



CENTRAL TEXAS REGIONAL  
**MOBILITY AUTHORITY**

# Title VI/Nondiscrimination Plan

April 2026

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- A Title VI/Nondiscrimination Statement
- B Title VI/Nondiscrimination Assurances
- C Organizational Chart
- D Sample Complaint Forms
- E 183 South Community Relations Plan
- F Form FHWA-1273 – Required Contract Provisions Federal-Aid Construction Contracts
- G Title VI Special Provision
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## Introduction

As a subrecipient of federal assistance administered by the Texas Department of Transportation (TxDOT), the Central Texas Regional Mobility Authority (Mobility Authority) is required to comply with various nondiscrimination laws and regulations, including Title VI of the Civil Rights Act of 1964.

Title VI of the Civil Rights Act of 1964 and related statutes and regulations ensure that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. The Mobility Authority's policy on nondiscrimination includes these protected classes to ensure there is no discrimination in any programs or activities, including those related to transportation facilities.

### *Authorities*

The authorities applicable to this Title VI/Nondiscrimination Program include:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibits discrimination on the basis of race, color and national origin.
- Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. § 324) prohibits discrimination based on sex.
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 790) prohibits discrimination based on a disability.
- The Age Discrimination Act of 1975 (42 U.S.C. § 6101-6107,) prohibits discrimination based on age.
- 23 *Code of Federal Regulations* (C.F.R.) Part 200 includes the Federal Highway Administration's Title VI Program Implementation and Review Procedures.
- 49 C.F.R. Part 21 – U.S. Department of Transportation's Regulations on Title VI of the Civil Rights Act of 1964.
- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*.

## **Policy Statement on Title VI/Nondiscrimination**

Title VI of the Civil Rights Act of 1964 prohibits discrimination on federal and federally assisted projects and programs based on race, color, and national origin. Since 1964, additional statutes have prohibited discrimination based on sex (Federal-aid Highway Act of 1973), age (The Age Discrimination Act of 1975), and disability (Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990). Taken together, these requirements define an over-arching Title VI/Nondiscrimination Program. Additionally, the Civil Rights Restoration Act of 1987 defined the word “program” to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives Federal assistance.

*The Central Texas Regional Mobility Authority, as a subrecipient of Federal financial assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Authority programs or activities.*

The nondiscrimination statement signed by the Mobility Authority’s Executive Director, is included as **Attachment A**.

## **Title VI/Nondiscrimination Assurances**

23 C.F.R. § 200.9(a)(1) and 49 C.F.R. § 21.7 require assurances that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the U.S. DOT, including the Federal Highway Administration (FHWA).

The Mobility Authority's Title VI assurances signed by the Executive Director are included as **Attachment B**.

## **Organization & Staffing**

### *Title VI/Nondiscrimination Coordinator*

The Executive Director or his/her designee will appoint an individual to serve as the Mobility Authority's Title VI/Nondiscrimination Coordinator. The Mobility Authority organizational chart, included as **Attachment C**, depicts the relationship the Title VI/Nondiscrimination Coordinator has with CTRMA's Executive Director. The Title VI/Nondiscrimination Coordinator is responsible for:

- Maintaining an updated Title VI/Nondiscrimination Plan and monitoring accomplishments;
- Maintaining and providing the Title VI/Nondiscrimination policy statement and assurances;
- Assisting program personnel to correct Title VI problems or discriminatory practices or policies found through self-monitoring and review activities;
- Being the focal point for Title VI implementation and monitoring of programs and/or activities receiving Federal financial assistance;
- Ensuring that Title VI requirements are included in policy directives and that the procedures used have built-in safeguards to prevent discrimination;
- Implementation of procedures for the prompt processing of Title VI external discrimination complaints;
- Attendance at training on Title VI and other nondiscrimination authorities;
- Efforts to coordinate the development and implementation of a Title VI and related statutes training program;
- Collecting relevant data and information for compliance; and
- Developing Title VI information for public dissemination, and where appropriate, in languages other than English.

## Complaint Procedures

Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subject to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the Mobility Authority.

Complaints submitted shall be in writing and must be signed by the complainant and/or the representative. Complainants can complete the Mobility Authority's External Discrimination Complaint Form available on the Mobility Authority's website in English and Spanish or in person at the Mobility Authority's office. Example forms are included as **Attachment D**.

Where to File: Title VI complaints may be submitted in person or via mail to:

Central Texas Regional Mobility Authority  
Attn: Title VI/Nondiscrimination Coordinator  
3300 N IH-35, Suite 300  
Austin, TX 78705-1849

Complaints may also be mailed directly to:

- Texas Department of Transportation, Attn: TxDOT-PTN, 125 E. 11th Street, Austin, TX 78701-2483;
- Federal Transit Administration, Region VI, 819 Taylor Street, Room 8A36, Fort Worth, TX 76102; or
- U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590

### *Timeframe for Filing Complaints*

In order to have the complaint considered under Title VI, the complaint must be filed no later than 180 days after:

- The date of the alleged act of discrimination;
- The date the person(s) became aware of the alleged act(s) of discrimination; or
- Where there has been a continuing course of conduct, the date on which that conduct was discovered.

In either case, the Mobility Authority may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for doing so.

### *Processing Complaints*

Complaints shall set forth, as fully as possible, the facts and circumstances surrounding the alleged discrimination. In the event that a person makes a verbal complaint to a Mobility Authority employee, that person shall be interviewed by the Title VI/Nondiscrimination Coordinator. If necessary, the Title VI/Nondiscrimination Coordinator will assist the person in

documenting the complaint in writing and submitting the written version to the person for signature.

Within 10 days of receipt of the complaint, the Title VI/Nondiscrimination Coordinator will acknowledge receipt, inform the complainant of action proposed or taken, and advise the complainant of other avenues of redress available, such as filing with the Investigation and Adjudications Unit at FHWA Headquarters Office of Civil Rights and the U.S. DOT.

### *Dismissal*

A complaint may be dismissed by the Title VI Coordinator for the following reasons:

- The complainant requests withdrawal of the complaint;
- The complainant fails to respond to repeated requests for additional information needed to process the complaint; or
- The complainant cannot be located after reasonable attempts.

### *Investigation by the Texas Department of Transportation*

The Mobility Authority will forward external discrimination complaints against the Mobility Authority to TxDOT within 10 calendar days of receipt of any complaint for investigation.

### *Information to be Maintained*

The Title VI Coordinator shall collect and maintain a log of all filed complaints within the official records of the Mobility Authority, which shall include the following information, at a minimum:

- Identification of each complainant by race, color, or national origin;
- The recipient;
- The nature of the complaint;
- The dates the complaint was filed and the investigation completed;
- The disposition and date of disposition; and
- Other pertinent information.

## **Limited English Proficiency**

Executive Order 13166, entitled *Improving Access to Services by Persons with Limited English Proficiency*, requires Federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to Limited English Proficiency (LEP), cannot fully and equally participate in, or benefit from, those programs and activities.

LEP individuals are those who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English as a result of their national origin. These individuals may be entitled to language assistance with respect to a particular service, benefit, or encounter.

The U.S. Department of Justice LEP Guidance advises each Federal department, agency, and subrecipient to “take reasonable steps to ensure ‘meaningful’ access to LEP individuals to the information and services they provide.” It further explains that the identification of “reasonable steps” to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the service provided by the program; and
4. The resources available to the agency.

The Mobility Authority will develop a Language Assistance Plan (LAP) to assist in their efforts to ensure that information and services are accessible to LEP individuals by providing guidance on translation, interpretation, and outreach services for LEP individuals seeking access to Mobility Authority programs.

## **Environmental Justice**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations*, signed in February 1994, requires a Federal agency to achieve Environmental Justice (EJ) as a part of its mission by identifying disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. FHWA requires TxDOT to carry out EJ responsibilities as part of its nondiscrimination program.

As a subrecipient, the Mobility Authority makes achieving EJ part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

### *Identification of Minority and Low-income Populations*

The Mobility Authority utilizes data from the U.S. Census Bureau, public outreach (scoping meetings, public meetings, and public hearings), information on poverty guidelines from the Department of Health and Human Services, and local agency coordination (including, but not limited to metropolitan planning organizations, local elected officials, municipalities, etc.) to establish demographic characteristics and trends. The data is used to identify and engage traditionally underserved populations, including those covered under existing EJ policies, as well as LEP populations.

### *Manuals and Guidance*

The National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act, Executive Orders on EJ and LEP, and the Uniform Relocation Assistance and the Real Property Acquisitions Policies Act (Uniform Act) govern policy for conducting, at the Federal and state-level, a thorough and defensible community impact assessment (CIA).

## **Public Participation**

The Mobility Authority develops a Community Relations Plan (CRP) for each one of their projects that requires public engagement. The purpose of the CRP is to implement strategies designed to manage expectations, address public concerns, and promote the long-term benefits of the project. The CRP is a living document that does not limit the flexibility of the public involvement team to implement programs and strategies in response to changing conditions and needs.

As part of the CRP, the Mobility Authority describes its approach to ensure that language is not a barrier to communication. Outreach materials will be prepared in English and Spanish, when appropriate. Spanish-language media will be used to help disseminate project information and outreach to Spanish-speaking communities. As an example, the 183 South Project team developed a CRP, which is provided as **Attachment E** to this document.

## **Data Collection and Analysis**

Statistical data on race, color, national origin, sex, age, and disability of participants in and beneficiaries of the Mobility Authority's programs will be gathered annually and analyzed to determine the transportation investment benefits and burdens to the population, including minority and low-income populations. Beneficiaries include relocatees, impacted citizens, and affected communities. Collecting, analyzing, and maintaining statistical data are crucial elements of the Title VI/Nondiscrimination compliance program because they constitute an effective mechanism by which to numerically assess the reach and impact of program funds.

## **Solicitation for Bid/Request for Proposal**

Solicitations for Bid/Request for Proposals which include the use of federal funds shall include the following nondiscrimination paragraph from the U.S. DOT standard Title VI Assurances:

*“The Mobility Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded a full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*

## **Title VI Contract Provisions**

The Mobility Authority incorporates a copy of Form FHWA-1273, titled “Required Contract Provisions Federal-Aid Construction Contracts”, which ensures nondiscrimination in the selection of employees and subcontractors, in every contract or agreement subject to the act and the regulations. A copy of the form is included as **Attachment F**.

### *Title VI Special Provision*

TxDOT Special Provision 000-002, Nondiscrimination, provides for the inclusion of Appendix A and Appendix E from the U.S. DOT Standard Title VI Assurances into every federally funded contract as mandated by Title VI of the Civil Rights Act of 1964. A copy of the Special Provision is included as **Attachment G**.

## **Affirmative Action Program**

The Mobility Authority developed a Business Opportunity Program and Policy (BOPP) to implement the Mobility Authority's program for promoting the use of disadvantaged and small businesses in Mobility Authority's projects. The BOPP was adopted by Resolution No. 03-60 by the Board of Directors on November 5, 2003 and is included as **Attachment H** to this document. The Mobility Authority also adopted TxDOT's federally approved Disadvantaged Business Enterprise Program through a Memorandum of Understanding (MOU), executed on February 1, 2007. A copy of this MOU is included as **Attachment I** to this document. References to the BOPP and the MOU are in the Mobility Authority's Policy Code, which can be viewed at: <https://www.mobilityauthority.com/about/policy-disclaimers/code>.

## **Annual Reporting**

The Mobility Authority will develop a Title VI/Nondiscrimination Annual Work Plan & Accomplishment Report following the table of contents below:

- Organization: Title VI/Nondiscrimination Component
- Internal Monitoring Program
- Title VI/Nondiscrimination Training Summary
- Title VI/Nondiscrimination Complaints Summary
- Special Emphasis Areas
- Environmental Justice
- Limited English Proficiency

The report will be developed annually and made available to TxDOT upon request. The report will provide an annual updated status of the Mobility Authority's implementation and monitoring of the Title VI/Nondiscrimination Plan.

*Attachment A*

*Mobility Authority Policy Statement on Title VI/Nondiscrimination*

**Title VI and Related Statutes Nondiscrimination Statement**

The Central Texas Regional Mobility Authority, as a subrecipient of federal financial assistance, and under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall, on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under Mobility Authority programs or activities.



[James Bass \(Apr 1, 2026 14:48:13 CDT\)](#)

James M. Bass, Executive Director  
Central Texas Regional Mobility Authority

04/01/2026

Date

## Título VI y Estatutos Relacionados en Contra de la Discriminación

La entidad "Central Texas Regional Mobility Authority", actuando como un subreceptor de asistencia financiera federal y acatándose al Título VI del Acto de Derechos Civiles de 1964 y sus estatutos, asegura que ninguna persona será excluida de participar en actividades, se le serán negados los beneficios, o estará sujeta a discriminación debido a su raza, religión (donde el objetivo principal de la asistencia financiera es proporcionar empleo por 42 U.S.C. § 2000d-3), color, nacionalidad, sexo, edad, o discapacidad en programas o actividades de nuestra entidad.



