accordance with Section 2155.4441 of the Texas Government Code, Sub-recipient agrees that during the performance of a contract for services it shall purchase products and material produced in Texas when they are available at a price and time comparable to products and materials produced outside this state. Authority: §2155.4441 Gov't Code E-Verify Program Sub-recipient certifies that for contracts for services, Sub-recipient shall utilize the U.S Department of Homeland Security's E-Verify system during the term of the agreement to determine the eligibility of: 1. all persons employed by the Sub-recipient to perform duties within Texas; and 2. all persons, including subcontractors, assigned by the Sub-recipient to perform work pursuant to the Agreement within the United States of America. Authority: Executive Order No. RP8 Antitrust Affirmation The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with the Response, neither I nor any representative of the RESPONDENT have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with the Response, neither I nor any representative of the RESPONDENT has violated any federal antitrust law, and; (3) neither I or any representative of the RESPONDENT have directly or indirectly communicated any of the contents of this Response to a competitor of the RESPONDENT or any other company, corporation, firm, partnership or individual engaged in the same line of business as the RESPONDENT. Authority: §2155.005 Gov't Code Dispute Resolution Contract for Professional Services of Architect, Engineer, or Surveyor Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under the agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under the agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). (a) Notwithstanding Texas Government Code Chapter 2260.002 (3) and Chapter 114.12 and any other statute or applicable law, if the Sub-recipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Sub-recipient may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against Sub-recipient as is contemplated by Texas Government Code Chapter 2260, Subchapter B. In such event, Sub-recipient must provide written notice to Agency of a claim for breach of the agreement not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Sub-recipient seeks as damages; and (3) the legal theory of recovery. (b) The chief administrative officer, or if designated in the Agreement another officer of the AGENCY, shall examine the claim and any counterclaim and negotiate with Sub-recipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052. (c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Agreement as to the parts of the claim that are not resolved. (d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the AGENCY, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Sub-provider's sole and exclusive process for seeking a remedy or an alleged breach of contract by the AGENCY if the parties are unable to resolve their dispute as described in this section. (e) Nothing in this Agreement shall be construed as a waiver of the state's or the AGENCY'S sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities, or be considered as a basis for estoppel. AGENCY does not waive any privileges, rights, defenses, or immunities available to AGENCY by entering into this Agreement or by its conduct or by the conduct of any representatives of AGENCY, prior to or subsequent to entering into this Agreement. (f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Sub-recipient: (1) filing suit pursuant to Chapter 114 of the Civil Practice and Remedies Code; or (2) initiating a contested case hearing pursuant to subchapter C of Chapter 2260 of the Texas Government Code. Authority: §2254.004 Gov't Cod