[James Bass \(Apr 1, 2026 14:48:13 CDT\)](#)

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James M. Bass, Executive Director  
Central Texas Regional Mobility Authority

04/01/2026

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Date

**Attachment B**  
**Title VI/Nondiscrimination Assurances**

**The United States Department of Transportation (USDOT)**  
**Standard Title VI/Nondiscrimination Assurances**  
**DOT Order No. 1050.2A**

The Central Texas Regional Mobility Authority (herein referred to as the “Recipient”), HEREBY AGREES THAT, as a condition for receiving Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration, is subject to, and will comply with, the following:

**Statutory/Regulatory Authorities**

- Title VI of the Civil Rights Act of 1964 (42 *United States Code* [U.S.C.] § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- 49 *Code of Federal Regulations* (C.F.R.) Part 21 (entitled *Nondiscrimination in federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964*)
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964)

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

**General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institution-wide scope and coverage of these Nondiscrimination statutes and requirements to include all programs and activities of the Recipient, if any portion of the program is federally assisted.

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted Department of

Transportation programs:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all DOT programs and, in adapted form, all proposals for negotiated agreements regardless of funding source:

*“The Central Texas Regional Mobility Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*

3. The Recipient will insert the clauses of Appendix A and Appendix E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. The Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

- b. the period during which the Recipient retains ownership or possession of the property.
- 9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, subrecipients, subgrantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
- 10. The Recipient agrees that the United States has a right to seek judicial enforcement regarding any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Central Texas Regional Mobility Authority also agrees to comply (and require any subrecipients, subgrantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the USDOT access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the USDOT. You must maintain records and reports, and submit the material for review upon request to USDOT, or its designee, in a timely, complete, and accurate manner. Additionally, you must comply with all other reporting, data collection, and evaluation requirements as prescribed by law or detailed in program guidance.

The Central Texas Regional Mobility Authority gives this ASSURANCE in consideration of, and for obtaining, any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under all DOT programs. This ASSURANCE is binding on Texas, other recipients, subrecipients, subgrantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in all DOT programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

  
James Bass (Apr 1, 2026 14:48:13 CDT) \_\_\_\_\_ 04/01/2026 \_\_\_\_\_

James M. Bass, Executive Director  
Central Texas Regional Mobility Authority

Date

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in federally assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices, when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event that the contractor becomes involved in, or is threatened with, litigation

by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**APPENDIX B**  
**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law and upon the condition that the Central Texas Regional Mobility Authority will accept title to the lands and maintain the project constructed thereon in accordance with all applicable federal statutes, the Regulations for the Administration of all Department of Transportation programs, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Central Texas Regional Mobility Authority all the right, title and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the Central Texas Regional Mobility Authority and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Central Texas Regional Mobility Authority, its successors and assigns.

The Central Texas Regional Mobility Authority, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that

(1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the Central Texas Regional Mobility Authority will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned Nondiscrimination conditions, the DOT will have a right to enter or re-enter said lands and

facilities on said land, and that above-described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**APPENDIX C**  
**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED**  
**OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Central Texas Regional Mobility Authority pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
    - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  
  - B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Central Texas Regional Mobility Authority will have the right to terminate the [lease, license, permit, etc.] and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the [lease, license, permit, etc.]) had never been made or issued.\*
  
  - C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Central Texas Regional Mobility Authority will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the Central Texas Regional Mobility Authority and its assigns.\*
- \* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY**  
**ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Central Texas Regional Mobility Authority pursuant to the provisions of Assurance 7(b):

- A. The [grantee, licensee, permittee, etc., as appropriate] for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases, add "as a covenant running with the land"] that (1) no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to [licenses, leases, permits, etc.], in the event of breach of any of the above Nondiscrimination covenants, the Central Texas Regional Mobility Authority will have the right to terminate the [license, permit, etc., as appropriate] and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, permit, etc., as appropriate] had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, the Central Texas Regional Mobility Authority will there upon revert to and vest in and become the absolute property of the Central Texas Regional Mobility Authority and its assigns.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.

# MOBILITY AUTHORITY ORGANIZATION

## Attachment C - Organizational Chart





CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY

## Central Texas Regional Mobility Authority Discrimination Complaint Form

Mail the completed and signed form to:  
Central Texas Regional Mobility Authority  
3300 N IH-35, Suite 300  
Austin, TX 78705-1849

Last Name:	First Name and Middle Initial:
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Mailing Address (include city, state, and zip code):
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Telephone:	Email:
------------	--------

Preferred Method of Contact: <input type="checkbox"/> Telephone <input type="checkbox"/> Email <input type="checkbox"/> Other (Please Specify)
_____

Please indicate the basis of your complaint by checking one or more of the options listed:
<input type="checkbox"/> Race _____
<input type="checkbox"/> Color _____
<input type="checkbox"/> Age _____
<input type="checkbox"/> Gender _____
<input type="checkbox"/> National Origin _____
<input type="checkbox"/> Disability _____

Date and place of alleged discriminatory action(s). Please indicate the earliest date of discrimination and the most recent date of discrimination.
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How were you discriminated against? Please explain your complaint as clearly as possible. Include how other persons were treated differently. Use additional sheet(s), if necessary. Attach supporting documents, if available.

The law prohibits intimidation or retaliation against anyone because they have either taken action, or participated in action, to secure rights protected by the laws. If you feel that you have been retaliated against, separate from the discrimination alleged above, please explain the circumstances below. Describe the action you took which you believe was the cause for the alleged retaliation.

Names of persons (witnesses, coworkers, supervisors or others) whom we may contact for additional information to support or clarify your complaint (attach additional pages, if necessary).

	<u>Name</u>	<u>Address</u>	<u>Telephone</u>
1)			
2)			
3)			
4)			

What action(s) have you or your representative taken to attempt to resolve this complaint? Please include filing dates or other dates as applicable.

Action:	Date:
<input type="checkbox"/> Filed with the Federal Highway Administration	_____
<input type="checkbox"/> Filed with the U.S. Department of Transportation	_____
<input type="checkbox"/> Filed with another Federal Agency	_____
<input type="checkbox"/> Filed in Federal Court	_____
<input type="checkbox"/> Other Action	_____

Please provide any additional information you feel would be helpful in investigating this matter.

Briefly explain what remedy, or action, you are seeking for the alleged discrimination.

We cannot accept an unsigned complaint. Please sign and date the complaint form below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## Central Texas Regional Mobility Authority

### Formulario de Quejas por Motivos de Discriminación

Envíe el formulario completo a:  
Central Texas Regional Mobility Authority  
3300 N IH-35, Suite 300  
Austin, TX 78705-1849

Apellido:	Nombre:
-----------	---------

Dirección domiciliar (ciudad, estado, código postal):
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Número de teléfono:	Correo Electrónico:
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Método preferido de contacto: <input type="checkbox"/> Teléfono <input type="checkbox"/> Correo Electrónico <input type="checkbox"/> Otro (especifique por favor) _____
--

Por favor indique el motivo de su queja. <input type="checkbox"/> Raza _____ <input type="checkbox"/> Color _____ <input type="checkbox"/> Edad _____ <input type="checkbox"/> Sexo _____ <input type="checkbox"/> Origen Nacional _____ <input type="checkbox"/> Impedimento _____
---

Fecha aproximada del presunto acto de discriminación. Indique por favor la primera vez que ocurrió la discriminación y la fecha más reciente de la discriminación.
--

¿Cómo es que fue discriminado? Por favor describa en sus propias palabras el acto de la presunta discriminación. Relate lo que ocurrió y cómo han tratado a otras personas de manera distinta. Utilice hojas adicionales en caso de ser necesario. Adjunte otros documentos que demuestren lo ocurrido.

La ley prohíbe la intimidación y venganza contra cualquier persona que haya tomado acción o que haya participando en la investigación de una queja de discriminación. Si usted se siente que lo han amenazado, a parte de la discriminación alegada anteriormente, por favor explique las circunstancias abajo. Describa la acción que usted tomó que pudo haber causado esta amenaza.

Por favor escriba el nombre(s) e información de contacto para cualquier persona (testigos, otros empleados, supervisores, u otros) que podamos contactar para obtener información adicional y clarificar o justificar su alegación(es). Utilice las hojas adicionales, en caso de ser necesario.

	<u>Nombre</u>	<u>Dirección domiciliar</u>	<u>Número de teléfono</u>
1)			
2)			
3)			
4)			

¿Qué acciones ha tomado usted o su representante para resolver esta queja? Por favor incluya las fechas de su representación u otras fechas que apliquen a su caso.

Acción:	Fecha:
<input type="checkbox"/> Administración Federal de Carreteras de los EE.UU	_____
<input type="checkbox"/> Departamento de Transporte de los EE.UU.	_____
<input type="checkbox"/> Otras Agencias Federales de los EE.UU.	_____
<input type="checkbox"/> Tribunal Federal de los EE.UU.	_____
<input type="checkbox"/> Otros	_____

Favor de proporcionar cualquier información adicional y/o fotografías que sean pertinentes a la investigación.

Explique que medidas o acciones esta buscando para remediar el presunto acto de discriminación.

No podemos aceptar una queja sin firma. Favor de incluir su firma y la fecha a continuación:

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Fecha



# COMMUNITY RELATIONS PLAN

UPDATE NOVEMBER 2016

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**Steve Pustelnyk & Jori Steck**  
Central Texas Regional Mobility Authority

**Atkins**  
General Engineering Consultant

**Group Solutions RJW**  
Public Involvement Services Team

**Colorado River Constructors (Fluor/Balfour Beatty)**  
Design/Build Contractor



CENTRAL TEXAS  
Regional Mobility Authority

## INTRODUCTION

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The next major project for the Central Texas Regional Mobility Authority (Mobility Authority) is to improve mobility in East Austin and improve accessibility to key regional destinations like Austin-Bergstrom International Airport (ABIA) through the 183 South Project.

When open, the 183 South Project will offer Central Texas drivers a non-stop, signal free route to get to their destination without delay. This key north-south alternative to IH-35 will provide significant improvements to the corridor including a new high speed toll road with three lanes in each direction referred to as the 183 South Expressway, expanded non-tolled general purpose lanes designated as US 183 and new multi-modal transportation facilities to serve bicyclists and pedestrians.

In the meantime, however, the Mobility Authority, its consultants and contractor, will be constructing the largest transportation construction project in Central Texas since SH 130. The 183 South Project broke ground in April 2016, and construction is projected to last approximately 4 years. The construction will take place in phases, with phase one improvements, between US 290/290 Toll and south of TechniCenter Drive, expected to be complete in 2019. The second phase will open to traffic about a year later.

**Construction communications are critical to the success of this project and the community relations team will implement a world class and collaborative communications effort that follows the Bleiker method.**

Since its inception in 2002, public involvement has been a priority of the Mobility Authority and has resulted in general public support of the agency's projects and programs. The Mobility Authority's community outreach team consistently uses the strategy and methods outlined in Hans Bleiker's Systematic Development of Informed Consent. These efforts go above and beyond many traditional public involvement programs. The Informed Consent approach involves developing an understanding and appreciation of community values and strives to incorporate or address these in the evolution of the project. The goal is to build informed consent, whereby even the angriest potentially affected individuals or groups recognize that the Mobility Authority has been forthcoming and transparent about project issues and has taken reasonable steps to address concerns.

The purpose of the Community Relations Plan (CRP) is to implement strategies designed to manage expectations, address public concerns and promote the long-term benefits of the project. The CRP is a living document that will not limit the flexibility of the public involvement team to implement programs and strategies in response to changing conditions and needs.

## OBJECTIVES

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The Mobility Authority aims to achieve the following objectives:

- **Implement a world class program of community outreach** using the Bleiker method
- **Listen, acknowledge, and respond promptly** to public questions and issues
- **Work with the Design/Build team** to identify, minimize, and mitigate impacts to neighbors, businesses and the traveling public
- **Engage the community early and often** about construction progress, travel delays, lane closures, detours, and project issues via a multitude of innovative information-sharing platforms, including in-person and electronic methods
- **Develop and communicate a unified message** to ensure that stakeholders are receiving a clear and consistent message about the project from all partners
- **Build upon Mobility Authority's reputation** as a transparent, credible agency and a good partner to the community

- **Provide a robust bilingual communications program**
- **Address concerns and criticisms** and correct misinformation about the project
- **Maintain proactive, two-way communication and information flow** during the process and address concerns, criticisms and misinformation
- **Manage expectations** and promote long-term benefits of the project
- **Build upon the efforts of the communications program** carried out during the environmental process and reinforce relationships with key stakeholders and maintain project momentum

We consider public involvement to be a key element within the fabric of project planning, delivery, and operation. **Next to funding, public trust can be a project’s greatest asset or its biggest downfall.** It is critical that the team keep a pulse on the community to ensure that our project is successful.

**TEAM**

The community relations program will be created and executed by the Mobility Authority with the assistance of consultants and the Design/Build Contractor, Colorado River Constructors (CRC).

The organizational chart below shows the community relations team and the role and responsibilities for each member. Steve Pustelnyk and the GEC team will lead and manage the day-to-day activities for public information and communications with the assistance of the key personnel listed.

TEAM	
AGENCY/FIRM	TEAM MEMBERS
<b>MOBILITY AUTHORITY</b> Owner	<ul style="list-style-type: none"> <li>• <b>Management Team:</b> Justin Word</li> <li>• <b>Community Relations Director:</b> Steve Pustelnyk</li> <li>• <b>Communications Manager:</b> Jori Steck</li> </ul>
<b>ATKINS</b> GEC	<ul style="list-style-type: none"> <li>• <b>Management Team:</b> Aaron Autry, Jerel Rackley</li> <li>• <b>Community Relations Manager:</b> Elizabeth Story, Katie Kenneally</li> </ul>
<b>GROUP SOLUTIONS</b> Public Involvement Services Team	<ul style="list-style-type: none"> <li>• <b>Community Relations Support:</b> Robena Jackson, Tracy Shell</li> </ul>
<b>COLORADO RIVER CONSTRUCTORS (CRC)</b> D/B Contractor	<ul style="list-style-type: none"> <li>• <b>Management Team:</b> Scott Yardas, Terry Oliver</li> <li>• <b>Community Relations Support:</b> Yvette Mercado, Beverly Silas</li> </ul>

**ADJACENT PROJECTS**

Coordination and communications with adjacent projects is important as their progress and completion could affect the development of the 183 South Project. Listed below are the adjacent projects the project team should communicate with or be aware of:

- SH 71 Express/71 Toll Lane Project (TxDOT Austin / TxDOT SPD Division)
- 290 Toll / SH 130 Intersection Improvements Project (Mobility Authority)
- SH 71 Environmental Studies, various (TxDOT Austin)

## POTENTIAL COMMUNICATION ISSUES

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- Tree preservation / removal
- Potential environmental impacts and opportunities/erosion control/flooding
- The impact of temporary and permanent cross street closures
- Changes to traffic patterns through neighborhoods
- The impact of construction on drivers in the area especially long term closures and detours
- The impact of construction on residents and businesses in the area, including but not limited to:
  - access limitations
  - noise, odor, and light pollution,
  - dust and construction debris,
  - exposure to construction and loss of privacy
- Maintenance of traffic issues including striping, signing, temporary lighting, barrel and cone placement, wording/spelling on VMS signs.
- Late changes to traffic control plans with limited or no notice regarding potential impacts to traveling public
- Lack of reliable schedule for completion of various construction activities or failure to complete construction elements when scheduled
- Opposition to tolling
- Issues with access to airport and travelers or shippers missing flights
- Expectations for quick completion and opening of bicycle/pedestrian elements
- Worker behavior including inappropriate language, littering, driving, gestures, unsafe activities etc.
- Failure to properly maintain temporary construction facilities/materials such as fencing
- Miscommunication between residents and construction contractor regarding private property issues
- Utility outages/damage caused by or due to construction

At a minimum, the team should be prepared with key messages to address all of these potential issues. In addition to enabling quick responses as the issues may arise, if the messages are appropriately incorporated into the core messaging for the project and repeated continuously, the team could help prevent or at least mitigate them before they escalate.

## STRATEGIES

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The Mobility Authority is committed to being a proactive force in the communities we serve. The strategies noted below will guide the project team's interactions with the public, agencies, and other important stakeholders.

**1. Construction-Related Communication and Notifications.** The public's safety and convenience throughout construction is an overarching aim of project communication. The team will use a variety of tools to accomplish this intention including media notifications, text messages, email alerts, tweets and website postings.

**2. Attention to Corridor Issues and Stakeholders' Interests.** Issues surrounding the construction of 183 South may be more diverse than any of the Mobility Authority's previous projects. Environmental justice, treatment of heritage oak trees, neighborhood walls, and the closure of existing cross streets are among the issues that will require sensitivity and attention. Construction or design related adjustments may occur as a result of community concerns if warranted.

**3. Active Listening.** The project team will be easily accessible to project stakeholders and will actively listen to their concerns, acknowledge them, and respond promptly. A telephone hotline, stakeholder meetings, community presentations, and a project office are among the avenues

available to the public for getting information and/or voicing complaints. The bilingual hotline will be answered 24 hours a day, seven days a week.

**4. Bilingual Communication and Outreach.** Many residents living in neighborhoods adjacent to the 183 South Project are Spanish-language dominant or speak only Spanish. To ensure that language is not a barrier to communication, outreach materials will be prepared in English and Spanish when appropriate. Spanish-language media will be used to help disseminate project information and outreach to Spanish speaking communities.

**5. Prompt Attention to Impacts and Concerns.** Speedy attention to a small problem often prevents it from becoming larger. Our intention is to address issues promptly, avoiding escalation. Calls to the hotline will be logged and disseminated promptly for attention. Issues identified during meetings and presentations will also be disseminated for attention.

**6. Management of Expectations and Solutions Driven Discussions.** No one is happy about the noise, dust, detours, or traffic delays that come with construction, but construction impacts are inevitable. We will communicate candidly with the public, minimizing or mitigating impacts whenever possible and being empathetic, but honest, when mitigation is not possible. We will also correct misinformation and educate the public on the long-term benefits of the project, including new expanded general-purpose lanes and pedestrian and bicyclist elements valued at \$25 million.

**7. Adjacent Neighborhood and Business Outreach.** Those living, working, and conducting business in proximity to the 183 South corridor will be most impacted by its construction. The key to successful business and neighborhood outreach is being *proactive*. We will begin communicating with these important stakeholders before dirt is turned, and continue communicating with them until construction is completed. And, while information about the disruption of utility service, changes in access to homes and businesses, and updates to the construction schedule is most important, we will foster a relationship that encourages neighbors and business owners to contact us for any information need.

**8. Innovative Activities and Events.** We want stakeholders to receive useful information, and to know that the Mobility Authority is committed to building projects that improve mobility and add value to neighborhoods. The project team will plan and participate in family-friendly neighborhood and community events located across the 183 South corridor. Some of the foreseen activities include youth focused activities, tree plantings, community festivals, Kids' Day events, and neighborhood specific social events hosted by the project team.

**9. Project Transparency.** Stakeholders need to know that they are being dealt with honestly and getting truthful information. The project team wants stakeholders' trust, and knows that trust must be earned by truthfulness and transparency. We will build trust by making sure that project team members are delivering a clear and consistent message. Monthly project team meetings will assist in this goal. Secondly, we will place updated, reliable information on the project website. Thirdly, we will provide easy access to project personnel via our interactive tools including the project website, twitter, and the project hotline. Fourth, we will encourage transparency by proactively engaging interested stakeholders, including elected leaders. And, finally, we will publish a Benchmark Progress Report as part of our e-newsletters to keep the public up to date on project activities.

**Our strategic approach can be summed up by a commitment to be strong communicators and a good neighbor.** While we won't be able to solve every problem, we commit to communicate honestly and frequently, to treat concerns as if they were our own, and to keep the public's safety foremost in our minds.

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**TECHNIQUES TO DELIVER THE STRATEGY**

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**REOCCURRING ITEMS**

- **HOTLINE – PHONE**

CRC will establish a telephone hotline in advance of the start of any field investigation work near homes and all construction activity. It will be answered by CRC or an answering service and routed to Steve Pustelnyk or to the GEC. The telephone hotline protocol is as follows:

1. Member of the public calls the hotline.
2. The answering service receives the call, and says: *“Thank you for calling the 183 South Project Hotline. Could you please provide your name and telephone number as well as the nature of your call?”*
  - a. Information is then documented in a spreadsheet.
3. The answering service then says: *“Please standby as we locate a project representative.”* Then the CRC personnel OR answering service calls Steve Pustelnyk’s cell phone and transfers the call if he’s present.
  - a. If he is not present, s/he calls Elizabeth Story’s phone and transfers the call if she’s present.
  - b. IF NEITHER ARE AVAILABLE, the answering service lets the caller know that someone will call them back shortly, and then sends an email with the information to the team
4. Later, the team compares notes in order to complete documentation in the hotline spreadsheet.

- **HOTLINE – EMAIL**

The public will have the opportunity to provide comments and questions through the Contact Us form on 183South.com. The Mobility Authority or its GEC will respond to inquiries in 1 business day. Similar to the telephone hotline, the hotline team will track all emails in the listening log.

- **LANE CLOSURE AND CONSTRUCTION ACTIVITY NOTIFICATIONS**

The information will be provided by CRC to the GEC management team. The GEC team will reformat it and forward out to the Mobility Authority and TxDOT for their use. The Mobility Authority will then provide this information on a daily basis to the public through various means including: project website, Twitter (@183South), email and text alerts. CRC will provide changeable message signs along the corridor. If large-scale enough to merit it, the Mobility Authority will also notify the media.

- **WEBSITE: 183SOUTH.COM**

One of the single most valuable tools to communicate key messages and project information to a widespread audience is a project website. The Mobility Authority has established [www.183South.com](http://www.183South.com) that provides up-to-date construction alerts, project information, contact information and allows for two-way communication to occur with the community. All printed and electronic materials will encourage stakeholders to visit the website for more information.

- **SOCIAL MEDIA**

With social media being the primary source of news for many young people, it is important to utilize this medium so we can reach people through the channels that best suit their habits. The Project has its own Twitter handle where daily Tweets are issued to notify the traveling public of traffic impacts. In addition, a mix of promotional and general project

informational Tweets are coordinated as part of our weekly content calendar. To ensure the public is informed of our commitment to sustainability, this channel is used to notify the public of our efforts to build the 183 South Project in an environmentally responsible manner that meets the needs of the community.

- **E-NEWSLETTERS**

The Project will issue a bi-monthly e-mail newsletter to keep the stakeholder informed of high-level project progress. It will also be available for viewing on the project website. Stakeholders will be able to be added and removed from this contact list as requested. These newsletters also include updates and reminders about commitments made such as tree preservation. In addition, this platform is utilized to inform the public about community service activities the project team engages in, such as City-wide clean ups, and donations and sponsorships that benefit the community, such as mulch donation to tree advocates, school supply donations, and more.

- **MEDIA RELATIONS**

Relationships with local and trade media outlets will be utilized to disseminate a unified message about the project's benefits and objectives as well as keep the public informed about community events and activities related to or sponsored by the project. In addition, media alerts and news releases will be issued when there is significant news to share about the project, such as a milestone reached, a major traffic impact, detour or lane closure, or when public or neighborhood meetings are held to solicit public input.

The Public Involvement Services Provider will complement these activities for Spanish-language media.

***Media Request Protocol***

Without question, the Mobility Authority's spokespersons will handle all media inquiries. Any project personnel contacted by the media should attain the reporter's name, media outlet, phone number, and e-mail and then forward the contact information to the primary media spokesperson, Steve Pustelnyk, in a prompt manner.

- **STAKEHOLDER MEETINGS / PRESENTATIONS**

Stakeholder meetings and presentations are a significant tool for providing face-to-face access to project personnel. Group Solutions will help schedule, set up and staff these meetings, to disseminate information, communicate with special interest groups, address specific neighborhood issues, and keep stakeholders up-to-date on activities that could impact their daily commutes and lives. To ensure internal coordination, Group Solutions will coordinate these meetings with Mobility Authority and GEC representatives, will request needed assistance from CRC, and will maintain a record of meetings and results.

- **PROJECT TOURS FOR VISITORS AND OTHER DELEGATIONS**

At any point throughout the project, tours may be scheduled to provide visitors and others a first-hand look at mobility challenges, construction activities, roadway features, bicycle and pedestrian facilities, and/or other key issues. Planned tours will be coordinated with CRC, the GEC, and the Mobility Authority so that appropriate staff is involved and any related issues are resolved in advance.

- **COLLATERAL MATERIALS**

After branding the project to make sure that printed and electronic materials are visually attractive and key messages are clear, collateral materials will be developed. Early materials

to be developed include fact sheets, and frequently asked questions. Other needed materials include exhibits and presentation materials. New materials will be prepared as they are needed.

- **BUSINESS IMPACT MITIGATION ACTIVITIES**

Prior to initiating construction that may impact existing businesses, CRC will coordinate placement of temporary access signage with affected stakeholders. In the event existing business ingress/egress such as driveways are impeded, CRC will also coordinate temporary access to mitigate business interruption.

- **OUTREACH TO CORRIDOR BUSINESSES**

While business owners and managers are eager for information about construction activities, particularly information that directly impacts access to their businesses or daily operations, experience has demonstrated that these business owners are busy and, typically, will not attend meetings and other events to hear the latest construction news. Even lunchtime business roundtable events have met with limited success due to poor attendance. The 183 South Project Team wants to ensure that 183 South corridor business owners are informed about construction activities, particularly as construction nears their locations. Towards this end, we will give special attention to businesses located adjacent to the 183 South corridor. Techniques will be used, based on the importance of this group to the outcome of the project, including:

- Development of a database to specifically identify property addresses and owners of businesses
- Personal, door to door collection of email addresses for distribution of email updates
- Direct US Post Office mail communications
- Periodic information events scheduled at the business site for owners, employees and customers (similar to HEB Grocery Store events at Springdale Shopping Center)
- One-on-one communication with business owners and managers
- Sponsoring promotional events to support and/or drive traffic to businesses along the corridor

- **ELECTED OFFICIAL BRIEFINGS**

The Mobility Authority's executive level staff may coordinate meetings with individual elected officials or schedule appearances at various council/commission/board meetings to provide information about the construction and to answer questions. The project team will also produce a regular email to key elected officials keeping them informed about project progress and any issues that may be relevant.

- **REPORTING AND DOCUMENTATION**

Reporting and documentation are a very important part of the process. Many key stakeholders, including elected officials and the Mobility Authority's Board of Directors, will be looking to these reports to review the team's activities and progress with the community. These reports will include but are not limited to:

***Quarterly Reports to the Mobility Authority Board of Directors***

The GEC will work with the Mobility Authority staff to provide a quarterly report and presentation to the Mobility Authority Board. All team members will be required to provide information, as needed.

***Meeting Minutes***

The CRC team will also document all formal meetings and provide draft meeting minutes to the Mobility Authority within five working days as described in the project scope.

- **SUSTAINABILITY EDUCATION**

Through a collaborative relationship with the University of Texas at Austin (UT), members of our project team engage in mentorship with engineering students through one-on-one communication. In addition, our project team is coordinating an effort to give guest lectures in UT classrooms on the importance of sustainability in infrastructure development, touching specifically on project components such as bituminous mixtures and ensuring sustainability is a key component of asphalt and paving.

- **MENTORSHIP**

Through a partnership with local schools, our project team educates and informs students about key components of the project and reiterates our commitment to sustainability.

- **RELATIONSHIPS WITH SUSTAINABILITY-FOCUSED ORGANIZATIONS**

Through a partnership with TreeFolks, a non-profit organization whose mission is to empower Central Texans to build stronger communities through planting and caring for trees, we contribute to their mission through our commitment to preserving historic oak trees and through donations of mulch to protect our City's urban tree canopy during the hot summer months.

- **OUTREACH TO NON-HOA REPRESENTED RESIDENTS**

The 183 South Project Team has identified multiple residents and property owners adjacent to the 183 South corridor who may not be represented by homeowners' or neighborhood associations, and who may not be reached by neighborhood publications. It is imperative that project communication continues to reach these homes, particularly as construction proceeds along the corridor. Special attention will be given to this group of geographically isolated residents so that they have up-to-date project information and can ask questions or express concerns. Techniques will be used, based on the unique characteristics of this group, including:

- Development of a database to specifically identify the property addresses and owners of geographically isolated residences
- Communication via US Post Office to provide a current construction update
- Continued periodic communications via US Post Office as construction activity mandates

### **SPECIAL EVENTS AND ONE-TIME ITEMS**

- **CONCEPTUAL ANIMATION**

During the environmental phase, the team produced a conceptual 3D animation video of what the project would look like to the traveling public. The videos was posted on the website and shown at stakeholder events, as well as provided to the media. This continues to be one of our key educational tools and the video page on 183South.com is one of the most popular on the site.

- **DIRECT MAIL POSTCARD ANNOUNCEMENT**

Prior to the start of construction, a direct mail postcard will be sent to corridor property owners, neighbors, and businesses informing them about the project and where to go for more information. The postcard will include a magnet for recipients to keep for future reference. Recipients will be encouraged to sign up for email or text updates.

- **CEREMONIAL GROUNDBREAKING**

Prior to major construction activity, elected officials and members of the public will be invited to a ceremonial groundbreaking. The ground breaking signals the official start of the 183 South Project, acknowledges those who have worked diligently to bring transportation and other improvements to the corridor, and publicly announces community benefits associated with the project. Providing an engaging, pleasant to attend event, is a high priority. To ensure the success of the event, the project team will allow a minimum of 120 days to plan and execute the event.
- **“MEET THE CONTRACTOR” EVENTS**

Several events will be held along the corridor to introduce CRC and the project (to those who may not have participated in environmental phase activities) to neighbors, businesses, and major employers. Events will allow CRC and other project team members to discuss the schedule, convey expectations, distribute contact information, and answer questions. Whenever possible, we will piggyback open house events with existing neighborhood association meetings or similar. We will also be mindful of selecting convenient times and locations for attendees.
- **NEIGHBORHOOD/COMMUNITY EVENTS AND GOOD NEIGHBOR PROGRAM (SPONSORED BY US)**

As a way of getting information to the public, thanking residents for their patience during construction, and presenting the human face of the project, the Mobility Authority will sponsor events and initiate a good neighbor program. Activities may be as simple as hosting BBQs and ice cream socials along the corridor or taking lunch to the employees of a business disproportionately impacted by construction. Activities could include providing noise cancellation headphones to residents troubled by late evening construction or car wash coupons to those for whom dust has become a problem. Larger events are also planned, events such as art contests and youth focused activities, tree plantings, community celebrations, and Kids’ Day events. With each of these opportunities, the project team will look to obtain food and other needed services from businesses in the East Austin community.
- **COMMUNITY-WIDE EVENTS AND FESTIVALS (SPONSORED BY OTHERS)**

Opportunities may exist to partner with other organizations or sponsor community events that other organizations are planning. To leverage this possibility, the project team will develop guidelines for sponsorship and financial parameters. In each case, the sponsored event should provide tangible benefits to the 183 South corridor/East Austin community, and be compatible with the Mobility Authority’s brand and broad mission.
- **GRAND OPENING CEREMONY**

At the conclusion of construction, a Grand Opening Ceremony will be held to celebrate the completion of pedestrian, bicycle and automobile transportation facilities. Just as the Groundbreaking Ceremony signaled the start of the 183 South Project, the Grand Opening Ceremony signals its completion and celebrates the benefits to the community. Providing a festive, engaging event is a priority. To ensure the success of the event, the project team will allow a minimum of 120 days to plan and execute the event.
- **PUBLIC OPINION SURVEYS**

During the life of the construction project and immediately thereafter, the Mobility Authority’s GEC will manage a public opinion survey via telephone to check against the baseline study performed in Spring 2015.

**AIR, LIGHTING, NOISE**

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The team understands that noise, odor, and light pollution as well as dust and construction debris can be critical issues for the public during construction. The following is CRC's air, lighting, and noise quality measures methodology:

***AIR - Best Practice Control Measures***

- **Watering** before and during earthmoving operations, active stock piles, active haul roads and during demolition
- **Application of Petroleum Based Prime** material promptly on areas of work, where required, to minimize fugitive dust
- **Controlling Vehicle Speed** of haul roads and other areas accessed by construction traffic
- **Minimizing Areas of Disturbance** by phasing and work planning
- **Providing re-vegetation** after final grading, inactive stockpiles
- **Compaction** after final cut to roadway sub-grade
- **Minimize drop height of materials** from excavator and other equipment buckets
- **Paving Slopes, Synthetic or Natural Cover for Slopes** after final grade is achieved
- **Refraining from Overfilling Trucks and Covering the Loads** during all trucking and hauling operations
- **Precautions during High Wind periods** for equipment operation
- **Sweeping paved roadway surfaces**
- **Stabilized Construction Entrances:** Prevent tracking mud and soil onto paved roads
- **Restricting Speed of Traffic** on construction roads to 20 MPH or lower
- **All New Construction Equipment** will be compliant with Tier 4 engine emissions requirements

***TEMPORARY LIGHTING - Best Practice Control Measures***

- **Strategically placed** in areas to avoid direct illumination of residential structures or the traveling public
- **Utilize existing** illumination where possible

***NOISE - Best Practice Control Measures***

- **Strategic placement** of stationary equipment in areas where noise will be reduced such as depressed areas, behind walls, and away from structures
- **Minimize idling** by instituting a corridor wide awareness program to shut down equipment when not in use
- **Equipment maintenance** program will involve inspections and maintenance schedules to optimize running conditions of equipment

**TRAFFIC MANAGEMENT AND CONSTRUCTION STAGING**

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CRC will have a robust Maintenance of Traffic (MOT) plan that details all traffic management and construction staging, but the following is a summary of the methodology:

***MOT and Construction Staging – Summary Methodology***

- **Communicating traffic plans** well in advance of implementation. Methods will include advance warning signs, message boards, social media, and face to face meetings with affected businesses, agencies, emergency management services, and schools.
- **Maintain traffic** for cross and side street access and keep access to businesses and residence open
- **Accommodate movements** via dedicated U-turns and alternative access points for select cross streets prior to removal of crossing access
- **Minimize traffic shifts** by constructing multiple facets of work simultaneously
- **Monitor effectiveness** of implemented traffic plans through monitoring telephone hotline and website concerns, and visiting affected businesses
- **Adjust MOT** as needed to maintain effective traffic flow
- **Staging of equipment and material laydown** in consolidated areas to minimize the number of ingress and egress points along the corridor
- **Delivery** of materials will be scheduled for off peak hours to minimize public disruption and maximize project progress

**EMERGENCY RESPONSE PLAN**

Safety is our number one priority! The goal of this Emergency Response Plan is a coordinated, prompt internal and external communication process, to ensure safety and minimize adverse impacts to the public and project.

In the event of an emergency or unsafe condition (potential or real), immediate action will be taken to address the situation while informing members of the project team and the Mobility Authority of the problem, so that the public can be promptly notified. An emergency is defined as any situation which poses a risk to safety and/or will have a significant impact on the operation or reputation of the project and the Mobility Authority. Examples of possible emergencies include:

- Loss of life or serious physical injury (worker or member of the public)
- Major vehicle accidents causing lane closures for an extended period of time, limiting access or releasing hazardous materials
- Widespread power outages and utility line breaks
- Inclement weather, including ice, snow, tornadoes and other situations causing unsafe driving conditions
- Significant traffic disruptions
- Rail incidents of any type

**Communication Protocol:**

The primary objective of the Emergency Response Plan is to control the situation and depending on the type of emergency, quickly mobilize trained resources to mitigate. If an imminent risk of life is encountered, CALL 911. The following list provides the emergency contact tree that shall be used on the project:

		<u>Serious Injury</u> (Serious Physical Injury)		<u>Significant Environmental Incident</u> (Release of Hazardous Materials)		<u>Significant Traffic Disruption</u> (Major Accident causing Extended Lane Closures)		<u>Impending Threat</u> (Dangerous Weather, Public Emergency)	
		<u>Initial Notification</u> Immediate	<u>Secondary</u> Upon Control of Situation	<u>Initial Notification</u> Immediate	<u>Secondary</u> Upon Control of Situation	<u>Initial Notification</u> Immediate	<u>Secondary</u> As Soon as Practical	<u>Initial Notification</u> Immediate	<u>Secondary</u> As Soon as Practical
<b>EMS</b>	<b>911</b>	X		X		X			
	<b>Mobility Authority</b>								
	Steve Pustelnyk Public Relations		X		X	X		X	
	Juan Villarreal Assistant Director of Engineering, Construction Management		X		X	X		X	
	Dee Anne Heath Public Relations		X		X		X		X
	Aaron Autry Project Director		X		X		X	X	
	Don Nyland Construction Manager		X		X		X		X
	Lloyd Chance TxDOT		X		X		X		X
<b>CRC</b>	Bruno Ponce Safety Manager	X			X		X	X	
	Frank Escalante Traffic Control Supervisor				X	X			X
	Terry Oliver Director of Construction	X		X		X		X	
	Scott Yargas Project Director	X		X			X	X	
	Steve Funderburg Environmental Compliance Mgr			X					

The emergency contact tree only provides primary notifications. In the event CRC learns of an emergency, CRC will notify the individuals listed under Initial Notification in the matrix. To ensure over-communication occurs, Scott Yardas will contact Aaron Autry and Terry Oliver will contact Don Nyland. Conversely, if the Mobility Authority learns of an emergency, the Initial Notification CRC individuals will be contacted followed by secondary counterparts. Further dissemination of information within each organization shall be performed in accordance with each entity’s internal protocols.

The following list provides the primary emergency contact numbers and additional third parties.

Name	Title	Mobile	Office	Comment / Email
<b>MOBILITY AUTHORITY</b>				
Steve Pustelnyk	Director of Community Relations	(512) 680-9997	Home (512)296-2631	<a href="mailto:spustelnyk@mobilityauthority.com">spustelnyk@mobilityauthority.com</a>
Dee Anne Heath	Director of External Affairs/Media Relations	(512) 565-6247	(512) 996-9778	<a href="mailto:dheath@mobilityauthority.com">dheath@mobilityauthority.com</a>
Justin Word	Director of Engineering	(512) 560-9803	(512) 996-9778	<a href="mailto:jword@mobilityauthority.com">jword@mobilityauthority.com</a>
Juan Villarreal	Assistant Director of Engineering, Construction Management	(512) 415-2070	(512) 996-9778	<a href="mailto:jvillarreal@ctrma.org">jvillarreal@ctrma.org</a>
Aaron Autry	Project Director	(512) 801-8673	(512) 342-3227	<a href="mailto:aaron.w.autry@atkinglobal.com">aaron.w.autry@atkinglobal.com</a>
Don Nyland	Construction Manager	(512) 636-5611	(512) 342-3276	<a href="mailto:donald.nyland@atkinglobal.com">donald.nyland@atkinglobal.com</a>
Lloyd Chance	TxDOT Liason	(512) 585-3340	(512) 832-7266	<a href="mailto:lloyd.chance@txdot.gov">lloyd.chance@txdot.gov</a>
<b>COLORADO RIVER CONSTRUCTORS</b>				
Bruno Ponce	Safety Manager	(469) 628-6173	(737) 226-6435	<a href="mailto:bruno.ponce@crc183.com">bruno.ponce@crc183.com</a>
Frank Escalante	Traffic Control Supervisor	(737) 226-8640	---	<a href="mailto:frank.escalante@crc183.com">frank.escalante@crc183.com</a>
Terry Oliver	Director of Construction	(512) 906-4713	(737) 226-6421	<a href="mailto:terry.oliver@crc183.com">terry.oliver@crc183.com</a>
Scott Yardas	Project Director	(512) 801-9156	(737) 226-6420	<a href="mailto:scott.yardas@crc183.com">scott.yardas@crc183.com</a>
Steve Funderburg	Environmental Compliance Manager	(512) 809-6094	(512) 904-9177	<a href="mailto:steve.funderburg@rkci.com">steve.funderburg@rkci.com</a>
<b>EMERGENCY SERVICES</b>				
EMERGENCY - CALL 911				
Austin Fire Department	4201 Ed Bluestein Blvd		(512) 974-4100	Non-Emergency
Austin Police Department	812 Springdale Rd		(512) 974-5900	Non-Emergency
Travis County Sheriff	5555 Airport Blvd		(512) 854-9770	Non-Emergency
<b>UTILITY/RAIL COMPANIES</b>				
EMERGENCY - CALL 911				
Enterprise Pipeline			(888) 883-6308	Emergency
Energy Transfer			(800) 392-1965	Emergency
Kinder Morgan			(713) 369-8800	Emergency
Texas Gas Service			(800) 959-5325	Emergency
Sunoco			(800) 753-5531	Emergency
CapMetro Railroad			(512) 852-7264	Emergency - Rail Operations
Austin Energy			911	Emergency

**Media Protocol:**

The Mobility Authority’s Director of Community Relations, Steve Pustelnyk, is the official spokesperson for the 183 South Project and the Mobility Authority. All media inquiries should be referred to Steve. In Steve’s absence media inquiries should be directed to Dee Anne Heath, Director of External Affairs for the Mobility Authority. **No team member will address issues directly with the media unless requested by or approved by and coordinated with Steve Pustelnyk or Dee Anne Heath.**

Emergency Media Contacts	Office Number	Mobile Number
Steve Pustelnyk	(512) 450-6289	(512) 680-9997
Dee Anne Heath	(512) 450-6309	(512) 565-6247

**TIMELINE**

Construction timelines can be fluid, but key elements of the community relations plan will occur as follows:

QUARTER	ITEM
<b>Quarter 4 2015</b>	<ul style="list-style-type: none"> <li>• Construction Phase Website Launches</li> <li>• Community Relations Plan Prepared</li> <li>• Construction Communications Team Coordination Meetings</li> </ul>
<b>Quarter 1 2016</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – January</li> <li>• Project Hotline Launches – February</li> <li>• Adjacent Neighborhood and Business Outreach Begins – February</li> <li>• University Hills Neighborhood Wall Meeting – March</li> <li>• Boggy Creek Turnaround Shift Meetings – March</li> <li>• SH 71 Turnaround Relocation Meetings – March</li> </ul>
<b>Quarter 2 2016</b>	<ul style="list-style-type: none"> <li>• <b>PROJECT MILESTONE: GROUNDBREAKING</b></li> <li>• Quarterly Report to the Board of Directors – April</li> <li>• Ceremonial Groundbreaking – April</li> <li>• Meet the Contractor Open Houses – April through July</li> <li>• Quarterly Newsletter Launches</li> </ul>
<b>Quarter 3 2016</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – July</li> <li>• Community Benchmark Progress Report Launches</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 4 2016</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – October</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 1 2017</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – January</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 2 2017</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – April</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 3 2017</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – July</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 4 2017</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – October</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 1 2018</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – January</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 2 2018</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – April</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> </ul>

	<ul style="list-style-type: none"> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 3 2018</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – July</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 4 2018</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – October</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 1 2019</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – January</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 2 2019</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – April</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 3 2019</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – July</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 4 2019</b>	<ul style="list-style-type: none"> <li>• <b>PROJECT MILESTONE: OPEN PHASE 1 OF THE PROJECT</b></li> <li>• Quarterly Report to the Board of Directors – October</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 1 2020</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – January</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 2 2020</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – April</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 3 2020</b>	<ul style="list-style-type: none"> <li>• Quarterly Report to the Board of Directors – July</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>
<b>Quarter 4 2020</b>	<ul style="list-style-type: none"> <li>• <b>PROJECT MILESTONE: OPEN FULL PROJECT TO TRAFFIC</b></li> <li>• Quarterly Report to the Board of Directors – October</li> <li>• Quarterly Newsletter</li> <li>• Community Benchmark Progress Report</li> <li>• Community Presentations, Business Outreach and Neighborhood Events</li> </ul>

**MEASUREMENT**

The purpose of this Plan is to implement communications strategies designed to keep the community informed and engaged while managing expectations, addressing public concerns, and

promoting the long-term benefits of the project. To monitor and measure the reach of the Plan, the following will be documented on a frequent basis:

- Number of community events and presentations conducted
- Number of hotline calls and emails
- Media coverage
- Website Google analytic statistics
- Twitter analytics and engagement including mentions and followers
- Number of opens on each e-newsletter
- Growth of stakeholder e-mail list
- Public opinion research

# Attachment F - Form 1273

FHWA-1273 – Revised October 23, 2023

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

#### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 CFR 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 recipient 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.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

**c. Conformance.** (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). 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.

(4) 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 will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), 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 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

**d. Fringe benefits not expressed as an hourly rate.** 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**e. Unfunded plans.** 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, in accordance with the criteria set forth in § 5.28, 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.

**f. Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## **2. Withholding (29 CFR 5.5)**

**a. Withholding requirements.** The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**b. Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**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 as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, 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.** a. By entering into this contract, the contractor certifies that neither it 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**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. 29 CFR 5.5.

**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 and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* 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.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first 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 Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with 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 (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with 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. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading 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 paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## Special Provision to Item 000

### Nondiscrimination



#### 1. DESCRIPTION

All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

#### 2. DEFINITION OF TERMS

Where the term "Contractor" appears in the following six nondiscrimination clauses, the term "Contractor" is understood to include all parties to Contracts or agreements with the Texas Department of Transportation.

#### 3. NONDISCRIMINATION PROVISIONS

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 3.1. **Compliance with Regulations.** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- 3.2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- 3.4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- 3.5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- withholding payments to the Contractor under the Contract until the Contractor complies, and/or
  - cancelling, terminating, or suspending a Contract, in whole or in part.
- 3.6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs (3.1) through (3.6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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#### 4. PERTINENT NONDISCRIMINATION AUTHORITIES:

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 4.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- 4.2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4.3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 4.4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 4.5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 4.6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 4.7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and Contractors, whether such programs or activities are Federally funded or not);
- 4.8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- 4.9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- 4.10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- 4.11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 4.12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 et seq).

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 03-60**

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, Transportation Code Section 370.183 requires regional mobility authorities to: set goals for the award of contracts to disadvantaged businesses and to attempt to meet those goals; attempt to identify disadvantaged businesses that may provide or have the potential to provide supplies, materials, equipment or services to the authority; and give disadvantaged businesses full access to the authority's contract bidding process; and

WHEREAS, regulations of the Federal Highway Administration ("FHWA") also require the development and implementation of certain policies and procedures for DBE participation in projects which receive any federal funding; and

WHEREAS, implementation of policies and procedures to meet these state and federal requirements requires coordination among the authority, TxDOT, and FHWA representatives; and

WHEREAS, staff has developed a Business Opportunity Program and Policy ("BOPP") to implement the CTRMA's program for promoting the use of disadvantaged and small businesses in CTRMA projects, a copy of which is attached as Exhibit A, and staff recommends approval and adoption of the BOPP; and

WHEREAS, staff has developed and seeks approval of a DBE policy statement to forward to FHWA officials to indicate concurrence with federal requirements, a copy of which is attached as Exhibit B; and

WHEREAS, staff has prepared a draft of a memorandum of understanding between the CTRMA, TxDOT, and FHWA which details how the entities will work together to satisfy the requirements of state and federal law and regulations, a copy of which is attached as Exhibit C, and staff seeks authorization to pursue the consummation of same with the other entities;


NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby approves and adopts the Business Opportunity Program and Policy attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, that the Board of Directors approves the DBE policy statement attached hereto as Exhibit B and authorizes such statement to be provided to the FHWA; and

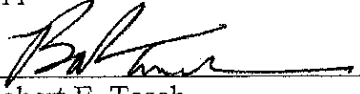
BE IT FURTHER RESOLVED, that the Board of Directors approves of the memorandum of understanding attached hereto as Exhibit C and authorizes staff to seek concurrence and execution thereof by TxDOT and the FHWA, provided that if changes or modifications are made to that agreement that the revised version be presented to the Board of Directors for approval.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 5<sup>th</sup> day of November, 2003.

Submitted and reviewed by:

  
\_\_\_\_\_  
C. Brian Cassidy  
General Counsel for the Central  
Texas Regional Mobility Authority

Approved:

  
\_\_\_\_\_  
Robert E. Tesch  
Chairman, Board of Directors  
Resolution Number 03-60  
Date Passed 11/05/03

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**BUSINESS OPPORTUNITY PROGRAM AND POLICY**

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# CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY BUSINESS OPPORTUNITY PROGRAM AND POLICY

## I. PURPOSE

In accordance with state and federal law, the Central Texas Regional Mobility Authority (the "CTRMA") is required to facilitate and assure the participation of disadvantaged and small businesses in the CTRMA's procurement process. The CTRMA is also generally required to procure its goods and services and construction contracts through a competitive bid process. To facilitate compliance with federal and state laws regarding disadvantaged businesses and competitive bid procurement, the CTRMA Board of Directors adopted Resolution No. 03-60, which establishes the Disadvantaged Business Enterprise ("DBE") Policy Statement and this Business Opportunity Program and Policy ("BOPP").

The BOPP incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts. The BOPP will consist of two separately administered programs: (1) the DBE Program; and (2) the Small Business Enterprise (SBE) Program.

## II. APPLICABILITY

The policies, procedures and contract clause(s) established under the BOPP apply to CTRMA procurements, bidders and recipients of contracts, and to related subcontracts, to the extent that these provisions are not inconsistent with state or federal law or other rules and regulations.

**A. DBE Program:** The CTRMA is required, as a condition of receiving federal financial assistance for transportation projects, to provide certain assurances that it will comply with 49 C.F.R. Part 26, which requires the creation of a DBE Program that applies to CTRMA contracts, including roadway construction contracts and related purchases, funded in whole or in part with federal funds received from the United States Department of Transportation ("DOT"), including funds received through the Federal Highway Administration ("FHWA"), or funded in whole or in part with such federal funds received by the CTRMA through the Texas Department of Transportation ("TxDOT"). To comply with the federal regulations, the CTRMA may elect to adopt the federally approved TxDOT DBE Program pursuant to 49 C.F.R. § 26.45(c)(4) and the Recreational Trails Program Guidance (Revised 2 June 2000) of the DOT. The CTRMA may agree to a Memorandum of Understanding ("MOU") between the CTRMA, TxDOT and the FHWA concerning CTRMA adoption and operation of its DBE program under TxDOT's DBE program for contracts involving federal assistance.

**B. SBE Program:** The SBE Program is created pursuant to § 370.183 of the Texas Transportation Code and applies to all CTRMA contracts and procurements that do not involve federal financial assistance (i.e. contracts and procurements funded strictly by state, local or private means, or any combination thereof).

### **III. DEFINITIONS**

The following are definitions of terms used in this Program based primarily on definitions found in 49 C.F.R. § 26.5:

**Aspirational Goal:** A level of SBE participation that the CTRMA will strive to achieve which may be based upon a numeric formula or other milestones.

**Availability:** The calculated estimate of qualified small business enterprises in a particular trade and/or profession. In defining availability of small business enterprises, a common sense approach with respect to geographical basis, customs that apply to firms and logistics of timely completion of work orders are taken into consideration.

**Bidder/Proposer:** Any person, firm, partnership, corporation, association or joint venture as herein provided seeking to be awarded an CTRMA contract, award or lease by a competitive process.

**Business Enterprise:** Any legal entity which is organized to engage in lawful commercial transactions and is actively engaged in such transactions as a means of livelihood, such as a sole proprietorship, partnership or corporation, but not a joint venture except as hereinafter provided.

**Commercially Useful Function:** Means the DBE/SBE is responsible for a distinct element of the work of a contract and actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations related to the satisfactory completion of the contracted work.

**Contract:** An award by the CTRMA whereby the CTRMA expends or commits the expenditure of its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

**Contractor:** One who participates through a contract or subcontract in a transportation construction project.

**DBE Goal:** A flexible target determined by the CTRMA and/or TxDOT, in accordance with the requirements and formulas set forth in 49 C.F.R. Part 26, and applicable rules promulgated thereunder, based on estimates of the availability of qualified and certified disadvantaged business enterprises ("DBEs") in the applicable marketplace, and known circumstances and conditions. In no case will a goal be construed as constituting a quota.

**Disadvantaged Business:** A minority-owned, woman-owned, or otherwise economically disadvantaged small business in general, used in this BOPP to refer to both DBEs and SBEs, as may be more particularly defined by certifying agencies.

**Disadvantaged Business Enterprise (“DBE”):** A for-profit small business enterprise: (a) which is at least 51.0 percent owned, as defined herein, by one or more Socially and Economically Disadvantaged Individual(s), or, in the case of any publicly owned business, at least 51.0 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individual(s); and (b) whose management and daily business operations are controlled, as defined herein, by one or more of the Socially and Economically Disadvantaged Individual(s) who own it; and (c) which receives appropriate certification status through the appropriate federally-designated or approved DBE certification agency. The Texas Unified Certification Program, administered by TxDOT, is the certifying agency for businesses within the state of Texas.

**Good Faith Efforts:** Efforts to achieve a goal or other requirements that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the BOPP.

**Joint Venture:** An association of two (2) or more persons, partnerships, corporations or any combination thereof, founded to carry on a single business activity, which is limited in scope and duration. The degree to which a joint venture may satisfy the stated DBE goal cannot exceed the proportionate interest of the DBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture for which the DBE contractor is to perform 50.0 percent of the contract work itself shall be deemed equivalent to having DBE participation of 50.0 percent of the work. DBE member(s) of the joint venture must have financial, managerial, or technical skills in the work to be performed by the joint venture.

**Minority Business Enterprise (MBE):** A business enterprise that is owned and controlled by one or more minority person(s). Minority persons include the ethnic categories listed under the definition of “Socially and Economically Disadvantaged Individuals” in this section. The MBE must also satisfy the owned and controlled provisions set forth in the definitions of “Disadvantaged Business Enterprise” and “Socially and Economically Disadvantaged Individuals.”

**Prime Contractor:** Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded an CTRMA contract or agreement.

**Professional Services:** Those Services as defined by Chapter 2254 of the Texas Government Code (Professional Services Procurement Act).

**Race-and-Gender Conscious:** Describes a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-and-Gender Neutral:** Describes a measure or program that is, or can be, used to assist all small businesses.

**Small Business Concern:** As defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business shall not include any business or group of businesses controlled by the same Socially and Economically Disadvantaged Individual(s) which has annual average gross receipts in excess of the standards established by the Small Business Administration's regulation under 13 C.F.R. Part 121 for a consecutive three-year period. However, no firm is considered small if, including its affiliates, it averages annual gross receipts in excess of \$16.6 million per year over the previous three (3) fiscal years. The definition of "Small Business Concern" applies only to federal DBE certification, and not to the CTRMA state SBE program set forth in Section VII of this BOPP.

**Small Business Enterprise:** A business is considered a "Small Business Enterprise" for purposes of the CTRMA BOPP if it meets the definition of "small business concern" as set forth in Section 3 of the U.S. Small Business Act. This provision defines a "small business concern" as any business concern (including those limited to enterprises engaged in the business of production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries) which is independently owned and operated and which is not dominant in its field of operation. 13 C.F.R. § 121.201 sets forth the "size standards," in either number of employees or average annual receipts, that define the maximum size that a concern, together with all of its affiliates, may be to be eligible for federal small business programs. The Small Business Administration organizes these specific size standards according to North American Industry Classification System (NAICS) Codes, as published in the Small Business Administration's "Table of Small Business Size Standards."

**Socially and Economically Disadvantaged Individuals:** As included in 49 C.F.R. Part 26, individuals who are citizens of the United States (or lawfully admitted permanent residents), and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans 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, or individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. There shall be a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged, and DBE Program officials may also determine, on a case-by-case basis, that individuals who are not members of one of the following groups are socially and economically disadvantaged:

- a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
- c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

- d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, and the U.S. Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- e. "Subcontinent Asian Americans," which include persons whose origins are from India, Pakistan and Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- f. "Women;" and
- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Subcontractor:** Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract with a prime contractor on a CTRMA contract.

**Vendor:** One who participates in contracts with and/or procurements by the CTRMA in a transportation construction project.

**Women Business Enterprise (WBE):** A business enterprise that is owned and controlled by one or more females. The WBE must also satisfy the owned and controlled provisions under the definition of "Disadvantaged Business Enterprise" in this section.

#### IV. POLICY STATEMENT AND OBJECTIVES OF BUSINESS OPPORTUNITY PROGRAM

It is the policy of the CTRMA to ensure that disadvantaged businesses, as defined in 49 C.F.R. Part 26 and under this BOPP, have an equal opportunity to receive and participate in CTRMA contracts. It is the policy of the CTRMA never to exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin. In administering its BOPP, the CTRMA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of federal and state law with respect to individuals of a particular race, color, sex, or national origin. In implementing these policies and objectives, the CTRMA will strive to ensure that the DBE Program is narrowly tailored in accordance with applicable law. This program also incorporates the DBE Policy Statement adopted by the CTRMA Board of Directors in Resolution No. 03-60, dated November 5, 2003.

V.  
**GENERAL REQUIREMENTS AND ADMINISTRATION  
OF BUSINESS OPPORTUNITY PROGRAM**

A. **Administration:** The DBE and SBE programs will be administered through and in accordance with the BOPP. All CTRMA departments, personnel, and/or consultants having or sharing responsibility for awarding CTRMA contracts and/or making procurements, will support and assist in promoting and carrying out this BOPP. Examples of such departments, or consultant services, include Administration, Engineering, Information Technology, Maintenance, Contract Management, Legal and Purchasing.

1. **BOPP Liaison Officer:** The Executive Director will appoint a BOPP Liaison Officer who will report directly to the Executive Director regarding the implementation, status and compliance with the BOPP. The BOPP Liaison Officer's duties for this BOPP include, but are not limited to, the following:

- (a) implementing, coordinating, administering and monitoring the BOPP;
- (b) developing and presenting annual and other reports as may be requested by the Executive Director or Board of Directors;
- (c) coordinating and conducting outreach efforts with other CTRMA departments, TxDOT, FHWA and other agencies;
- (d) educating and advising the staff as necessary for effective implementation of the BOPP, and the DBE and SBE programs;
- (e) developing and maintaining procedures to ensure that disadvantaged businesses are afforded an equitable opportunity to compete on all CTRMA contracts by providing assistance and opportunities through workshops and trade fairs, distributing handbooks, conducting pre-bid/pre-proposal conferences, and assuring timely dissemination of bid/contract information;
- (f) developing, administering and enforcing policies, standards, definitions, criteria and procedures to govern the implementation, interpretation, and application of the BOPP in a manner that is designed to achieve its purposes;
- (g) assuring that listings or directories of SBEs are developed, maintained and available to persons seeking to do business with the CTRMA;
- (h) receiving and reviewing inquiries and making recommendations concerning the DBE and/or SBE programs, including concerns about violations and/or abuse of the DBE and/or SBE programs;

- (i) making recommendations for resolution of any issues or concerns and taking appropriate steps to enforce the BOPP, including deciding and imposing appropriate sanctions for violations and/or abuse of the program;
- (j) considering and evaluating whether efforts for DBE and SBE utilization by contractors satisfy the good faith requirements of the BOPP;
- (k) recommending, in cooperation with other departments, appropriate DBE and/or SBE goals and any program changes, which may be appropriate to improve the overall effectiveness of the BOPP;
- (l) ensuring that appropriate provisions of the DBE and/or SBE Program are included in bid proposals and contract specifications;
- (m) periodically reviewing applicable insurance and bonding requirements with a view toward determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly DBEs and SBEs, to bid more competitively on all CTRMA contracts;
- (n) compiling information to determine the level of DBE and/or SBE utilization; and
- (o) reviewing contracting requirement and recommending modification of requirements, where appropriate, that may tend to create barriers for minority, women owned and small businesses.

2. **Departmental Responsibilities:** All CTRMA departments, and consultants, when applicable, will cooperate with the BOPP Liaison Officer in the implementation of the goals and intent of this BOPP. However, certain departments and consultants will have particular responsibilities because of their procurement activity. Examples of such departments and consultant services include Engineering, Information Technology, Maintenance and Purchasing. These responsibilities for this BOPP include, but are not limited to, the following:

- (a) assisting the BOPP Liaison Officer in gathering information to determine the availability of qualified disadvantaged businesses, as defined in this BOPP;
- (b) assisting and participating in workshops, trade fairs, outreach seminars, and other similar programs designed to identify and increase the participation of disadvantaged businesses in Authority projects;
- (c) working with the BOPP Liaison and other departments and coordinating with TxDOT, where appropriate, in establishing BOPP goals;
- (d) maintaining appropriate records to keep track of compliance with the BOPP and to be able to present reports concerning the DBE/SBE programs;

- (e) ensuring that applicable provisions of the DBE and/or SBE programs are included in bid proposals and specifications and in contracts awarded;
- (f) assisting in evaluating whether there are opportunities to present bid packages and requests for proposal in a manner that provides DBEs and/or SBEs a maximum opportunity for competitive participation; and
- (g) ensuring that purchasing procedures are consistent with the BOPP.

**B. Outreach:** The CTRMA will maintain and participate in outreach programs that are designed to maximize the opportunities for disadvantaged and small businesses to contract with the CTRMA. The outreach efforts will include, but not be limited to, one or more of the following:

1. **Website:** The CTRMA official website ([www.ctrma.org](http://www.ctrma.org)) will include information about its procurement process and how to do business with the CTRMA.

2. **Notice Of Bidding Opportunities:** The CTRMA will advertise bidding opportunities in accordance with the CTRMA Procurement Policy. The CTRMA may advertise in newspapers or other publications that target small, minority-owned, and/or woman-owned businesses. The CTRMA will take reasonable steps to include disadvantaged and small businesses on its mailing lists for the receipt of bid documents.

3. **Assistance In Bidding Process:** Upon request, the CTRMA will assist small, minority-owned, and woman-owned businesses by providing them information regarding bid specifications, contracting opportunities, and prerequisites for bidding on CTRMA contracts.

4. **Structure Of Bidding Opportunities:** When determined to be feasible, the CTRMA will structure its solicitations for bid proposals so that they include bidding opportunities for businesses of varying sizes and delivery schedules and encourage opportunities for disadvantaged and small businesses.

5. **Simplification Or Reduction Of Bonding Requirements:** When determined to be feasible, the CTRMA will simplify or reduce bonding and financing requirements to encourage disadvantaged and small business participation.

6. **Directory For Prime Contractors:** The CTRMA will utilize and refer contractors to the DBE participant directories developed and maintained by TxDOT, to directories maintained by other agencies, and may prepare and maintain one or more of its own directories of disadvantaged and small businesses. The CTRMA will make the directory(ies) available to its prime contractors and known potential prime contractors, and encourage prime contractors to subcontract with the disadvantaged and small businesses.

7. **Encouragement Of Joint Ventures:** The CTRMA may encourage joint ventures between and with businesses that qualify as disadvantaged and small businesses by providing access to it directories.

8. **Use Of Financial Institutions:** The CTRMA will make reasonable efforts to use small, woman-owned or minority-owned financial institutions. The CTRMA will encourage prime contractors to use such institutions.

9. **TxDOT/FHWA Programs:** The CTRMA will use and cooperate with programs administered by TxDOT in its DBE Program.

10. **Program Monitoring:** The CTRMA will keep track of disadvantaged and small business participation in CTRMA contracts, including those with and without specific contract goals. "Participation" by disadvantaged and small businesses for this purpose means that payments have actually been made to the disadvantaged and/or small business. The record will show the commitments and attainments as required by 49 C.F.R. § 27.37. The BOPP Liaison Officer will monitor the CTRMA's progress toward its annual overall goal as may be required by law or the Executive Director. Progress toward the federal DBE Program goal will be calculated in accordance with 49 C.F.R. § 26.55.

11. **Program Inquiries:** Any questions about the Programs or Policies, including allegations about possible violation and/or abuse of the Programs or Policies, must be submitted to the BOPP Liaison Officer.

C. **Directories and Designations of Disadvantaged Businesses:** As part of CTRMA's efforts to identify and ensure participation of disadvantaged and small businesses on CTRMA projects, the CTRMA will rely on listings (directories) of certified small, woman-owned and minority-owned businesses maintained by TxDOT and other entities and governmental units that satisfy the CTRMA's certification requirements, including the Texas Unified Certification Program for Federal DBE Certification, as administered through TxDOT and the City of Austin's Department of Small and Minority Business Resource (as the designated Texas DBE certifying agency for Hays, Travis, Williamson, Caldwell and Bastrop Counties), or any other recognized certification that the CTRMA finds acceptable.

D. **General Requirements of Contractors/Vendors:**

1. **Good Faith Efforts/Waiver:** Contractors/vendors who propose to perform a contract with the CTRMA that is subject to the DBE Program, using their own work force, and without the use of subcontractors will be required to demonstrate good-faith efforts by submitting information (when requested by the CTRMA) sufficient for the CTRMA to determine the following to effectuate a waiver of applicable BOPP requirements:

- a. That it is a normal business practice of the contractor/vendor to perform the elements of the contract with its own work forces without the use of subcontractors;

- b. That the technical nature of the proposed project does not facilitate subcontracting nor any significant supplier opportunities in support of the project; and/or;
- c. That the contractor/vendor in fact has demonstrated its capabilities to perform the elements of the contract with its own work forces without the use of subcontracts.

The CTRMA may also require the same demonstration by contractors/vendors who propose to perform a contract with the CTRMA that is subject to the SBE Program.

2. **Payment Of Subcontractors In A Timely Manner:** Each contract the CTRMA signs with a prime contractor/vendor will also contain provisions with regard to the timely payment of subcontractors as required by 49 C.F.R. § 26.29. The following language is an example of the type of language to be included, however, such language may be subject to modification and approval by TxDOT:

The contractor agrees to pay its subcontractors for satisfactory performance of their contracts no later than thirty (30) days from its receipt of payment from the CTRMA. The contractor shall also promptly return any retainage payments to subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CTRMA. This clause applies to payments to all subcontractors.

3. **Reasonable Efforts To Use Local DBE/SBE Financial Institutions:** Prime contractors subject to the DBE Program will also be encouraged to make reasonable efforts to identify and use financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities pursuant to 49 C.F.R. § 26.27.

4. **Approval For Replacement of DBE:** A contractor must obtain approval from the CTRMA to substitute another firm for a DBE firm listed on an approved commitment and demonstrate written justification for the substitution, for example, that the original firm is unable or unwilling to carry out the terms of the contract.

## VI. DBE PROGRAM REQUIREMENTS AND IMPLEMENTATION

A. **DBE Program Adoption:** This DBE Program is created pursuant to 49 C.F.R. Part 26 and applies only to procurements that are federally-assisted and only until such time that all funds from DOT have been expended. As a sub-recipient of federal funds through TxDOT, the

Authority may establish a distinct federal DBE Program, or may comply with the federal regulations by adopting the federally approved TxDOT DBE Program.

In order to facilitate the administration of the federal DBE requirements, the Authority, and TxDOT may enter into a Memorandum of Understanding (MOU) to establish the obligations and responsibilities of the CTRMA, TxDOT and FHWA in each agency's collective efforts to abide by and implement the policies and objectives of the federal DBE regulations. Should the CTRMA adopt the TxDOT DBE Program, it will conduct its DBE Program in accordance with the MOU that is adopted by the CTRMA Board and incorporated herein for all purposes pursuant to 49 C.F.R. § 26.45(c)(4). If the MOU requirements are inconsistent with the DBE Program requirements, the MOU will govern.

**B. DBE Certification:** The CTRMA will ensure that only businesses certified as DBEs are allowed to participate as DBEs in its DBE Program. To be certified as a DBE, a business must meet the definition of Disadvantaged Business Enterprises as set forth in the Definitions section of this Policy and the certification standards set forth at 49 C.F.R. Part 26, Subpart D. The CTRMA will recognize DBE certification by TxDOT, the Texas Unified Certification Program, and the City of Austin Department of Small and Minority Business Resources (as the Federal DBE certifying entity for Hays, Travis, Williamson, Caldwell, and Bastrop Counties), and other agencies, to the extent approved by TxDOT to process applications for DBE certification.

**C. DBE Goal Setting/DBE Annual Goal:**

1. **Process For Establishing DBE Goal:** The CTRMA will establish a DBE participation goal following the process set forth in 49 C.F.R. § 26.45 or the MOU. The CTRMA will not use quotas in any way in the administration of this DBE Program.

2. **Race- and Gender-Neutral And Race- and Gender-Conscious Participation:** The CTRMA will meet the maximum feasible portion of its overall goal by using race- and gender-neutral efforts of facilitating DBE participation. The CTRMA will adjust the estimated percentage of race- and gender-neutral and race- and gender-conscious participation as needed to reflect actual DBE participation and will track and report race- and gender-neutral and race- and gender-conscious participation separately. For reporting purposes, race- and gender-neutral DBE participation is defined in this BOPP.

3. **Race- and Gender-Neutral Efforts To Achieve Annual DBE Goals:** Race- and gender-neutral DBE participation exists when a DBE: (1) wins a prime contract through customary competitive procurement procedures; (2) is awarded a subcontract on a prime contract that does not carry a DBE goal; or (3) is awarded a subcontract on a prime contract that carries a DBE goal if the prime contractor awarded the subcontract without regard to DBE status.

4. **DBE Contract Goals:** Contract goals may be established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the CTRMA's overall DBE goal that is not projected to be met through the use of race- and gender-neutral efforts. Contract goals may be set only if the CTRMA determines that it will not meet its

annual overall DBE participation goal by race and gender neutral efforts, and that the contract at issue will have subcontracting opportunities. In this event, contract goals shall be set in accordance with 49 C.F.R. § 26.51(e), (f) and (g) and race- and gender-neutral efforts shall be increased to achieve the overall goal. If a contract goal is set, the contract must include provisions requiring the contractor to make good faith efforts to achieve the contract goal and may only be awarded to a bidder who agrees to do so. The CTRMA need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBE's to perform the particular type of work). The CTRMA will express its DBE contract goals as a percentage of the total contract, including both federal and any other funds; however, for purposes of reporting to the U.S. DOT, emphasis will be placed on the percentage of federal funds that were ultimately paid to DBEs.

5. **Good Faith Effort:** The CTRMA will make a good faith effort to meet or exceed the goal of this DBE Program, using good faith efforts and the race- and gender-neutral methods described in this Program. Contractors will be required to make good faith efforts to obtain DBE participation as described in Appendix A to 49 C.F.R. Part 26 and the TxDOT DBE Program, if applicable. The CTRMA will grant no preferences to DBEs in the bidding/contracting process.

D. **DBE Contractor/Vendor Obligations:** Potential prime contractors on projects involving federal funds will be notified of this policy and must meet the following standards:

1. **Compliance With This Program:** The CTRMA contracts that involve federal financial assistance will include a contract provision requiring the contractor: (a) to encourage the use of DBEs in subcontracting and material supply activities; (b) to prohibit discrimination against DBEs; and (c) to provide a method of reporting race-and gender neutral DBE participation.

2. **Adherence To Equal Opportunity:** When federal financial assistance is involved, each contract the CTRMA signs with a contractor and each subcontract between a prime contractor and a subcontractor will include the following assurance as required by 49 C.F.R. § 26.13:

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

## VII. SBE PROGRAM REQUIREMENTS AND IMPLEMENTATION

**A. SBE Program:** The CTRMA SBE Program applies to CTRMA contracts and procurements that do not involve federal financial assistance. In accordance with § 370.183 of the Texas Transportation Code, the CTRMA Procurement Policy, and consistent with general law, the CTRMA will:

1. set goals for the award of contracts to disadvantaged and small businesses and attempt to meet the goals;
2. attempt to identify disadvantaged and small businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and
3. give disadvantaged and small businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

**B. SBE Certification:** The CTRMA will require SBEs to be certified according to its standards, which may vary from the DBE certification. The CTRMA will recognize as certified SBEs certifications for small, minority-owned, women-owned, historically underutilized, and disadvantaged business enterprises. Such certifications may be provided by one or more of the following agencies or entities: TxDOT; the Texas Unified Certification Program for Federal DBE Certification; the Texas Building and Procurement Commission's Historically Underutilized Business ("HUB") Program Certification; the City of Austin's Department of Small and Minority Business Resources; or any other recognized certification that the CTRMA finds acceptable.

Firms that desire or are required by the CTRMA to be certified for SBE participation must complete and submit a CTRMA SBE Status Certification Affidavit which identifies the status certification and the group providing the certification. The MWSBE status certification is effective for as long as it is effective with the certifying entity, unless terminated earlier by the CTRMA.

**C. SBE Goals:** The CTRMA will identify overall SBE aspirational goals for the construction, professional services, consulting services and other goods and services procurements. The aspirational goal may generally establish a level of participation that the CTRMA will strive to achieve. The aspirational goal may be based upon a numeric formula and/or based on other factors. During the process of developing SBE goals, the CTRMA may review and consider information on the availability of SBEs in the CTRMA's applicable marketplace, as well as any other information and data which the CTRMA believes is pertinent to goal setting.

1. The overall SBE aspirational goal(s) may be established or reaffirmed on an annual basis and will reflect the CTRMA's commitment to facilitate opportunities for the participation of small business enterprises in the CTRMA procurement process and awards.

2. The goals may be expressed as a broad and general aspiration, as a percentage of the total estimated dollar amount of all contracts and subcontracts to be awarded during the applicable fiscal year, or as a specific percentage of the dollar amount on a given contract. The goal may reflect the CTRMA's estimate of overall SBE participation that is attainable given available CTRMA SBE resources and the performance of the CTRMA in its efforts to achieve previous goals under the Program.

3. If contract-specific goals are established, no contract will be executed until the lowest responsible bidder/proposer has achieved or demonstrated an acceptable good-faith effort toward achievement of the SBE goal. If goals are established and are not met, no sanctions will be recommended or imposed provided the successful bidder/proposer can fully demonstrate that he/she made an acceptable good-faith effort, as defined by the CTRMA, to achieve the goals.

**D. SBE Contractor/Vendor Obligations:** All contracts and specification packages and requests for bids or proposals will incorporate the following provisions specifically or by reference:

1. It is the policy of the CTRMA Board of Directors that disadvantaged and small businesses will have the maximum practicable opportunity to participate in the awarding of CTRMA contracts and related subcontracts.
2. The bidder, proposer, contractor or vendor agrees to employ good-faith efforts to carry out this policy through award of subcontracts to small or disadvantaged business enterprises to the fullest extent consistent with the efficient performance of the contract, and/or the utilization of CTRMA SBE suppliers where feasible. CTRMA contractors are expected to make a good faith effort to solicit bids for subcontractors/suppliers from available CTRMA SBEs.
3. The bidder, proposer, contractor or vendor specifically agrees to comply with all applicable provisions of the CTRMA's SBE Program, and to include federal requirements when applicable.
4. The contractor/vendor will maintain records, as specified in his/her contract, showing: (1) subcontract/supplier awards, specifically to small business enterprises; (2) specific efforts to identify and award such contracts to small business enterprises; and, (3) submit, when requested, copies of executed contracts to establish actual CTRMA SBE participation and how much DBEs were paid.
5. The contractor/vendor agrees to submit periodic reports of subcontract and/or supplier awards to small business enterprises in such form and manner, and at such time, as the CTRMA shall prescribe and will provide access to books, records and accounts to authorized officials of the CTRMA, state or federal agencies for the purpose of verifying CTRMA SBE participation and good-faith

efforts to carry out this SBE policy. All CTRMA contractors may be subject to a post-contract SBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future CTRMA contracts.

6. The contractor/vendor will appoint an official or representative knowledgeable as to this Policy and Program to administer and coordinate the contractor's efforts to carry out this SBE policy.
7. Where possible and/or practical, all vendors and/or contractors will make good-faith efforts to subcontract and meet the CTRMA SBE goal. Contractors may be required to provide documentation demonstrating that they have made good-faith efforts, as defined by the CTRMA, in attempting to do so by submitting an acceptable SBE Utilization Statement. Bidders are required to satisfy applicable SBE Program requirements prior to the award of contract. Bidders that fail to meet these requirements will be considered non-responsive or in non-compliance.
8. Vendors or contractors will report any changes in proposed or actual SBEs, and will make good-faith efforts to replace SBE subcontractors or subconsultants unable to perform on the contract with another SBE.
9. Failure or refusal by a bidder, proposer, contractor or vendor to comply with the SBE provisions herein or any applicable provisions of the SBE Program, either during the bidding process or at anytime during the term of the contract, shall constitute a material breach of contract whereupon the contract, at the option of the CTRMA, may be canceled, terminated or suspended in whole or in part; and, the contractor may be debarred from further contracts with the CTRMA as a non-responsible contractor.

### VIII. ENFORCEMENT

**A. Compliance With Program:** The BOPP Liaison Officer will monitor compliance by all prime contractors with the requirements under these Programs, implement appropriate mechanisms to ensure compliance by all program participants, and verify that the work committed to disadvantaged and small businesses is actually performed by the disadvantaged and/or small business.

**B. Claims of Program Violations:** Allegations about violations and/or abuse should be made in writing and identify the person making the allegation. The BOPP Liaison Officer will review the information presented and take whatever steps he or she determines to be appropriate under the circumstances to resolve the issues raised by the allegation. The BOPP Liaison Officer may conduct an investigation of the allegations. The CTRMA cannot assure complete confidentiality in conducting its investigation, which may require the disclosure of information to other governmental agencies or affected third parties. Allegations that are made anonymously

or verbally will be reviewed as is deemed appropriate. It may not be possible to investigate an issue if insufficient information is provided.

**C. Notification of TxDOT, DOT and Other Agencies:** The CTRMA will notify TxDOT, FHWA, the DOT and other appropriate agencies of any false, fraudulent, or dishonest conduct in connection with the federal DBE Program, so that TxDOT and/or DOT can take the necessary steps to investigate the alleged conduct as provided in 49 C.F.R. § 26.109.

## IX.

### COMPLIANCE AND SEVERABILITY CLAUSE

It is the intent of the CTRMA to comply with all applicable federal and state laws and regulations and to comply with the TxDOT DBE Program, where applicable. The BOPP will not apply to contracts that are subject to overriding state or federal laws, regulations, policies or guidelines, including those regarding small, minority-owned, or woman-owned businesses. In the event that an apparent conflict arises between the language contained in this Program and federal, state or local law or ordinance, the language will be construed so as to comply with the federal, state or local law or ordinance.

Nothing in this Business Opportunity Program or Policy should be construed as requiring a set-aside or mandatory quota. Any questions regarding the CTRMA's Business Opportunity Program should be directed to the BOPP Liaison Officer.

## X.

### EFFECTIVE DATE

This Business Opportunity Program and Policy (BOPP) shall become effective on November 5, 2003, and apply to any contract or procurement executed thereafter. The CTRMA shall approve any amendment, modification, or replacement of this BOPP by resolution, with such resolution including either an explicit repeal of specific sections and provisions of this BOPP, or a replacement of this BOPP with entirely new provisions.



**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**  
**DBE POLICY STATEMENT**

The Central Texas Regional Mobility Authority ("CTRMA") has established a Disadvantaged Business Enterprise ("DBE") program in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 C.F.R. Part 26. The CTRMA has received, or will receive, federal financial assistance from DOT, and as a condition of receiving this assistance, the CTRMA has signed an assurance that it will comply with 49 C.F.R. Part 26.

It is the policy of the CTRMA to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also CTRMA policy:

1. to ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. to ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. to ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. to help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. to assist the development of firms that can compete successfully in the market place outside the DBE Program.

The CTRMA Executive Director has been designated as the CTRMA DBE Liaison Officer. In that capacity, the Executive Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the CTRMA in its financial assistance agreements with DOT.

The CTRMA has disseminated this policy statement to members of the CTRMA Board of Directors and all of the components of the regional mobility authority. CTRMA has also distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Such distribution was undertaken via publication on the CTRMA web site ([www.ctrma.org](http://www.ctrma.org)), by publication, and via reference in targeted mailings to DBE businesses in the Central Texas region.

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Mike Heiligenstein, Executive Director

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Date



MEMORANDUM OF UNDERSTANDING

CTRMA ADOPTION OF TxDOT DBE PROGRAM

This Memorandum of Understanding is by and between the **FEDERAL HIGHWAY ADMINISTRATION** ("FHWA"); the **TEXAS DEPARTMENT OF TRANSPORTATION** ("TxDOT"), an agency of the State of Texas; and the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY** ("CTRMA"), a Texas regional mobility authority organized and existing pursuant to Chapter 370, Texas Transportation Code.

WHEREAS, from time to time from FHWA through TxDOT, the CTRMA receives federal funds to assist with the construction of its transportation projects; and

WHEREAS, the CTRMA, as a sub-recipient of federal funds, is required pursuant to 49 C.F.R. Part 26, to implement a program for disadvantaged business enterprises ("DBE"), as defined by 49 C.F.R. §26.5 ("DBE Program"); and

WHEREAS, TxDOT has implemented an approved DBE program pursuant to 49 C.F.R. Part 26; and

WHEREAS, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the CTRMA's procurement of construction services are subject to review and/or concurrence by TxDOT; and

WHEREAS, the CTRMA shall undertake roadway construction projects that are substantially similar to those undertaken by TxDOT, and the CTRMA shall construct its projects using substantially the same pool of certified contractors that TxDOT uses; and

WHEREAS, the CTRMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

WHEREAS, FHWA, TxDOT and the CTRMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the CTRMA's adoption of the TxDOT DBE Program to meet the federal requirements;

NOW, THEREFORE, FHWA, TxDOT and the CTRMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 C.F.R. Part 26 and other applicable laws and regulations.

(2) The CTRMA is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 C.F.R. §26.21, must implement a federally approved DBE Program. The CTRMA receives its federal assistance through TxDOT. As a sub-recipient, the CTRMA has the option of developing its own program, or adopting and operating under TxDOT's

approved DBE Program. For a variety of reasons, the FHWA recommends that sub-recipients, such as the CTRMA, adopt state U.S. DOT-approved DBE programs.

(3) The CTRMA and TxDOT procure services from substantially the same pool of certified contractors for the construction of roadways.

(4) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the CTRMA to achieve its DBE participation in CTRMA federally assisted roadway construction projects.

(5) The CTRMA and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the CTRMA:

(a) The CTRMA will be responsible for project monitoring and data reporting to TxDOT. The CTRMA will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the CTRMA.

(b) The CTRMA will furnish to the Business Opportunity Program ("BOP") of TxDOT, at least three (3) months before letting, the specific work items (bid items) and engineers' estimates for the construction project to be let in order for TxDOT to accurately determine the appropriate DBE goal, if any, for the CTRMA construction project.

(c) The CTRMA may recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market and nature of the good or service to be acquired. The CTRMA's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. TxDOT will retain authority to establish project goals.

(d) TxDOT will cooperate with the CTRMA in an effort to meet the timing and other requirements of CTRMA projects.

(e) The CTRMA will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its roadway construction projects and will be responsible for all costs and expenses incurred in its procurements.

(f) The DBEs eligible to participate on TxDOT roadway construction projects will also be eligible to participate on CTRMA roadway construction projects subject to the DBE Program, unless otherwise prohibited from bidding on a CTRMA project under applicable law or the CTRMA's Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.

(g) The CTRMA will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE program compliance issues that may

arise such as Good Faith Effort, Commercially Useful Function, DBE qualification and other similar requirements.

(h) The CTRMA and TxDOT will work together to achieve a mutually acceptable result with regard to Items (b) and (g); however, TxDOT will retain final decision-making authority on those issues.

(i) The CTRMA will designate a liaison officer to coordinate efforts with TxDOT DBE Program administrators and to respond to questions from the public and private sector regarding the CTRMA's administration of the DBE Program through TxDOT.

(j) TxDOT will be responsible for providing the CTRMA with DBE project awards and expense reports, with a quarterly DBE summary report and with a DBE shortfall report to allow the CTRMA to prepare its required quarterly DBE report for FHWA.

(k) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The CTRMA and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the Central Texas area.

(l) The CTRMA will submit quarterly reports to FHWA through the division administration of the Texas Division of FHWA.

(m) The CTRMA will agree to participate in TxDOT-sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, including DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the CTRMA projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the CTRMA about the implementation of the TxDOT DBE Program by the CTRMA, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, any party may terminate this Memorandum of Understanding by written notice to all other parties.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the CTRMA will be allowed reasonable time in which to seek approval for a DBE Program without being deemed not to be in compliance with 46 C.F.R. Part 26, or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which the CTRMA is a sub-recipient of federal funds. The CTRMA may also implement a Small Business Enterprise

(SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program. The CTRMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by FHWA, TxDOT, and the CTRMA, acting through each duly authorized official.

APPROVED AS TO FORM:

TEXAS DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
[TxDOT General Counsel]

By: \_\_\_\_\_  
Efrem Casares, TxDOT DBE Program  
Administrator

APPROVED AS TO FORM:

CENTRAL TEXAS REGIONAL MOBILITY  
AUTHORITY

By: \_\_\_\_\_  
C. Brian Cassidy  
General Counsel

By: \_\_\_\_\_  
Mike Heiligenstein  
Executive Director

U.S. DEPARTMENT OF  
TRANSPORTATION, FEDERAL  
HIGHWAY ADMINISTRATION – TEXAS  
DIVISION

By: \_\_\_\_\_  
[Name & title]

**MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 03-61**

WHEREAS, the Texas Transportation Code authorizes the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating one or more transportation projects in a region of this state; and

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, the Board of Directors desires to hire an Executive Director to serve as the chief administrative officer for the CTRMA; and

WHEREAS, pursuant to Resolution No. 03-32 the staff caused to be published a posting for the Executive Director position for the purpose of soliciting interest and responses from qualified candidates interested in the job; and

WHEREAS, twenty responses were received to the job posting notices; and

WHEREAS, after screening all of the responses and conducting interviews with several of the applicants the CTRMA Board of Directors has determined that Mike Heiligenstein is the applicant best qualified for the position of Executive Director of the CTRMA.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby selects Mike Heiligenstein to serve as its Executive Director; and

BE IT FURTHER RESOLVED, that staff and the general counsel are directed to negotiate terms and conditions for the employment of the Executive Director and to present any employment contract and a summary of the material terms thereof to the Board of Directors for approval.

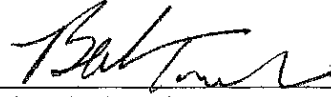
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 5th day of November, 2003.

Submitted and reviewed by:



\_\_\_\_\_  
C. Brian Cassidy  
Legal Counsel for the Central  
Texas Regional Mobility Authority

Approved:



\_\_\_\_\_  
Robert E. Tesch  
Chairman, Board of Directors  
Resolution Number 03-61  
Date Passed 11/05/03

**MEMORANDUM OF UNDERSTANDING  
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF TRANSPORTATION  
FEDERALLY-APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**ORIGINAL**

This Memorandum of Understanding is by and between the TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT"), an agency of the State of Texas; and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("the CTRMA"), a Texas regional tollway authority organized and existing pursuant to Chapter 26, Texas Transportation Code.

Whereas, from time to time from CTRMA receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the CTRMA with the construction of turnpike projects; and

Whereas, the CTRMA, as a sub-recipient of federal funds, is required by 49 CFR 26. to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a DBE Program that is approved by the Federal Highway Administration (FHWA) pursuant to 49 CFR part 26; and

Whereas, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the CTRMA's procurement of construction services are subject to review and/or concurrence by TxDOT; and

Whereas, the CTRMA and TxDOT undertake substantially similar roadway construction projects and construct their respective projects using substantially the same pool of contractors; and

Whereas, the CTRMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the CTRMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the CTRMA's adoption of the TxDOT DBE Program to meet the federal requirements;

Now, therefore, TxDOT and the CTRMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The CTRMA is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 CFR § 26.21, must implement a federally approved DBE Program. The CTRMA receives its federal assistance through TxDOT. As a sub-recipient, the CTRMA has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the CTRMA, adopt the DBE program, administered through TxDOT, and the CTRMA hereby chooses to adopt the TxDOT DBE Program.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the CTRMA to achieve its DBE participation in CTRMA federally assisted roadway construction projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the CTRMA and for TxDOT.

(5) The CTRMA and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the CTRMA:

(a) The CTRMA will be responsible for project monitoring and data reporting to TxDOT. The CTRMA will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the CTRMA.

(b) The CTRMA will recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The CTRMA's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The CTRMA and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues.

(c) TxDOT will cooperate with the CTRMA in an effort to meet the timing and other requirements of CTRMA projects.

(d) The CTRMA will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its roadway construction projects and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT roadway construction projects will also be eligible to participate on CTRMA roadway construction projects subject to the DBE Program, unless otherwise prohibited from bidding on a CTRMA project under applicable law or the CTRMA Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.

(f) The CTRMA will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort, Commercially Useful Function, etc. The CTRMA and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues.

(g) The CTRMA will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding the CTRMA's administration of the DBE Program through TxDOT.

(h) CTRMA will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The CTRMA and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the North Central Texas area.

(j) The CTRMA will submit DBE semi-annual progress reports to TxDOT.

(k) The CTRMA will participate in TxDOT sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the CTRMA projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the CTRMA about the implementation of the TxDOT DBE Program by the CTRMA, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, either party may terminate this Memorandum of Understanding by written notice to the other party and FHWA.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the CTRMA will be allowed reasonable time in which to seek approval for a DBE Program without being deemed non-compliant with 46 CFR Part 26 or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which the CTRMA is a sub-recipient of federal funds. The CTRMA may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program. The CTRMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

(10) The following attachments to this MOU are incorporated as if fully set out herein for all purposes: Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973); Attachment B - SPECIAL PROVISION 000-461; Attachment C - Comprehensive Development Agreement (CDA) DBE Provisions (with TxDOT's DBE Program and its 10 Attachments) and Attachment D - 49 CFR §26.13 (contractual assurances). In the case of any conflict between the SPECIAL PROVISION, the CDA DBE Provisions and TxDOT's DBE Program, the provisions of the first two documents shall prevail in regard to CDAs.

EXECUTED by TxDOT and the CTRMA, acting through each duly authorized official and effective on the latest date signed.

APPROVED AS TO FORM:

By: Bob Jackson  
Bob Jackson, General Counsel  
Texas Department of Transportation

Date: 1/18/07

By: Tom Nielson  
Tom Nielson, General Counsel  
Central Texas Regional Mobility Authority

Date: 1/23/07

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

CENTRAL TEXAS REGIONAL MOBILITY  
AUTHORITY

By: *M. W. Behrens*  
Michael W. Behrens, P.E.  
Executive Director

By: *Mike Heiligenstein*  
Mike Heiligenstein  
Executive Director

Date: 1-18-07

Date: 2/1/07

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”), agrees to comply with the following Nondiscrimination statutes and authorities, including, but not limited to:

### **Pertinent Nondiscrimination Authorities**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 4 71, Section 4 7123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, regardless of whether such programs or activities are federally funded);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by DOT regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).